



Civil Resolution Tribunal

Date Issued: August 12, 2020

File: SC-2020-000168

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lam v. Gallivan*, 2020 BCCRT 895

BETWEEN:

HAYMOND LAM

APPLICANT

AND:

CHRISTOPHER GALLIVAN and NELSON DANCE STUDIOS LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. The applicant, Haymond Lam, says he previously filed a Civil Resolution Tribunal (CRT) dispute against the respondents, Christopher Gallivan and Nelson Dance Studios Ltd. (NDSL), under CRT file number SC-2018-003674. Mr. Lam and Mr. Gallivan reached a settlement agreement during the facilitation process. Mr. Lam says in December 2018 Mr. Gallivan stopped making payments under the

settlement terms and still owes him \$1,800. Mr. Lam seeks \$1,800 for the balance owing.

2. Mr. Gallivan says that NDSL is no longer in business.
3. NDSL did not file a Dispute Response and is in default, as discussed below.
4. Mr. Lam and Mr. Gallivan are self-represented.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

9. The issue in this dispute is whether either respondent must pay the applicant \$1,800 for the balance of the settlement proceeds.

EVIDENCE AND ANALYSIS

10. In a civil dispute like this one, as the applicant Mr. Lam bears the burden of proof on a balance of probabilities. Mr. Lam provided evidence and submissions to support his position. Although Mr. Gallivan filed a Dispute Response, he did not provide any evidence or submissions despite having the opportunity to do so.
11. Mr. Lam says a company, HLL, was hired to renovate the respondents' dance hall in July 2017 and the work was completed in August 2017. I infer HLL is Mr. Lam's company. Mr. Lam says the respondents did not pay in full for the work that was done and \$4,749.78 remained unpaid. Mr. Lam filed a dispute with CRT file number SC-2018-003674 for the balance owing. I infer the previous dispute involved the same parties as this dispute and that the respondents did not dispute that Mr. Lam had standing to file the dispute. On August 7, 2018, Mr. Lam and Mr. Gallivan agreed to settle the previous dispute for \$4,200. Under the emailed settlement agreement, Mr. Gallivan agreed to pay Mr. Lam \$100 per week from August 10, 2018 until May 31, 2019. The settlement agreement did not refer to NDSL. The parties did not ask for the settlement terms to be made into a consent resolution or a consent dismissal order. Mr. Lam says the respondents stopped making payments in December 2018 and still owe \$1,800.
12. Mr. Gallivan did not explain why he stopped making payments in his Dispute Response. He merely stated that NDSL was no longer in business.

Do the respondents owe Mr. Lam \$1,800?

13. NDSL is in default since it did not file a Dispute Response as required. Where a respondent is in default, liability is assumed. This means since NDSL refused to participate, it is generally reasonable to assume Mr. Lam's position is correct about

the issue at hand. However, as noted above, I find Mr. Lam does not have a cause of action against NDSL since it was not a party to the settlement agreement in the earlier CRT dispute. I dismiss Mr. Lam's claim against NDSL.

14. Mr. Gallivan did not provide any submissions or evidence and so, I accept Mr. Lam's uncontested evidence that Mr. Gallivan agreed to settle the previous dispute between the parties and to pay Mr. Lam \$100 per week from August 10, 2018 until May 31, 2019. I also accept that Mr. Gallivan ceased to comply with the settlement terms in December 2018 and that he still owes Mr. Lam \$1,800 under the settlement agreement.

15. I find Mr. Gallivan must pay Mr. Lam \$1,800 for the balance owing under the settlement agreement.

INTEREST, CRT FEES, AND DISPUTE EXPENSES

16. The *Court Order Interest Act* applies to the CRT. Mr. Lam is entitled to pre-judgment interest on the \$1,800 from December 28, 2018, the date Mr. Gallivan stopped making payments, to the date of this decision. This equals \$53.80.

17. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Mr. Lam is entitled to reimbursement of \$125 in CRT fees. Mr. Lam did not claim dispute-related expenses.

ORDERS

18. Within 14 days of the date of this order, I order Christopher Gallivan to pay Haymond Lam a total of \$1,978.80, broken down as follows:

- a. \$1,800 in debt,
- b. \$53.80 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$125 in CRT fees.

19. The applicant is entitled to post-judgment interest, as applicable.
20. The applicant's claims against Nelson Dance Studio Limited are dismissed.
21. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision.
22. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
23. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Rama Sood, Tribunal Member

