



# Civil Resolution Tribunal

Date Issued: August 14, 2020

File: SC-2020-003608

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *ATAC Law Corporation v. Torres*, 2020 BCCRT 906

Default decision – non-compliance

B E T W E E N :

ATAC LAW CORPORATION

**APPLICANT**

A N D :

MIGUEL TORRES

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (CRT) has been made without the participation of the respondent, Miguel Torres, due to Mr. Torres' non-compliance with the CRT's mandatory directions as required, as discussed below.

2. This dispute is about non-payment of debt. The applicant, ATAC Law Corporation (ATAC), says Mr. Torres failed to pay ATAC's invoice for legal services provided. ATAC claims \$966.05 plus contractual interest.
3. In his Dispute Response, Mr. Torres acknowledges that he owes this amount to ATAC.
4. While he participated, Mr. Torres represented himself. ATAC is represented by an employee or owner.

## **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 CRT rules in relation to the case management phase of the dispute, including specified time limits, or an order of the CRT made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to the CRT for resolution and the CRT 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 referred Mr. Torres's non-compliance with the CRT'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 CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the 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.

8. Where permitted under section 118 of the CRTA, the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
9. For the following reasons I allow ATAC's claim.

## **ISSUES**

10. The first issue is whether I should proceed to decide ATAC's claim, without Mr. Torres' further participation, given his non-compliance.
11. The second issue is whether I should order Mr. Torres to pay ATAC for the outstanding balance and, if so, how much.

## **EVIDENCE AND ANALYSIS**

### ***Non-compliance***

12. My August 4, 2020 summary decision to hear the dispute without Mr. Torres's participation, due to his non-compliance was previously communicated to the parties by email through the case manager. The details supporting that decision are set out below.
13. Mr. Torres is the non-compliant party in this dispute as I find he has failed to participate in the case management phase, as required by sections 25 and 32 of the CRTA and CRT rules 1.4(1), 5.1 to 5.4, and 7.1 to 7.4, despite multiple attempts by the case manager to contact him with a request for a reply. The relevant details follow.
14. Mr. Torres filed his Dispute Response on May 15, 2020, which included his email address to be used for this dispute. The case manager then made the following attempts at contact:

- a. On May 27, 2020 the case manager emailed Mr. Torres, providing facilitation directions and asking for a phone meeting on June 4, 2020. The case manager asked Mr. Torres to reply by June 1, 2020. On the same date the case manager also attempted to call Mr. Torres at the phone number provided on the Dispute Response, which was not in service.
  - b. On June 2, 2020 the case manager emailed Mr. Torres asking him to reply by June 4, 2020.
  - c. On June 16, 2020 the case manager called Mr. Torres at the phone number provided to the case manager by ATAC. That phone number was also not in service.
  - d. On June 23, 2020 the case manager mailed a letter to Mr. Torres at the address provided on the Dispute Response, asking him to reply by July 10, 2020. The case manager warned Mr. Torres that, if a tribunal member found Mr. Torres to be non-compliant, the dispute could be heard and decided without his participation.
  - e. On July 21, 2020 the case manager emailed Mr. Torres asking him to communicate with the case manager by July 28, 2020. The case manager gave Mr. Torres a final warning that, if he did not respond, the dispute could go ahead without his participation.
  - f. Mr. Torres did not respond to the case manager's emails or letter.
15. The case manager referred the matter of the respondent's non-compliance with the CRT's rules to me for a decision as to whether I should hear the dispute without Mr. Torres's participation.

***Should the CRT hear ATAC's dispute without Mr. Torres's participation?***

16. As referenced above, Mr. Torres filed a Dispute Response. Mr. Torres was informed in writing at the beginning of the facilitation process that he must actively participate in the dispute resolution process and respond to the case manager's

communications, including emails. He provided his contact information on the May 15, 2020 Dispute Response. I find the case manager made a reasonable number of attempts to contact Mr. Torres using that contact information. I find it more likely than not that Mr. Torres knew about the case manager's contact attempts and failed to respond, as required under the CRTA and rules.

17. Rule 1.4(2) states that if a party is non-compliant, the CRT 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.

18. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT 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.

19. In the circumstances of this case, I find it is appropriate to hear ATAC's dispute without the respondent's further participation, relying on the information and evidence provided by ATAC and in Mr. Torres' Dispute Response form. My reasons are as follows.
20. First, this dispute does not affect persons other than the named parties.
21. Second, the non-compliance here occurred early in the facilitation process, and Mr. Torres has provided no evidence or submissions. He has effectively abandoned the process after providing a response.
22. Third, given the case manager's attempts at contact and Mr. Torres' failure to respond despite written warning of the consequences, I find the nature and extent of the non-compliance is significant.
23. Fourth, I see no prejudice to ATAC in hearing the dispute without Mr. Torres' participation. The prejudice to Mr. Torres of proceeding to hear the dispute is outweighed by the circumstances of his significant non-compliance. If I refused to proceed to hear the dispute, ATAC would be left without a remedy, which would be unfair to it.
24. Finally, the CRT'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 CRT to continue applying its resources on this dispute, such as by making further attempts to seek participation from the respondent.
25. In weighing all the factors, I find ATAC's claim should be heard. In deciding to hear this dispute, I have put significant weight on the following factors:
  - a. The extent of the non-compliance is significant;
  - b. ATAC is not prejudiced; and
  - c. The need to conserve the CRT's resources.

***Must Mr. Torres pay ATAC and, if so, how much?***

26. Having decided to hear the dispute without Mr. Torres's participation, I turn to the merits of the dispute.
27. Where a respondent files a response but subsequently fails to comply with the CRT's directions, an adverse inference may be drawn against him. This means that if the respondent refuses to participate, it is generally reasonable to assume that the applicant's position is correct on the issue at hand. This concept is similar to assuming liability when a respondent has failed to provide any response to the dispute and is in default.
28. Having said that, I reviewed the Dispute Response, because it was filed before Mr. Torres' non-compliance. Mr. Torres acknowledged the outstanding debt. He said he is willing to pay the balance on the invoice but does not have much money to do so. On balance, I find Mr. Torres agreed to pay ATAC \$1,110 plus tax for legal services provided by ATAC on January 29, 2019. I further find that, as Mr. Torres paid \$320 toward the invoice on January 29, 2019, \$966.05 remains owing.
29. On balance, I find in favour of ATAC and so I order Mr. Torres to pay ATAC \$966.05 for legal services. The *Court Order Interest Act* applies to the CRT. ATAC is entitled to pre-judgment interest on the \$966.05 from January 29, 2019 to the date of this decision, which equals \$27.32.
30. I also find that, as the successful party, ATAC is entitled to be reimbursed its CRT fees of \$125. ATAC did not claim any dispute-related expenses.

**ORDERS**

31. Within 30 days of the date of this order, I order Miguel Torres to pay ATAC Law Corporation a total of \$1,118.37, broken down as follows:
- a. \$966.05 in debt as payment for legal services,
  - b. \$27.32 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$125 in CRT fees.

32. The applicant is entitled to post-judgment interest, as applicable.
33. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.
34. As set out in 58.1(3) of the CRTA, a party may only enforce this order if the time for making a notice of objection has passed and a Notice of Objection has not been filed. The non-compliant party has no right to make a Notice of Objection, as set out in section 56.1(2.1) of the CRTA.
35. 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.

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Sherelle Goodwin, Tribunal Member