



Civil Resolution Tribunal

Date Issued: April 25, 2018

File: SC-2017-002250

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fowlie v. Miller et al*, 2018 BCCRT 154

BETWEEN:

Frank Fowlie

APPLICANT

AND:

Maela Miller nee Braaten and Naveed Tahir-Kheli

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Ashley Syer

INTRODUCTION

1. This is a dispute about a loan totalling \$4,900 (loan). The applicant says that the respondent Naveed Tahir-Kheli asked him to loan money to the respondent Maela Miller, nee Braaten. It is undisputed that Ms. Miller received funds from the

applicant, but she says the loan was Mr. Tahir Kheli's responsibility, not hers. It is also undisputed that neither of the respondents repaid the money.

2. The applicant and Ms. Miller are both self-represented. Mr. Tahir-Kheli is not participating, as discussed further below.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

7. Mr. Tahir-Kheli did not file a Dispute Response. I have reviewed the Dispute Notice and the completed Proof of Notice with submitted evidence. I find that the applicant properly provided Mr. Tahir-Kheli with a copy of the Dispute Notice under the Act and tribunal rules. I am satisfied, on the balance of probabilities, that Mr. Tahir-Kheli received the Dispute Notice and did not respond to it by the deadline set out in the tribunal's rules.

ISSUES

8. The issues in this dispute are:
 - a) To what extent is Mr. Tahir-Kheli responsible for repayment of the loan?
 - b) Did the applicant bring the claim too late against Ms. Miller?
 - c) Is Ms. Miller responsible for repaying the loan to the applicant?

EVIDENCE AND ANALYSIS

9. When a properly served respondent fails to provide any response at all to the dispute and is in default, that respondent's liability is assumed. Given my conclusions above that Mr. Tahir-Kheli was properly served with the Dispute Notice, I find that Mr. Tahir-Kheli is in default. Therefore, he is liable for the applicant's debt claim against him.
10. For the reasons that follow, I dismiss the applicant's claim against Ms. Miller.
11. I have considered all the evidence submitted by the applicant and Ms. Miller, even if I do not refer to it in this decision. In a civil claim such as this, the burden of proof is on the applicant, on a balance of probabilities.
12. On October 2, 2014, Mr. Tahir-Kheli asked the applicant to send \$2,500.00 to Ms. Miller. Shortly after, the applicant sent \$2,500.00 to Ms. Miller by e-transfer.

13. The applicant sent an additional \$2,400.00 to Ms. Miller by e-transfer on December 23, 2014.
14. As referenced above, the applicant and Ms. Miller agree that the loan totalled \$4,900.00.
15. The Dispute Notice alleges that Mr. Tahir-Kheli requested at least the first \$2,500 portion of the loan for Ms. Miller's benefit, and that it would be repaid by her next paycheque. E-mail evidence before me shows that Mr. Tahir-Kheli said he was responsible for the loan and not Ms. Miller.
16. On February 1, 2017, the applicant sent an email to Mr. Tahir-Kheli that said the loan had been outstanding for over two and a half years. That same day, Mr. Tahir-Kheli replied with a promise to repay the loan by wire transfer on March 1, 2017.
17. The loan was not repaid on March 1, 2017.
18. The applicant says that both respondents should be responsible for repaying the loan. The applicant says that he first learned that the loan would not be repaid in March 2017.
19. Ms. Miller says that she believed Mr. Tahir-Kheli was going to repay the loan to the applicant, and that the applicant is too late to bring a claim against her.
20. Section 8 of the *Limitation Act* explains that a claim is discovered on the first day that a person knew or ought to have reasonably known that:
 - a. An injury, loss, or damage had occurred.
 - b. The injury was caused by something someone did or failed to do.
 - c. The person or company who failed to do or something was the respondent.
 - d. Bringing a claim was an appropriate way to seek a remedy for the injury, loss, or damage.

21. I find, on a balance of probabilities, that the loan was intended to be a short-term loan, and was expected to be repaid soon after it was provided. The evidence before me shows that the first part of the loan was intended to hold Ms. Miller over until her paycheque arrived. I infer that Ms. Miller's paycheque would have arrived within one month, and therefore that the loan was intended to be repaid within one month from time the applicant gave the loan. I infer that the second portion of the loan was also intended to be a short-term loan.
22. I find that the limitation period began on November 2, 2014, for the first portion of the loan, and on January 23, 2015 for the second portion of the loan. I find that the limitation period ran out long before the applicant filed this dispute against Ms. Miller in June 2017.
23. Neither the applicant nor Ms. Miller provided any evidence that Ms. Miller did anything that would extend the limitation period after January 23, 2017.
24. If Mr. Tahir-Kheli did anything that extended the limitation period for himself, I find that does not extend the limitation period for Ms. Miller.
25. I find that the applicant's time to bring the claims in this dispute against Ms. Miller expired on January 23, 2017, and certainly before the Dispute Notice was issued in June 2017.
26. I find that the applicant did not bring this dispute in time against Ms. Miller, and I therefore dismiss the dispute against her on that basis.

ORDERS

27. I dismiss the dispute against Ms. Miller.
28. Within 14 days of the date of this order, I order Mr. Tahir-Kheli to pay the applicant a total of \$5,209.95, broken down as follows:
 - a. \$4,900 as reimbursement for the loan,

b. \$134.95 in pre-judgment interest under the *Court Order Interest Act* (COIA),
and

c. \$175 for tribunal fees.

29. The applicant is also entitled to post-judgment interest under the COIA.

30. 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.

31. 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.

Ashley Syer, Tribunal Member