Civil Resolution Tribunal

Indexed as: *Hilts v. Schaefer*, 2018 BCCRT 235

B E T W E E N :

Jay Hilts

**APPLICANT**

A N D :

Alan Schaefer

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member:                                                    Shelley Lopez, Vice Chair

## INTRODUCTION

1.   This dispute is about the repayment terms of a $20,000 loan given by the respondent Alan Schaefer to the applicant Jay Hilts. The applicant says the respondent unilaterally demanded a repayment amount that was excessive and

amounted to extortion. The respondent says the loan had expired and the respondent was entitled to keep the collateral and sell it back to the applicant. The parties are self-represented.

## JURISDICTION AND PROCEDURE

2.      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.

3.      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.

4.      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.

5.      Under the Act and tribunal rule 126, 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

6.      The issues in this dispute are:

    a.  what were the agreed loan terms between the parties,

b. did the respondent breach the agreed terms, and c) if so, what is the appropriate remedy.

## EVIDENCE AND ANALYSIS

7. 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.

8. On June 22, 2017, the applicant borrowed $20,000 at 8% interest compounded monthly. The applicant gave the respondent transfer papers for 3 collectible vehicles, to hold as collateral. The parties' signed contract stated that the loan was for 8 weeks, at which point it either needed to be paid off in full or the respondent could keep the collateral. An amendment initialed by both parties stated that at any point before September 1, 2017, the debt could be paid off in full and the signed transfer papers would be returned or destroyed. None of this is disputed.

9. The reason the applicant needed the loan and why he needed an extension to pay it back is not relevant to this decision.

10. The applicant alleges that on August 9, 2017 the parties agreed by text to extend the loan terms "for another month", that is until October 1, 2017. I cannot agree there was such an agreement. For a contract to exist, there must be an offer, acceptance, and consideration. Here, the applicant made a general request to extend the loan. The respondent replied offering a new term, "I would have to get $1000 total as I missed out buying a semi of used tires". I note the '$1,000 total interest' amendment reflected an allowable 48% interest rate. The threshold for a criminal rate of interest is 60% under section 347 of the *Criminal Code*.

11. The crux of this dispute is that the applicant never responded to that '$1,000 total' interest term, and therefore never accepted it. The applicant has provided no explanation of why he did not respond, and instead just submits that the terms had been extended to October 1, 2017 based on that August 9, 2017 text exchange.

12. On balance, I find that the applicant has not proved there was a contractual amendment agreed upon based on the August 9, 2017 text exchange. I say this because the applicant did not accept the respondent's offer. In his reply submission, the applicant states, "Comes down to having a signed contract, and a text requesting change to contract." The key here is that acceptance of the offer must be communicated in order to be effective. The $1,000 total interest amendment was never finalized.

13. The respondent therefore reasonably proceeded on the basis that the applicant's loan would be repaid "before September 1, 2017", as set out in their signed and initialed agreement, described above.

14. The parties did not communicate again until September 1, 2017, when the respondent texted the applicant that he would need $24,265 if the applicant wanted the cars back.

15. If I had found the parties' loan agreement had been extended to October 1, 2017 based on the August 9, 2017 text exchange, I would agree with the applicant that the $4,265 demand amounted to a criminal rate of interest, contrary to section 347 of the *Criminal Code*. However, as noted above, on September 1, 2017, the parties' loan agreement had expired and as of that date the respondent was free to deal with the collateral as he chose. The applicant wanted the collateral back and the respondent was free to set the price and they agreed upon $24,265. The fact that the applicant paid this amount in order to get his collateral back does not change the parties' obligations under their agreement.

16. In accordance with the tribunal's rules, as the applicant was unsuccessful in this dispute I find he is not entitled to reimbursement of tribunal fees paid.

## ORDER

17.    I order the applicant's dispute dismissed.

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Shelley Lopez, Vice Chair