



Civil Resolution Tribunal

Date Issued: January 6, 2020

File: SC-2019-008719

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vickery v. ICBC*, 2020 BCCRT 17

Default decision – non-compliance

B E T W E E N :

SARA VICKERY

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and JERRY
TIMOTHY PETERSON

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the applicant, Sara Vickery, due to her non-compliance with the tribunal's mandatory directions as required, as discussed below.
2. This small claims dispute is about liability for a motor vehicle accident. The applicant claimed \$2,900 as compensation for her written-off vehicle. The respondent Insurance Corporation of British Columbia (ICBC) internally concluded that the applicant was liable for the accident.
3. ICBC says it is not the correct respondent, and that the proper respondent is the respondent Jerry Timothy Peterson. Given that I have below dismissed the applicant's claim, nothing turns on whether ICBC is a proper respondent.
4. While she participated in the process, the applicant was self-represented. Both respondents were represented by an ICBC employee.

JURISDICTION AND PROCEDURE

5. Section 36 of the *Civil Resolution Tribunal Act* (CRTA) applies if a party to a dispute fails to comply with the CRTA or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to the tribunal for resolution and the tribunal may:
 - a. Hear the dispute in accordance with any applicable rules.
 - b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
 - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.

6. The case manager has referred the applicant's non-compliance with the tribunal's rules to me for a decision as to whether I ought to refuse to resolve this dispute or dismiss it.
7. These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought under section 118 of the CRTA. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
8. Where permitted under section 118 of the CRTA, the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
9. For the reasons that follow, I dismiss the applicant's claim and this dispute.

ISSUE

10. The issue is whether I should hear the applicant's claim, dismiss the applicant's claim, or refuse to resolve the claim and the dispute.

EVIDENCE AND ANALYSIS

Non-compliance

11. The applicant is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by sections 25 and 32 of the CRTA and tribunal rules 1.4(1), 5.1 to 5.4, and 7.1 to 7.4, despite multiple attempts by the case manager to contact the applicant with a request for a reply.
12. The tribunal generated the applicant's Dispute Notice on November 4, 2019, which included the email address and phone number she provided for use in this dispute. The case manager then made the following attempts at contact:

- a. On December 2, 2019, the case manager emailed the applicant, asking her to respond to the case manager's initial email by December 4. On December 4, the case manager emailed the applicant, extending that deadline to December 6. With no response, on December 9, the case manager attempted to call the applicant, but the number was not in service.
 - b. On December 9, 2019 the case manager sent a final warning email asking the applicant to respond by December 12, 2019. The email warned the applicant that failure to comply may result in a tribunal member hearing and deciding the dispute without her participation, without further notice.
 - c. On December 12, 2019, the case manager telephoned the applicant and the number was in service. The case manager left a voicemail. On December 16, 2019, the case manager left another voicemail, warning the applicant that if she did not respond by December 17 at 10 a.m. the case manager would refer the claim to a tribunal member for non-compliance. She also said that further details were in the December 9, 2019 email. The applicant did not respond.
13. The case manager then referred the matter of the applicant's non-compliance with the tribunal's rules to me for a decision as to whether I should refuse to resolve the dispute, hear the dispute, or dismiss the applicant's claim.

Should the tribunal dismiss the applicant's claim?

14. As referenced above, the applicant filed a dispute application and the tribunal generated a Dispute Notice. The applicant has provided no explanation about why she then failed to communicate with the tribunal as required. I find the case manager made a reasonable number of contact attempts. The applicant was informed in writing at the beginning the facilitation process that she must actively participate in the dispute resolution process and respond to the case manager's communications, including emails. The applicant provided her contact information on the Dispute Notice. Given that the applicant did respond to the emails and

voicemails, I find it is more likely than not that the applicant knew about the case manager's contact attempts and failed to respond.

15. Rule 1.4(2) states that if a party is non-compliant, the tribunal may:

- a. decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
- b. conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
- c. dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and
- d. require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.

16. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the tribunal will consider:

- a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
- b. the stage in the facilitation process at which the non-compliance occurs;
- c. the nature and extent of the non-compliance;
- d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
- e. the effect of the non-compliance on the tribunal's resources and mandate.

17. In the circumstances of this case, I find that it is appropriate to dismiss the applicant's dispute. Though not a binding precedent, I agree with the tribunal's reasoning in *Grand-Clement v. The Owners, Strata Plan*, KAS 2467, 2017 BCCRT

45 that it is problematic to force an unwilling applicant to pursue a dispute. To do so would go against the tribunal's mandate and impair the fairness of the process by creating an imbalance of the tribunal's fact finding and decision-making functions.

18. The non-compliance here occurred at the outset of the facilitation process and no discussions between the parties occurred. The applicant was unwilling to provide particulars of her claim, or to provide evidence to support her claim. Given the case manager's attempts at contact and the applicant's failure to respond despite written warning of the consequences, I find the extent of the non-compliance is significant.
19. Given that no counterclaim was filed, I see no prejudice to the respondents by dismissing the applicant's dispute. On the other hand, if I refuse to resolve the claim, there would be no finality as it would be open to the applicant to make a further request for tribunal resolution. There would be no consequence to the applicant for non-compliance, which would be unfair to the respondents.
20. Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party refuses to participate. I find that it would be wasteful for the tribunal to continue applying its resources on this dispute, such as by making further attempts to seek participation from the applicant.
21. Weighing all of the factors, I find that the applicant's claim should be dismissed.
22. Under tribunal rule 9.5 the tribunal can make orders about payment of fees or reasonable expenses in the case of a withdrawal or dismissal. The respondents did not pay tribunal fees or claim expenses in this dispute, so I make no order for payment of tribunal fees or expenses.

ORDER

23. I dismiss the applicant's claim and this dispute.

Micah Carmody, Tribunal Member