



Civil Resolution Tribunal

Date Issued: April 5, 2024

File: SC-2023-007598

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pioneer Garage Limited (dba Pioneer Chrysler Jeep) v. General*, 2024
BCCRT 332

Default decision – non-compliance

B E T W E E N :

PIONEER GARAGE LIMITED (Doing Business As PIONEER
CHRYSLER JEEP)

APPLICANT

A N D :

SINO CAMERON GENERAL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (CRT) was made without the participation of the applicant, Pioneer Garage Limited (doing business as Pioneer Chrysler Jeep), because it failed to comply with the CRT's mandatory directions.
2. The applicant says the respondent, Sino Cameron General, has failed to make payments on a \$3,500 promissory note. The applicant claims that amount. The respondent acknowledges they signed the promissory note, but says the applicant breached its contractual obligations in the note.
3. The applicant is represented by an authorized employee or principal. The respondent is self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. Section 36 of the CRTA applies if a party to a dispute fails to comply with the CRTA, its regulations, CRT rules in relation to case management, or a CRT order made during the case management phase. After giving notice to the non-compliant party, CRT staff may refer the dispute to a CRT member who 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. CRT staff referred the applicant's non-compliance with the CRT's rules to me to decide whether I ought to hear the dispute, refuse to resolve it, or dismiss it.

ISSUES

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

EVIDENCE AND ANALYSIS

Non-compliance

8. For the following reasons, I find the applicant is non-compliant in this dispute, having failed to participate in the case management phase and pay the tribunal decision fee, as required under sections 25 and 32 of the CRTA, and CRT rules 1.3(1) and 5.1 to 5.4. This is despite multiple attempts by the CRT to contact the applicant with a request for fee payment.
9. The applicant applied for dispute resolution on July 25, 2023, and included its mailing address, and its representative's email and telephone number to be used for this dispute.
10. CRT staff provided details of the applicant's non-compliance, as follows:
 - a. On February 21, 2024, CRT staff emailed the applicant and asked them to pay the \$50 tribunal decision fee by February 28, 2024 for the dispute to proceed through the tribunal decision process for a final decision. The email included a warning that if the applicant did not pay the fee, the CRT would give the other party the option to pay. However, if no party paid the fee, the CRT could dismiss or refuse to resolve the dispute.

- b. In a February 27, 2024 email, CRT staff reminded the applicant of the fee due date.
 - c. In a February 29, 2024 email, CRT staff said payment was overdue and extended the due date to March 4, 2024. The email contained the same warning as the February 21, 2024 email.
 - d. On March 6, 2024, CRT staff called and spoke to the applicant's representative. The CRT staff member told the applicant's representative the decision fee was overdue, but the deadline had been extended. The applicant's representative said they would discuss the matter with their lawyer.
 - e. On March 11, 2024 CRT staff emailed the applicant a final warning that the fee payment was overdue and again extended the due date to March 13, 2024. CRT staff warned the applicant that the dispute could be decided by a tribunal member without any further warning if the applicant did not pay the fee.
 - f. On March 19, 2024, CRT staff emailed the respondent and asked them to pay the decision fee by March 26, 2024, if they wished to proceed to adjudication. The email included a warning that, if no party paid the decision fee, the CRT could choose to dismiss or refuse to resolve the dispute.
 - g. Neither party paid the \$50 decision fee.
11. Based on the above, I find the applicant is non-compliant with the CRTA and the CRT's rules for failing to pay the tribunal decision fee. I find CRT staff provided the applicant with a reasonable number of opportunities to pay the fee. As noted above, the applicant was warned, in writing, about the risks of their failure to pay the tribunal decision fee or respond to the CRT staff's communications.

Should the CRT continue without the applicant's further participation?

12. Under CRT rule 5.4(3), where neither party pays the tribunal decision fee, the CRT can refuse to resolve the dispute, proceed to hear it, or dismiss it.

13. 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.

14. 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.

15. Based on the evidence described above, I find that the applicant had proper notice of the outstanding tribunal decision fee. I further find the applicant knew the consequences if it failed to pay the fee, which was the potential dismissal of its 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.

16. On the other hand, 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.
17. The applicant's non-compliance here occurred early in the tribunal decision process, and the parties have not provided any evidence or submissions.
18. The CRT's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not want to participate. 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 they do not want the CRT's assistance in resolving their claim.
19. 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.
20. In weighing all the factors, I find the applicant's claim, and this dispute, should be dismissed.
21. Under its rules, the CRT can make orders about payment of fees or reasonable dispute-related expenses in the case of a withdrawal or dismissal. Given the applicant's non-compliance, I find it is not entitled to a refund of any tribunal fees it may have paid. The successful respondent did not pay any fees or claim dispute-related expenses.

ORDERS

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

Andrea Ritchie, Vice Chair