



Civil Resolution Tribunal

Date Issued: July 5, 2018

File: SC-2017-006385

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Estate of Leslie Victor Keam v. Keam*, 2018 BCCRT 304

B E T W E E N :

Estate of Leslie Victor Keam

APPLICANT

A N D :

Ashley Keam

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about \$3,000 the respondent Ashley Keam borrowed from her now deceased grandfather Leslie Victor Keam.
2. This dispute is about whether the loan was forgiven or cancelled because the respondent's grandfather refused certain payments believing they were made by

the respondent's mother instead of the respondent, who the grandfather felt should repay the debt. For reasons that follow, I find the respondent must repay the debt.

3. As set out in Leslie Victor Keam's Will and in the Grant of Probate, Larry Keam is the executor of Leslie Keam's estate. While this dispute began with Larry Keam as the only named applicant, after submissions from the parties I decided the proper applicant should be "Estate of Leslie Victor Keam" rather than Larry Keam personally. I do not agree with the respondent that this substitution is unethical at this stage. Rather, I find it properly reflects to whom the respondent owes the debt. I find Larry Keam does not have standing in his own right to bring this claim, and I note Larry Keam's agreement with the substitution. I have amended the style of cause accordingly.
4. The parties are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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.

ISSUE

9. The issue in this dispute is to what extent, if any, the respondent owes the applicant executor the \$3,000 she borrowed from her now deceased grandfather.

EVIDENCE AND ANALYSIS

10. 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.
11. On February 12, 2015, the respondent signed a promissory note indicating she received a \$3,000 interest-free loan from the lender, her grandfather, referred to there as Victor Keam. The material terms of the promissory note are:
 - a. The \$3,000 principal would be repaid in full by August 30, 2018, at the rate of \$83.33 per month, starting September 30, 2015.
 - b. If the respondent defaults on the repayment plan, the lender reserves the right to put a lien on the respondent's 2011 Jeep Patriot.
12. It appears there was some sort of falling out between the respondent and certain family members, including her grandfather. The respondent says she tried to make payments, and that her grandfather refused. It is undisputed that shortly before his death her grandfather refused a gift she had sent him. The details of the discord are not relevant to this dispute, which is about the respondent's obligation to repay the \$3,000 loan.

13. In addition, in December 2015 the respondent mailed one cash payment, which the respondent's grandfather returned because he believed the respondent's mother had paid the debt for her and he felt the respondent should repay it herself. However, I do not accept the respondent submission that she made several other attempts to pay her grandfather, as there is insufficient supporting documentation to that effect.
14. I find the weight of the evidence, including text messages and evidence from family members, is that the loan was never forgiven. I find that if the respondent's grandfather had intended to forgive the loan, he would have documented it to that effect. There is no such documentation. The fact that the respondent's grandfather may have refused to speak with her does not mean he had forgiven the loan. I say the same about the grandfather's erroneous belief that the respondent's mother had sent the cash payment, rather than the applicant. The fact that the grandfather expected the payment to come from the respondent supports the conclusion that he had not forgiven the loan. The respondent could have made payment by cheque or money order, and I do not accept her submission that she, an adult, could not do so.
15. I find the applicant has proven the respondent must repay the loan. I find the applicant is entitled to payment of \$3,000, by August 30, 2018, the end date on the promissory note. This gives the respondent about 2 months to pay the debt, which I find is reasonable in all of the circumstances. As the loan was expressed as interest-free, I find there is no entitlement to pre-judgment interest.
16. The applicant was successful. In accordance with the Act and the tribunal's rules, I find the applicant is also entitled to reimbursement of the \$125 he paid in tribunal fees.

ORDERS

17. By August 30, 2018, I order the respondent to pay the applicant, through its executor Larry Keam, a total of \$3,125, broken down as follows:

- a. \$3,000 as full repayment of the loan the respondent borrowed from her grandfather Leslie Victor Keam, and
 - b. \$125 in tribunal fees.
18. The applicant is also entitled to post-judgment interest, as applicable.
19. 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.
20. 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