



Civil Resolution Tribunal

Date Issued: January 17, 2019

File: SC-2018-002288

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *EASYFINANCIAL SERVICES INC. v. Rosvold*, 2019 BCCRT 68

B E T W E E N :

EASYFINANCIAL SERVICES INC.

APPLICANT

A N D :

Scott Rosvold

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about a personal loan. The applicant, EASYFINANCIAL SERVICES INC., says the respondent, Scott Rosvold, defaulted on the loan and owes \$3,705.48, plus contractual interest at a rate of 46.96% per year. The respondent admits he owes the debt but says the parties have not reached a reasonable settlement arrangement.

2. The applicant is represented by Nicole Ziegler, who I infer is an employee. The respondent is 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 118 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.
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.

ISSUE

7. The issue in this dispute is whether the respondent must pay the claimed debt plus 46.96% contractual interest.

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 referenced the evidence and submissions as necessary to give context to my decision.
9. It is undisputed that on December 29, 2017 the respondent borrowed \$3,877.99 from the applicant, with an applicable 46.96% per year contractual interest rate. It is also undisputed the respondent agreed to make biweekly payments for a 24-month term, and in February 2018 defaulted.
10. I acknowledge the respondent's submission about his financial difficulties and the failure to reach a settlement arrangement with the applicant. However, this does not change the applicant's entitlement to an order for repayment of the debt plus interest. Nothing in this decision prevents the respondent from raising his ability to pay in any enforcement proceeding in court.
11. It is undisputed the respondent owes an outstanding principal balance of \$3,705.48. I order the respondent to pay this amount, which is also consistent with the loan agreement and payment records before me.
12. The applicant also claims the following charges: \$133.95 for insurance, \$100 for 2 NSF fees, and \$32.84 for "service product charges". These total \$266.79. I find the applicant is entitled to an order for the \$266.79 as the respondent agreed to the charges in the signed loan documents. The evidence also shows the respondent had 2 NSF payments, on February 22 and March 7, 2018.
13. It is undisputed the respondent owes the 46.96% contractual interest of \$257.44, for the period up to March 28, 2018. I order payment of this amount.
14. At this point, I have ordered payment of a total of \$4,229.71 ($\$3,705.48 + \$266.79 + \257.44).
15. The applicant also claims additional pre-judgment interest on the \$3,705.48 principal balance at 46.96% from March 29, 2018 to the date of this decision. I find

this equals \$1,401.61. Together with the \$4,229.71 above, this would bring the applicant's total award to \$5,631.32, apart from tribunal fees and dispute-related expenses.

16. The difficulty for the applicant is the tribunal's \$5,000 monetary limit. In proceeding with the tribunal process, the applicant abandoned any claims over the \$5,000 limit. I find that contractual interest (unlike pre-judgment interest under the *Court Order Interest Act*) is a substantive claim that must together with the principal debt claim fall under the tribunal's \$5,000 monetary limit. In coming to this conclusion, I rely on *Telus Services Inc. v. Hussey*, 2016 BCPC 41 and *Canadian Tire Bank v. Konkin*, 2018 BCPC 151. Those cases say that the reference to "excluding interest" in section 3.1 of the *Small Claims Act*, which deals with the Provincial Court's monetary limit, excludes only interest under the COIA. This is because the courts concluded contractual interest was a substantive claim under the contract and so together with the principal debt it must fall within the applicable monetary limit.
17. Although the *Hussey* and *Konkin* cases considered the *Small Claims Act*, rather than the Act, I find these cases are binding upon me because the *Small Claims Act* is incorporated into the Act by reference, in section 118(4). In other words, there is nothing in the Act that distinguishes it from the *Small Claims Act* such that it could be said the *Hussey* and *Konkin* cases are distinguishable and do not apply. I therefore find the applicant is only entitled to further contractual pre-judgment interest in the amount of \$770.29, bringing the applicant's claims to \$5,000, exclusive of tribunal fees and dispute-related expenses.
18. The applicant was successful. In accordance with the Act and the tribunal's rules, I find the applicant is entitled to reimbursement of \$175 paid in tribunal fees. The applicant claims \$84 as a dispute-related expense, but provided no evidence in support other than saying it is the fee it charges for serving the respondent. I dismiss this \$84 claim as it is unsupported.

ORDERS

19. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$5,175, broken down as follows:
 - a. \$3,972.27 in debt,
 - b. \$1,027.73 in pre-judgment interest, and
 - c. \$175 in tribunal fees.
20. The applicant is also entitled to post-judgment interest under the COIA, as applicable. The applicant's remaining claims are dismissed.
21. 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.
22. 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