



Civil Resolution Tribunal

Date Issued: March 7, 2019

File: SC-2018-007384

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *De Maeseneer et al v. Barandon*, 2019 BCCRT 275

B E T W E E N :

Guido De Maeseneer and Dolores De Maeseneer

APPLICANTS

A N D :

Maria Barandon

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a personal loan. The applicants, Guido De Maeseneer and Dolores De Maeseneer, say the respondent, Maria Barandon, defaulted on her December 2012 loan for \$5,000 (Loan). The applicants claim an outstanding

principal balance of \$3,118.96 plus 30% annual contractual interest. The applicants also claim \$240 for NSF charges.

2. The applicants say while the respondent has repaid several earlier loans, she has not repaid this Loan in full. The respondent denies she owes anything further under the Loan.
3. The applicants are represented by Mr. De Maeseneer and the respondent is self-represented. For the reasons that follow, I allow the applicants' 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.
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 or to what extent the respondent owes \$3,118.96 plus 30% annual interest, plus \$240 for NSF charges, under a personal loan agreement with the applicants.

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 applicants acted as private lenders. It is undisputed that on December 18, 2012, under the Loan the applicants loaned the respondent \$5,250 so she could take a trip. This Loan followed several prior loans by the applicants to the respondent, under the same terms.
11. It is undisputed that the written and signed Loan agreement required a payment schedule of the principal being repaid within 6 months. It is also undisputed the respondent did not honour this aspect of the agreement.
12. The principal was set at \$5,875 inclusive of fees, which is what the applicants' records show was advanced to the respondent in December 2012. The Loan agreement shows the agreed interest rate was 30% per year, which applied only to the Loan balance after the 6-month Loan period during which the fees were charged. In other words, no interest was charged between the Loan date of December 18, 2012 and July 24, 2013. The Loan agreement provided that payments would be applied to the accumulated interest first. It also provides for a \$30 charge per NSF payment.

13. At the time the Loan was advanced in December 2012, the respondent gave 9 post-dated cheques, instead of 12. The first 4 of those cheques could not be cashed, and 4 more payments were dishonoured. These 8 NSF payments is the basis for the applicants' \$240 claim, which I allow as claimed.
14. In short, the respondent only made very small payments over the years, often \$100 or \$150 a month, often skipping monthly payments, thus falling well below the agreed \$1,006 per month under the Loan. Instead of repaying the Loan as agreed within 6 months, the respondent still has not repaid it over 6 years.
15. I do not need to address the November 5, 2016 conditional offer presented by the applicants to the respondent, because the applicants expressly revoked it after the respondent failed to respond to it. In any event, the evidence is clear the respondent never complied with the terms of that conditional offer. I say the same about the applicants' August 2018 offer that that the respondent refused: nothing turns on it because it did not become an agreement between the parties.
16. The applicants say that as of October 4, 2018, the principal balance owing was \$3,238.45, with outstanding interest at that point of \$204.41. Since then, the respondent made 5 further payments for a total of \$500. Thus, as of January 1, 2019, the principal was reduced to \$3,118.96, with accumulated interest of \$58.96, plus the existing \$240 in expenses for dishonoured payments. The applicants say the total debt as of January 1, 2019 was \$3,417.92, plus tribunal fees and dispute-related expenses.
17. I accept the applicants' evidence which I find is consistent with the payment history and the applicable calculation of 30% interest on the outstanding principal balance.
18. I agree with the applicants that because the respondent made only sporadic and minimal payments, the payments she did make barely reduced the principal and also did not entirely pay off the accumulating interest. I have reviewed the applicants' payment schedule and accept that the respondent's payments after March 9, 2014 were so low that they mostly paid accumulating interest. I have

reviewed the respondent's payment history, and note her submission that she had 2 additional payments she cannot identify, dating back to 2014 or 2015. However, I prefer the applicants' records which I find are more detailed and reliable, and most importantly reflect the accumulating interest.

19. I acknowledge the respondent has paid a significant sum, over \$8,000, for a \$5,875 Loan. However, her payments of usually only \$100 or \$200 and with many missed payments, stretched over 5 years instead of the agreed 6 months. Significantly, the respondent's submissions fail to recognize the agreed 30% interest that accumulated to the outstanding balance after the 6-month Loan term. The respondent also failed to recognize the agreed Loan term that payments would be applied to accumulated interest first, with the result that her principal was barely drawn down.
20. I find the respondent owes a principal balance of \$3,118.96. On this sum, the applicants are entitled to \$58.96 in 30% contractual interest accumulated prior to January 1, 2019, plus \$166.63 in 30% annual interest from January 1, 2019 to the date of this decision. The total interest is therefore \$225.59. The respondent also owes \$240 for NSF payments, as set out in the Loan agreement.
21. In accordance with the Act and the tribunal's rules, as the applicants were successful I find they are entitled to reimbursement of \$175 in tribunal fees.

ORDERS

22. Within 14 days of this decision, I order the respondent to pay the applicants a total of \$3,759.55, broken down as follows:
 - a. \$3,118.96 in principal debt,
 - b. \$240 for NSF charges,
 - c. \$225.59 in interest at 30% per year, and
 - d. \$175 in tribunal fees.

23. The applicants are entitled to post-judgment interest as applicable.
24. 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.
25. 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