



# Civil Resolution Tribunal

Date of Original Decision: March 5, 2019

Date of Amended Decision: May 2, 2019

File: SC-2018-005731

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *EASYFINANCIAL SERVICES INC. V. Bergamo*, 2019 BCCRT 256

B E T W E E N :

EASYFINANCIAL SERVICES INC.

**APPLICANT**

A N D :

Roberto Bergamo

**RESPONDENT**

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## **AMENDED REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about a personal loan agreement. The respondent, Roberto Bergamo, borrowed \$2,526.88 from the applicant EASYFINANCIAL SERVICES

INC., at an agreed 46.96% annual interest rate. The applicant claims an outstanding principal balance of \$2,481.63, plus \$231.48 insurance, \$100 NSF fees, \$65.68 in service product charges, and contractual interest to date.

2. The respondent initially agreed he owes the debt as claimed, but said the interest rate was too much. The respondent chose not to provide evidence or submissions for this decision. The applicant is represented by an employee and while participating the respondent was self-represented.
3. For the reasons that follow, I allow the applicant's claims.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.
6. 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.

7. 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**

8. The issue in this dispute is whether the respondent must repay the amount claimed under the personal loan agreement.

## **EVIDENCE AND ANALYSIS**

9. 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.
10. The respondent chose not to provide any evidence or submissions for this decision. In his Dispute Response filed at the outset of this proceeding, he agreed with all of the applicant's requested resolutions, except for 2 things. First, for the principal balance claim for \$2,481.63: the respondent stated "I am not a woman", in response to the applicant's typographical error in referring to the respondent as "she" in their claim. Second, for the tribunal fees and interest claim, the respondent stated "too much".
11. On April 13, 2018, the applicant advanced the respondent \$2,526.88 as a personal loan. The parties' agreement required bi-weekly payments over an 18-month term, with the first payment due on April 27, 2018 and the last payment due on October 11, 2019.
12. Based on the applicant's "history" document, it appears the respondent never made any payment towards the loan, although the applicant's records show a credit of

\$45.25. In any event, the applicant claims only \$2,481.63 as the outstanding principal, rather than the original \$2,526.88 amount.

13. On balance, I find the applicant has proved the respondent owes \$2,481.63, which I find is not substantively disputed given the respondent's objection was only to the applicant's erroneous use of the female pronoun in its claim.
14. The respondent's first 2 pre-authorized payments were NSF, incurring a total of \$100 in NSF charges as agreed in the loan agreement. I find the respondent owes \$100 for the claimed NSF charges, which again is not disputed.
15. The loan agreement also shows the respondent chose to buy insurance, referred to as the applicant's optional "loan protection program". The insurance portion of the respondent's required bi-weekly payment was \$38.58. In this dispute, the applicant claims \$231.48 for insurance, which amount I am unable to entirely reconcile with the applicant's records. However, as the respondent agreed to the claim in his Dispute Response, I allow it. I say the same about the \$65.68 claim for service product charges.
16. I turn to interest. Contrary to the respondent's Dispute Response statement the claim was "too much", the parties' loan agreement clearly shows the respondent agreed to an annual interest rate of 46.96%, and so I allow it. As such, I find the respondent owes interest on the \$2,481.63 principal award at the rate of 46.96% per year from April 13, 2018 to the date of this decision. This equals \$1,040.85.
17. In accordance with the Act and the tribunal's rules, as the applicant was successful in this dispute it is entitled to reimbursement of \$175 in tribunal fees. There were no dispute-related expenses claimed.

## **ORDERS**

18. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$4,094.64, broken down as follows:

- a. \$2,878.79 in debt,
- b. \$1,040.85 in pre-judgment contractual interest at 46.96% per annum, and
- c. \$175 in tribunal fees.

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

20. 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.

21. 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.

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Shelley Lopez, Vice Chair

Decision in paragraph 18 amended under section 64 of the *Civil Resolution Tribunal Act*, to correct a calculation error in the total award.