Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

evert jan steen

APPLICANT

A N D :

Michael Linton

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. In February 2015, the parties decided to collaborate together as part of the respondent Michael Linton's unincorporated project "the openmoney development group", also known as "omdev". On March 14, 2015, the applicant Evert Jan Steen

e-transferred $1,000 to a web-developer, D, as arranged by the respondent Michael Linton. D worked with omdev. The applicant says the $1,000 was a "stop-gap" temporary loan. D is not a party to this dispute.

2. The applicant wants an order that the respondent repay the $1,000, plus $250 the applicant had sent the respondent in May 2015. The parties are self-represented.

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. None of the parties requested 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: 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

7. The issues in this dispute are whether the respondent owes the applicant a) $1,000 as reimbursement of money the applicant sent in March 2015 to D, a non-party in this dispute, and b) $250, the sum the applicant sent the respondent in May 2015.

EVIDENCE AND ANALYSIS

8. 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.

9. The respondent says omdev maintains accounts of contributions or inputs on the basis of which all revenues, if and when they are realized, can be allocated. The respondent says omdev has had no revenues since 2008, which is undisputed, although the applicant asserts D is earning income elsewhere and can afford to repay.

10. The respondent says the applicant in February 2015 emailed omdev seeking interest in his software project, as a form of joint venture. The respondent says omdev declined, seeing no value in the software given the applicant claimed he had already invested $100,000 over some years. The applicant agrees that he originally met with the respondent as an "attempt to seek a potential integration of our individual efforts".

11. In March 2015, the respondent says that D was working with omdev. At that time, D moved his family on a sudden basis and needed cash. The respondent says the applicant proposed a $5,000 contract. The respondent says while omdev was pleased to see that D was offered the work, it had serious concerns given the applicant's prior boasts of his propensity to litigate. The respondent says that accordingly it devised what it felt was a fair and proper means for the applicant to demonstrate good faith and alignment with omdev: that he contribute $1,000 to

omdev, specifically for omdev to bridge D's cash needs. The respondent says that in doing so, the applicant would be recorded as a contributor, as other contributors, with no claim against omdev unless and until D returned the $1,000 to omdev.

12. The applicant produced his typed transcript of an excerpt from a February 15, 2015 Skype text conversation he had with the respondent. In it, the $5,000 contract is discussed, and the following term:

> Jan has confirmed his confidence in this approach to a joint development with a loan of $1000 to [cut off in the excerpt provided] his funding gap.

13. Given the context, I find the portion cut off from the Skype message above was that the referenced $1000 loan was to D. A March 13, 2015 email from the respondent to the applicant and D, refers to the parties' web development agreement along with a "$1000 loan" from the applicant to D, "to be repaid as income comes in" through the third party contractor. The respondent wrote with respect to the applicant's "bridging finance" to D, "Essentially, this is an advance but running it as a loan and repayment is better for all our tax records". The respondent further wrote that the event will be recorded in omdev's accounts "so that, in the event of repayment problems, Jan will have a recovery in omdev.ca revenues".

14. The respondent says this arrangement left the applicant free to contract with D for his own purposes and gave the applicant some protection from loss should D be unable for any reason to raise $1,000. The respondent acknowledges that it mainly protected D and that the applicant accepted the term and acted accordingly. Later, the applicant withdrew its contract with D.

15. On March 14, 2015, the applicant e-transferred $1,000 to D, which was recorded in omdev's records as "bridge". I accept that this is a reference to D needing the money to "bridge" him over.

16. On March 27, 2015, the applicant emailed a credit union about related matters, and in it he referred to the $1,000 transfer to D as “my first advance/loan, on the beginnings of having my websites improved”. It appears with the passage of time the applicant forgot that it was to D he transferred the funds, as in his late 2017 exchanges with the respondent the applicant asserted the respondent had directly received the funds. This inaccuracy leads me to conclude the applicant’s memory may be somewhat clouded in other respects. I prefer to rely primarily upon the documentary evidence before me.

17. In an April 7, 2015 email exchange between the parties about the omdev collaboration, the respondent wrote, “… it’s the conversion of your omdev credit to cash that keeps your boat afloat”.

18. On May 5, 2015, the applicant e-transferred $250 to the respondent directly. That day, the applicant emailed the respondent about it, “Just hoping it’ll all come out in the wash …”.

19. On June 26, 2015, the respondent sent the applicant an email setting out the chronology of their interactions, including the following, with a request that the applicant advise if he did not agree:

> [D] asked me for bridging finance until [third party’s] invoices were paid to him.
> I suggested to you that a $1k loan to [D] would
> be useful for him and keep doors open
> would be met by [third party’s] payments, OR
> if not, would be accepted in om accounts as contribution
> which would qualify any funds you paid to [third party] to be accounted in om contributions
> …
> I proposed that you allocate $5k to a line of credit, particularly to use $2.5k as collateral (or contribution) in the open money projects.
>
> you indicated an interest
> NOT a contract, on this we agree
>
> in May you affirmed this interest with a further $250
> taking your accumulated contribution to $1270
> you were clearly reluctant, but not actually saying so

…
You have $1270 in our books

[reproduced as written, except where noted]

20. On June 27, 2015, the applicant emailed the respondent, among other things referring to his "'legitimization' of showing interest to [third party], by paying 1K to [D]". Later in this email, the applicant says he transferred the $1000 to D "who indicated it as a 'LOAN'". The applicant referred to the respondent's description quoted above if D's loan was not met by the third party's payments as "rhetoric indecipherable". The applicant has not explained that comment, given the parties' other exchanges that support the respondent's position.

21. The applicant also responded to the $250 reference in the quote above, that he reluctantly provided it so the respondent could pay an outstanding telephone bill. The applicant also wrote that he had not had indications of a repayment schedule for D's loan, but that "it is what it is. You takes yer chances". In response to "You have $1270 in our books", the applicant replied "I understand".

22. On August 18, 2015, D offered the applicant a partial payment of $100.

Limitation Act

23. The tribunal issued the Dispute Notice on December 11, 2017, which started this proceeding. Under the *Limitation Act*, there is a basic 2 year limitation period in which to start an action or tribunal proceeding. The 2-year period starts to run from when the claim was reasonably discoverable, and the start date is extended to when the person last acknowledges liability for the claim. In this case, the respondent has never acknowledged liability that the sums sought are owed by him, although as noted above D offered in August 2015 to pay $100 towards the $1,000. As noted above, D is not a party to this dispute.

24. In any event, I find that if the applicant knew or ought to have known before December 11, 2015 that he had a loss and a potential claim against the

respondent for the $1,000 and the $250 sums at issue, the applicant is out of time to bring the claim.

25. Given the email exchanges set out above, I find that by June 27, 2015 the applicant knew or ought to have known he had a claim against either D or the respondent for the $1,000 and for the $250. By that date, the applicant knew the respondent's position that there was a $1,270 "credit in our books" (the additional $20 paid by the applicant is not claimed in this dispute, for reasons unknown to me) and the applicant expressed his view that the money was a loan.

26. Therefore, the 2-year limitation period began to run by June 27, 2015 and expired on June 27, 2017. I find the applicant's dispute is out of time.

Repayment terms

27. Even if I am incorrect about the application of the *Limitation Act*, I find the applicant's claims cannot succeed against the respondent.

28. The respondent says that omdev undertook to the applicant: if D was able to recover sufficient funds from short-term contracts, including the one with the applicant, then D would repay omdev and omdev would return the applicant his $1,000 advance and so retire his omdev account of contribution. However, if D was unable to recover sufficient funds, then the applicant's contribution would stand with other contributors. D has never repaid omdev or the applicant, based on the evidence before me. The respondent says the applicant's status in omdev remains as it was on March 14, 2015. The respondent says the applicant has an asset, of no current value, in omdev. For reasons set out below, I agree.

29. It is true that the $1,000 transfer to D was referred to by the parties in emails and texts as a loan. However, the weight of the parties' documented exchanges, summarized above, support the conclusion that even if the $1,000 was a loan to D, the repayment terms were not on demand. Rather, the documentation supports the respondent's position. The $1,000 is repayable to the applicant by D or by

omdev if and when omdev has income coming in. It is undisputed omdev has not had such income.

30. I have not addressed the particular issue of whether the respondent should be held personally responsible for the $1,000 that the applicant sent to D, given the parties' submissions and the relationship with omdev. In any event, given my conclusions above, I find it unnecessary to do so.

31. What about the $250? I come to the same conclusion for the same reasons given above about the $1,000. The applicant has not proved this was a loan repayable on demand. Rather, the evidence supports the conclusion that it was a contribution on account, as submitted by the respondent.

32. In accordance with the tribunal's rules, as the applicant was unsuccessful I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses.

ORDER

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

Shelley Lopez, Vice Chair