Civil Resolution Tribunal

Date Issued: August 21, 2018

File: SC-2018-001660

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hill v. Welch*, 2018 BCCRT 463

B E T W E E N :

Brian Hill

APPLICANT

A N D :

Thomas Welch

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a $2,000 loan the applicant, Brian Hill, says he gave to the respondent, Thomas Welch, which was in addition to an $8,000 loan the applicant

gave the respondent to buy a vehicle. A central issue is to what extent, if any, the $2,000 debt was extinguished when the applicant seized the vehicle under the *Personal Property Security Act* (PPSA). 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 I can fairly decide the dispute based on the documentary evidence and submissions before me, without holding 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 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.

6. I note the respondent has referred to alleged outstanding money owed to him by the applicant, for work the respondent did on the applicant's home. There is no counterclaim before me, and therefore I make no findings or decision about any such debt.

ISSUES

7. The issues in this dispute are a) does the PPSA apply to the $2,000 loan balance, and b) to what extent, if any, the respondent must repay the $2,000 loan balance.

EVIDENCE AND ANALYSIS

8. I have only commented on the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.

9. In his Dispute Response filed at the outset of this proceeding, the respondent acknowledged he borrowed $8,000 from the applicant to buy a company vehicle. The respondent also stated in his Dispute Response that "in addition", he borrowed another $2,000 for "traveling expenses" for a trip to Alberta from the end of July to the first week of August 2017. The respondent's Dispute Response further set out that the parties' loan agreement was that the vehicle and "all monies loaned" was to be secured using the vehicle as collateral. The respondent agreed that his repayment plan was to start on October 15, 2017, but his trip did not go as planned and he did not secure employment as he hoped. The respondent's Dispute Response does not mention the sale of currency that was part of the loan agreement terms, as discussed below.

10. In other words, the respondent submits that while there were 2 parts to the entire $10,000 loan ($2,000 and $8,000 for the vehicle purchase), the entire $10,000 loan was part of the parties' "Loan Agreement (Security Agreement)" that the applicant secured with the vehicle as collateral and registered under the PPSA. The respondent says that when the applicant seized the vehicle, under section 35 of the PPSA the applicant chose to accept that collateral that was used to secure the entire loan. Thus, the respondent says that having chosen to seize the vehicle the applicant effectively abandoned any remaining loan balance.

11. The applicant says that the respondent acknowledged that the $2,000 was to be added to his first payment on October 15, 2017, which is not mentioned in the secured loan agreement. The applicant says the $2,000 was a separate loan by verbal agreement and is not subject to the PPSA, as it was a personal loan for living expenses and not a loan to buy personal property.

12. Thus, the crux of this dispute is whether the $2,000 loan for personal travel expenses was secured by the Loan Agreement registered under the PPSA. If it was, then I agree with the respondent that under sections 56 and 67 of the PPSA, the applicant is limited to the vehicle seizure as compensation for the entire $10,000 loan, including the $2,000.

13. The parties' July 27, 2017 "Loan Agreement" itemizes the $8,000 loan for the vehicle, and states that the vehicle is "in and of itself held as security for the monies loaned" by the applicant to the respondent. The Loan Agreement provides for 4 equal payments of $3,000, to start in September 2017. It is unclear to me why the parties both say that the first payment was due October 15, 2017, but nothing turns on it for the purposes of this decision. In its second clause, the Loan Agreement also provides for 20% interest for late payments.

14. The third clause of the Loan Agreement states that "in addition to the above terms", the respondent will sell the applicant 1,000,000 Iraq Dinar for $2,000. Based on the evidence and the parties' submissions, the sale of the Dinar is separate and not at issue.

15. The applicant says that after the Loan Agreement was signed, later that evening the respondent asked for $1,500 for living expenses, which I infer relates to the respondent's trip to Alberta to seek work, as referenced in the respondent's Dispute Response. The applicant says the trip loan was based on a verbal agreement and secured by the respondent's 'word'. The applicant says he gave the respondent $1,500 cash, with the agreement that the respondent would repay that amount by October 15, 2017, including an "interest premium of $500" as agreed by a later text message and email. I infer that the claimed $2,000 in this

dispute is that $1,500 personal living expenses loan plus the $500 “interest premium”.

16. On one hand, the respondent appears to argue in his submissions that the applicant has not proved he gave the respondent a $2,000 loan for the travelling expenses. Yet, the respondent’s earlier Dispute Response expressly acknowledges that he did so. I find that the applicant gave the respondent a $1,500 loan, with a claimed additional $500 “interest premium”, for the traveling expenses. I will address the application of interest separately below.

17. Significantly, there is no mention in the Loan Agreement about the $2,000 loan for the respondent’s trip. That $2,000 trip loan was an entirely separate matter that I find falls outside the terms of the Loan Agreement. Therefore, the registration of the Loan Agreement under the PPSA did not include the $2,000 trip loan. As a result, the applicant’s seizure of the vehicle satisfied the respondent’s under the Loan Agreement, but that did not include the $2,000 trip loan. The seizure documentation under the PPSA clearly refers to an $8,000 debt, which is consistent with the conclusion that the registered security was for the vehicle loan only.

18. I therefore find the applicant is entitled to repayment of the $1,500 loan he gave the respondent, around July 27, 2017, for the personal travelling expenses.

19. What about interest? As noted above, the applicant loaned the respondent $1,500 on or about July 27, 2017. The applicant claims $2,000 was due on October 15, 2017, inclusive of the $1,500 loan and the $500 “interest premium”. For that 80 day period, $500 amounts to an interest rate in excess of the 60% maximum set out in section 347 of the *Criminal Code*. Therefore, I find the applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA), as set out in my order below, from October 16, 2017.

20. The applicant was substantially successful. Under section 49 of the Act and the tribunal's rules, I find the respondent must reimburse the applicant $125 in tribunal fees.

ORDERS

21. Within 14 days of the date of this decision, I order the respondents to pay the applicant a total of $1,639.24, broken down as follows:
    a. $1,500 as repayment of the July 2017 loan for personal travelling expenses,
    b. $14.24 in pre-judgment interest under the COIA, and
    c. $125 in tribunal fees.

22. The applicant is also entitled to post-judgment interest, as applicable.

23. 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.

24. 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