



Civil Resolution Tribunal

Date Issued: September 11, 2018

File: SC-2018-002510

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Davies et al v. Martin*, 2018 BCCRT 514

BETWEEN:

CATHRYN JEAN DAVIES and Paul Henry Davies

APPLICANTS

AND:

Tamara Martin

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicants, Cathryn Jean Davies and Paul Henry Davies, say they loaned money to the respondent, Tamara Martin. At the time, the respondent was the Davies' son's fiancée, and the loan was to bail the respondent out of jail while she

was in Las Vegas and to pay for a lawyer there. The respondent denies agreeing to repay any money, and says she understood at the time the Davies' son took responsibility for the debt. The applicants are represented by Ms. Davies and the respondent is 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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 issue in this dispute is to what extent, if any, the respondent must repay the applicants \$4,957.26.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities. I have only commented upon the evidence and submissions to the extent necessary to give context to these reasons. In particular, I do not need to address the reason why the respondent was arrested in Las Vegas.
9. The applicants say they were asked by their son in June 2017 to bail the respondent out of jail when she was in Las Vegas, because the respondent had begged their son to get her out and other options had not been successful. It is undisputed that the applicants sent the bail money on June 16, 2017, by a Western Union transfer of \$4,191.75 CAD to the jail, which was the conversion of the required \$3,040 USD bail. The applicants also say the respondent's Las Vegas lawyer required a \$3,500 USD flat fee (\$4,575 CAD), which Ms. Davies paid by credit card on or about July 7, 2017. This payment is also undisputed.
10. The central issue in this dispute is whether the respondent agreed to be responsible for reimbursing the applicants. The respondent says if anything the responsibility was the applicants' son, who was involved in the arrest and making

the loan arrangements. The applicants say it clearly was the respondent's responsibility. The applicants say that while the bail they paid was refunded, there was a shortfall, being the Western Union transaction fees and the USD to CAD conversion rate at the time of reimbursement. The respondent made 2 payments in December 2017, for a total of \$400.

11. As for the US lawyer, the applicants say the respondent instructed the applicants directly that she would reimburse the applicants the legal fees, which as noted above were \$3,500 USD.
12. The applicants' son's statement was that the respondent asked him to ask his parents, the applicants, for the bail money. I find the most reasonable explanation of why the applicants' son asked his parents was because the respondent asked him to do so. I do not accept the respondent's suggestion that the applicants' son asked for the bail money without the respondent knowing or that he ever agreed to be responsible to repay it. I say the same about the retainer of the US lawyer. The respondent's suggestion that the applicants paid her bail and the US lawyer's fees to protect their son simply is not supported by the weight of the evidence before me. The respondent submits that she could not afford a lawyer, but also says that if she could have afforded or wanted one, she would have sought one out herself. Yet, the respondent signed the retainer agreement with the US lawyer. I find her doing so supports the conclusion she accepted the legal help and that she would repay the applicants. On the respondent's own evidence, the applicants were not close enough to her to agree to pay this significant sum without expectation of reimbursement from the respondent.
13. Text messages in evidence show the respondent agreed to repay the applicants for the legal fees. In particular, one text from the respondent's phone read "We will get you paid for the lawyer." This was part of an April 13, 2018 thread that came from the respondent's phone, "I got a bill from lawyer" ... and a screenshot of the US lawyer's bill addressed to the respondent. However, the respondent says that the applicants' son sent those texts from her phone, without her knowledge,

because his own phone was not working at the time. I do not accept the respondent's submission. The tenor of the entire April 13, 2018 text exchange, which included a reference of money "owing to cathy and paul", supports that this was an exchange between the respondent and the applicants. There was a later text message from the respondent, that when the applicants' son "comes down we will get everything sorted", which was in response to Ms. Davies' text asking about payment. The April 13, 2018 thread and its timing support a conclusion it was the respondent sending the relevant texts. There was a later text (the precise date is unclear from the screenshot), in which the respondent was clearly the person responding that she would not just be "paying everything", which appeared to relate to other matters between the respondent and the applicants' son, not at issue in this dispute. In other words, the fact that the respondent may have paid some of the applicants' son's expenses is not relevant to the issue before me.

14. On balance, I find the weight of the evidence overall supports the applicants' position. The respondent signed the US lawyer's retainer agreement on July 9, 2017, after Ms. Davies paid the required retainer. I agree with the applicants that it does not make sense for the respondent to believe the applicants would have gifted that sum. While the respondent suggests the applicants' son should bear the responsibility, there is no such agreement before me and he is not a party to this dispute. The fact that the respondent made 2 payments in December 2017 also supports a conclusion that she agreed to repay the debt at issue.
15. In summary, I find the respondent requested the applicants to bail her out of the Las Vegas jail, and therefore she is responsible for the bail shortfall. I also find the respondent asked the applicants to pay her US legal fee retainer and agreed to repay it. I accept the respondent must repay the applicants the claimed \$4,957.26. This sum represents the \$4,575 CAD legal fee retainer, the \$782.26 CAD bail shortfall, and the \$400 credit for payments made. I note the applicants' calculation of the amount owing was not disputed by the respondent. The applicants are entitled to pre-judgment interest on the \$4,957.26 under the *Court Order Interest Act* (COIA), from July 7, 2017, as set out in my order below. In accordance with

the Act and the tribunal's rules, as the applicants were successful I find they are entitled to reimbursement of the \$175 paid in tribunal fees.

ORDERS

16. Within 30 days of the date of this decision, I order the respondent to pay the applicants a total of \$5,193.06, comprised of:
 - a. \$4,957.26 in debt,
 - b. \$60.80 in pre-judgment interest under the COIA, and
 - c. \$175 in tribunal fees.
17. The applicants are entitled to post-judgment interest under the COIA, as applicable.
18. 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.
19. 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