



Civil Resolution Tribunal

Date Issued: February 23, 2018

File: SC-2017-003859

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bal v. Suri et al*, 2018 BCCRT 50

B E T W E E N :

Hardev Bal

APPLICANT

A N D :

Alka Suri and Deepak Suri

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about whether the \$10,000 the applicant provided to the respondent Mr. Suri in 2004 was a loan or a gift. The applicant claims a \$3,000 balance owing.

2. Through post-dated cheques, the respondents made regular payments until around September 2015 when the applicant says Mr. Suri asked for extensions to pay and then he could not cash the cheques. The respondents refused to provide alternate payment and say the \$10,000 was unconditionally given and the payments to date were a courtesy only. Ms. Suri denies liability on the basis that she was not a party to the \$10,000 transaction.
3. The applicant is represented by his son Harmon Bal and the respondents are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). 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.
5. The tribunal 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. Neither party requested an oral hearing.
6. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under tribunal rule 121, in resolving this dispute 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.

ISSUES

8. The issues in this dispute are a) was the \$10,000 a repayable loan, and b) to what extent, if any, do each of the respondents owe the \$3,000 balance claimed.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The parties are family friends. It is undisputed that in 2004 the applicant provided \$10,000 to Mr. Suri. It is also undisputed that there was no written contract between the parties at the time the applicant provided the money to Mr. Suri. Mr. Suri says the funds were advanced as “unconditional help” and were “voluntarily gifted in 2004” out of a “natural obligation” to help him. The applicant says the money was a loan that must be repaid in full.
11. I will first address the respondent Ms. Suri’s liability. The respondents argue Ms. Suri is not liable for the claimed debt. All of the applicant’s son’s communications about the money were with Mr. Suri. I find the applicant provided the money to Mr. Suri, not Ms. Suri, even though the funds were deposited to the respondents’ joint bank account. While Ms. Suri’s name is imprinted with Mr. Suri’s name on the cheques written to the applicant, her name was blacked out. The applicant’s submissions also generally refer to the loan being given to Mr. Suri and that it was Mr. Suri who made the payments. On balance, I dismiss the applicant’s claim against Ms. Suri as I find she is not personally responsible for the claimed debt.

12. I turn then to Mr. Suri's liability. Mr. Suri made regular payments on the \$10,000 provided by the applicant. In January 2015, Mr. Suri gave the applicant 20 post-dated cheques for \$500 dated for the 6th of each month, with the last cheque before me dated August 6, 2016. Mr. Suri submits he did so because the applicant was in financial crisis and asked him for help.
13. The claimed \$3,000 outstanding debt is based on 6 cheques for \$500 each. The applicant says Mr. Suri has stopped payment on these cheques. Evidence from Mr. Suri's bank indicates Mr. Suri asked that the cheques not be honoured because they are stale-dated.
14. The respondent says he gave the 20 cheques as a "pure liberality". He says because they were stale-dated and not cashed, the applicant cannot enforce payment. Mr. Suri blames the applicant for allowing the cheques to become stale-dated, whereas the applicant says Mr. Suri kept delaying his ability to cash the cheques. On balance, I find the text messages support the applicant's position. These text messages were efforts by the applicant's son to get Mr. Suri to make payments and Mr. Suri apologizing and making offers as to when a cheque could be cashed. Based on these text messages and the overall evidence and submissions, I further find the applicant brought the cheques to the bank but was told by the bank staff there was insufficient funds and so he chose not to try and formally cash the cheque.
15. Was the \$10,000 an unconditional gift that Mr. Suri could choose to repay? I find the answer is no. For an agreement or contract to exist, there must be an offer by one party that is accepted by the other. There must be contractual intention, which means the parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. There must also be valuable consideration, which refers to payment of money or something else of value (for a discussion of the basic elements of a contract, see *Babich v. Babich*, 2015 BCPC 0175, and *0930032 B.C. Ltd. v. 3 Oaks Dairy Farms Ltd.*, 2015 BCCA 332). One

party's belief that there is a contract is not in itself sufficient. There must be what is known in law as a 'meeting of the minds' about the contract's subject matter.

16. I find the evidence shows there was a 'meeting of the minds' between the parties that the \$10,000 was a repayable loan. Contrary to Mr. Suri's submission, an agreement to loan or repay money does not need to be in writing to be enforceable, although a written agreement is typically easier to enforce because its terms are more readily identifiable. However, here I have the applicant's text messages over a couple of years, which I find indicates Mr. Suri's acknowledgement of his obligation to repay the \$10,000 as a debt. In particular, the tone of Mr. Suri's text messages indicate he knew he needed to make payments and he apologized that he was not always able to do so on time. The tone of Mr. Suri's text messages does not reflect payments being simply a courtesy. One example of Mr. Suri's text messages is from March 31, 2016:

I am thankful for your patience and understanding my intention are clean but it's the situation I am in having no steady job past 2 years ... I will do my best and assure your Dad that from June I will start clearing the cheques every month. I am working hard to find a steady job. ... I hope you will consider my situation.

[reproduced as written]

17. In this case, the fact that the applicant failed to cash certain cheques before they became stale-dated does not mean the debt is no longer owed. I say this in part because the applicant was continuing to press for repayment of the debt and the applicant was asking for more time to pay, due to his difficulties in finding work.
18. In 2004 the applicant may not have specified conditions or a timeline for repayment. However, this does not mean he cannot apply for an order that Mr. Suri repay the debt. I have considered all of the evidence and I find the passage of time and the parties' communications support the conclusion that Mr. Suri should complete repayment of the debt now.

19. In summary, I find that the \$10,000 was a loan and the respondent Mr. Suri must repay the outstanding \$3,000 balance. I find the applicant is entitled to interest on the \$3,000 under the *Court Order Interest Act* (COIA), calculated from August 9, 2017, the date of the Dispute Notice. Overall, I find this is the most reasonable date in the circumstances.
20. Given my conclusions above, I allow the applicant's claim. In accordance with the tribunal's rules, I find the applicant is also entitled to reimbursement of the \$125 he paid in tribunal fees. The applicant did not claim any dispute-related expenses.

ORDERS

21. Within 30 days of this decision, I order the respondent Deepak Suri to pay the applicant a total of \$3,138.51, broken down as follows:
 - a. \$3,000 as repayment of the balance of the \$10,000 loan,
 - b. \$13.51 in pre-judgment interest under the *Court Order Interest Act* (COIA),
and
 - c. \$125 in tribunal fees.
22. The applicant's claims against the respondent Alka Suri are dismissed.
23. The applicant is also entitled to post-judgment interest under the COIA.
24. Under section 48 of the Act, the tribunal 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 tribunal's final decision.
25. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal 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 tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair