



Civil Resolution Tribunal

Date Issued: December 14, 2022

File: SC-2022-004722

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bhullar v. Ginzburg*, 2022 BCCRT 1339

Default decision – non-compliance

B E T W E E N :

SOFIA BHULLAR

APPLICANT

A N D :

ALAN GINZBURG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

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

2. The applicant says the respondent, Alan Ginzburg, failed to disclose head gasket defects in a vehicle they sold to the applicant. The applicant claims \$4,100 in damages for repair costs, which they say is also the vehicle's purchase price.
3. The respondent says they were unaware of any head gasket issues and that the vehicle operated fine during the applicant's extended road test. The respondent also says the applicant paid only \$3,000 for the vehicle.
4. Both parties are self-represented.

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 a CRT member for resolution and the CRT member 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. A CRT case manager referred the applicant's non-compliance with the CRT's rules to me for a decision as to whether I ought to hear the dispute, refuse to resolve it, 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 dismiss the applicant's claim.

ISSUES

10. The issues are:
 - a. Is the applicant non-compliant with the CRTA and the CRT's rules?
 - b. If so, should I dismiss or refuse to resolve this dispute without the applicant's further participation?

EVIDENCE AND ANALYSIS

Non-compliance

11. For the following reasons, I find the applicant is non-compliant in this dispute, having failed to participate in the case management phase, as required by sections 25 and 32 of the CRTA, and CRT rules 1.3(1), 1.9 and 5.1 to 5.4. This is despite multiple attempts by the case manager to contact the applicant with a request for a reply.
12. The applicant submitted their application for dispute resolution on July 14, 2022, which included their email address and telephone number to be used for this dispute.
13. The case manager provided details of the applicant's non-compliance, as follows:
 - a. In an October 11, 2022 email to both parties the case manager explained the CRT facilitation process. She reminded both parties they were expected to follow the directions and timelines the case manager set, to check their emails

- daily, and to respond to all email requests within 48 hours unless otherwise stated. The case manager asked the parties to confirm their availability for a teleconference on October 20, 2022 at 9:15 am. She asked the parties to respond to the email by 9 am on October 13, 2022. The applicant did not respond.
- b. On October 19, 2022 the case manager telephoned the applicant and left a voicemail message asking for a return call before 4 pm that day or between 8 and 9:15 am on October 20, 2022. The case manager repeated this request in an October 19, 2022 email to the applicant.
 - c. The applicant emailed the case manager on October 20, 2022 and explained that the case manager's emails had been directed to the applicant's spam folder. The applicant and case manager communicated by email and telephone between October 20 and November 1, 2022.
 - d. On November 1, 2022 the applicant emailed the case manager to advise she could only speak to her after 4 pm that day. The case manager's emailed response asked the applicant to review CRT decisions then advise by 9 am on November 2, 2022, whether they wished to withdraw their claim or proceed to adjudication.
 - e. In a November 3, 2022 email, the case manager again asked the applicant if they wanted to continue to adjudication or withdraw the dispute. The case manager referred to section 36 of the CRTA and warned the applicant that, if they did not respond, they could be found non-compliant. The case manager explained that meant a tribunal member may dismiss or refuse to resolve the applicant's claim, without the applicant's participation. The case manager told the applicant to contact her by 10 am on November 4, 2022.
 - f. In a November 4, 2022 email, the case manager advised the applicant that she spoke to the respondent shortly after speaking with the applicant and that the respondent declined to settle. I infer the case manager spoke to both parties sometime between November 3 and 4, 2022, given the case manager's

- November 3, 2022 email to the applicant asking for contact. In the November 4, 2022 email, the case manager asked the applicant to advise whether they wished to withdraw their dispute or proceed to adjudication, by 10 am on Monday, which I find was November 7, 2022.
- g. In a November 8, 2022 email, the case manager followed up with the applicant and asked them to respond by 9 am on November 9, 2022.
 - h. In a November 9, 2022 email, the case manager reminded the applicant they were expected to comply with the case manager's directions and deadlines. The case manager directed the applicant to contact her by 9 am on November 10, 2022. The case manager again warned the applicant that they could be found non-compliant, which meant a tribunal member could dismiss or refuse to resolve their claim.
 - i. On November 9, 2022, the case manager called the applicant and left a voicemail message, asking the applicant to respond to the case manager by 9 am on November 10, 2022.
 - j. As noted above, I find the case manager and applicant likely spoke after the case manager's first non-compliance warning email on November 3, 2022. However, I also find the applicant did not respond to the case manager's emails, or voicemail message, sent between November 4 and 9, 2022.
14. The case manager referred the matter of the applicant's non-compliance with the CRTA and the CRT's rules to me for a decision as to whether I should hear the dispute without the applicant's further participation.
15. Based on the above, I find the applicant is non-compliant with the CRTA and the CRT's rules for failing to respond to the case manager's requests for contact. As noted above, applicant was warned, in writing, about the risks of their failure to respond to the case manager's communications.

Should the CRT hear the dispute without the applicant's further participation?

16. I find the case manager's attempted emails and voicemail were sent to the email address and telephone number provided by the applicant. I also note the applicant responded to earlier communications sent the same way. I find the case manager made a reasonable number of contact attempts, but the applicant failed to respond after November 4, 2022.
17. As noted above, the applicant initiated this CRT dispute. They provided no explanation about why they failed to respond to the case manager's communications after November 4, 2022, as required. Given the applicant's previous responses, and the case manager's subsequent multiple attempts at contact, I find the applicant likely knew about the case manager's attempts and failed to respond after November 4, 2022.
18. 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.

19. 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 CRT's order addressing the non-compliance, and
 - e. The effect of the non-compliance on the CRT's resources and mandate.
20. Based on the evidence described above, I find that the applicant had proper notice of the case manager's attempts to contact them. I further find the applicant knew the consequences if they failed to respond, which was the potential dismissal of their dispute. I am also satisfied the dispute only affects the named parties, and I see no prejudice to the respondent in making an order dismissing the applicant's dispute.
21. If I were to refuse to resolve the claim, there would be no finality to this dispute. This is because it would be open to the applicant to make a further request for CRT resolution, subject to any limitation period. I find that in refusing to resolve, there would be no finality and no consequence to the applicant for failing to participate, which would be unfair to the respondent.
22. The applicant's non-compliance here occurred early in the tribunal decision process, and the parties have not provided any evidence or submissions.
23. The CRT's resources are valuable. I find that it would be wasteful for the CRT to continue applying its resources on a dispute where, through a failure to respond as required, the applicant shows it does not want the CRT's assistance in resolving its claim.

24. Although not binding on me, I agree with and apply the former CRT Chair'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 with the CRT. I agree that to do so would go against the CRT's mandate and impair the fairness of the process by creating an imbalance of the CRT's fact finding and decision-making functions.
25. In weighing all the factors, I find the applicant's claims, and this dispute, should be dismissed.
26. Given the applicant's non-compliance, I find they are not entitled to a refund of any CRT fees they may have paid. The successful respondent did not pay any CRT fees or claim any dispute-related expenses.

ORDER

27. I dismiss the applicant's claims and this dispute.

Sherelle Goodwin, Tribunal Member