Civil Resolution Tribunal

Date Issued: March 20, 2019

File: SC-2018-002381

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dr Edit Pusztai INC v. Scholpp*, 2019 BCCRT 351

B E T W E E N :

Dr Edit Pusztai INC

APPLICANT

A N D :

Deanna Scholpp

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell

INTRODUCTION

1. This dispute is about a debt.

2. The respondent, Deanna Scholpp, was an employee of the applicant, Dr Edit Pusztai INC. The applicant says the respondent received a $3,000 loan and did not repay it. The applicant seeks an order for payment of $3,000.

3. The respondent says she already repaid $2,200 to the applicant, and only owes $800.

4. The applicant is represented by Edit Pusztai. The respondent is self-represented.

JURISDICTION AND PROCEDURE

5. 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.

6. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

7. 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.

8. 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

9. The issue in this dispute is whether the respondent owes the applicant money, and if so, how much.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

11. Although the parties disagree about the characterization of the debt, they agree that the respondent gave the applicant $3,000, and that there was no written contract between them. The respondent says that after receiving the $3,000 she had financial difficulties, so Dr. Pusztai told her to “pay as and when you can”.

12. Dr. Pusztai says that around December 2015, she gave the respondent a $3,000 loan from her business account, and they agreed that the respondent would start paying by payroll deductions of $100 starting in January 2016. Dr. Pusztai says she assumed that the payroll deductions were being made, but did not check because she trusted her employees.

13. The respondent says the parties never discussed payroll deductions, and none were made. Rather, the respondent says she made several payments to Dr. Pusztai in cash, totalling $2,200. She says she does not have receipts for the first 2

payments, but has receipts for payments totalling $1,800. She says she stopped making payments after she was laid off in December 2017, as she had no income.

14. In her correspondence with the applicant, including a letter of February 10, 2018, the respondent acknowledged that she owes the applicant $800 towards the debt. For that reason, I find the respondent must pay the applicant $800.

15. For the reasons set out below, I find the applicant has not met the burden of proving the remaining $2,200 claimed.

16. First, in the Dispute Notice, the applicant says she "believes" no payments were ever made, after reviewing her bank records. I find that this is somewhat speculative, and that the applicant's belief and bank records are not sufficient to prove the $3,000 debt claim.

17. It is clear from the evidence that Dr. Pusztai did not monitor the status of the debt payments, and had no knowledge of them being paid or not paid prior to the respondent's layoff in December 2017. Thus, she has no direct knowledge of the amount owed by the respondent. Dr. Pusztai provided a copy of her business bank account statements showing no deposits corresponding to the $200 payments the respondent says she made. She says this proves the respondent did not pay. I disagree, and find these bank statements are not determinative. Since Dr. Pusztai has no knowledge of receiving any cash payments from the respondent, she cannot be certain that such payments would necessarily have been deposited in her business bank account by her staff. The fact that there are no such deposits is therefore not conclusive proof that no payments were made. Again, I note that the burden is on the applicant to prove that no payments were made, and not on the respondent to prove she paid: see *Gill v. Carr*, 2016 BCSC 792, at paragraph 209. Since the alleged payments were in cash, it is possible they were deposited into a different account, or not deposited at all.

18. Second, the applicant sent a draft payment agreement to the respondent dated February 16, 2018, in an attempt to get the respondent to pay. In that payment

agreement, Dr. Pusztai says the remaining balance owed on the debt was $1,600, as maintained by her bookkeeper. I find that this supports the conclusion that the applicant has no clear and specific knowledge of or evidence about how much the respondent owes.

19. In a March 12, 2018 letter to the respondent, Dr. Pusztai wrote that the parties had reached a settlement in their labour relations matter. She wrote, in part, as follows:

> In the course of reaching a Settlement you acknowledged that you still owed me a wage advance/personal loan debt and that you would be willing to make payments. There was some discussion as to the amount owing and I asked you to present receipts so that we could determine the amount. My book keeper maintains the amount still owing is $1,600 and you have yet to produce any contrary evidence.

20. Based on this letter, I find that the applicant cannot prove how much the respondent owes, beyond the $800 debt the respondent admits. As previously explained, I find the lack of bank deposit records are not sufficiently persuasive to establish the amount owed, as it is possible that cash was not deposited, or was deposited into a different account. I note the applicant provided a statement from an employee explaining that cash payments are generally placed in Dr. Pusztai's inbox for deposit, but this was not a payment for service by a client, so I am not prepared to infer that the general practice would have been followed for loan payments by an employee. I also note that the employee who provided the statement about how payments are handled at the applicant's business did not work there at the same time as the respondent, and therefore has no direct knowledge of any payments by the respondent.

21. Dr. Pusztai now says she incorrectly thought the amount owed was $1,600. She says she reviewed her bank records and the receipts provided by the respondent, and knew no money had been paid. Given the circumstances described above, I find Dr. Pusztai's belief is not sufficient to prove the debt.

22. The respondent provided copies of receipts for cash payments. These are for 9 monthly payments of $200, from July 1, 2016 to March 1, 2017. The respondent also says she made payments of $200 each in February and March 2016, but did not receive a receipt.

23. The parties agree that the receipts were printed using a computer template. They list the respondent's name, the amount, and "Repayment towards truck loan". They are signed using Dr. Pusztai's electronic signature, and stamped as "paid", with the date of payment included in the stamp.

24. In an August 29, 2018 statement, MG, the applicant's bookkeeper, says the receipts were prepared by CS. CS is the respondent's daughter, and was also the applicant's office assistant. MG says she does not consider these receipts proof of payment, as they were computer-generated, and there were no cheques or e-transfers to track. MG says she cannot verify that the payments were made.

25. Dr. Pusztai suggests that CS falsified the receipts, and says she dismissed her from employment for this reason, and also reported her to the police. CS provided a signed statement, and while she admits to creating the receipts, she says they were created with Dr. Pusztai's approval and were not falsified. CS says she did not think to create receipts for the first 2 payments because she thought they would be honoured as paid, and because Dr. Pusztai said she would buy a receipt book but did not. CS says she accepted the respondent's cash payments and always put them into an envelope and placed them into Dr. Pusztai's inbox.

26. I find that the applicant has not proven that the receipts created by CS were fraudulent. In various cases, including *Anderson v. British Columbia (Securities Commission), 2004 BCCA 7* (CanLII), courts have said that because fraud is a very serious allegation, which carries a stigma, it requires clear and convincing proof. I find there is no such proof in this case, and the applicant's assertion of fraud is speculative.

27. For that reason, I accept, based on the receipts, that the respondent paid $1,800 in cash payments toward the loan. I also accept, based on the written statements from the respondent and CS, that the respondent paid 2 cash payments totalling $400 in February and March 2016. While I accept that these statements could be self-serving, the respondent's various statements on this point are all consistent, and are not contradicted by any accounting records provided by the applicant.

28. For all of these reasons, I find the applicant is entitled to payment of $800, but has not proved the remaining debt of $2,200. While the applicant's draft payment agreement specifies 15% interest, there is no evidence that the parties agreed to any interest payment at the time of the loan. Thus, I find the applicant is not entitled to contractual interest. However, the applicant is entitled to interest on the $800 under the *Court Order Interest Act* (COIA), from January 1, 2018.

29. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The applicant claims $125 for tribunal fees, and $132.22 for dispute-related expenses related to serving the Dispute Notice on the respondent.

30. As the applicant was only partially successful in this dispute, and because the respondent offered to pay the $800 during the facilitation process, I find it is appropriate to refund half of the applicant's tribunal fees and dispute-related expenses. I order payment of $62.50 for tribunal fees, and $66.11 for dispute-related expenses.

ORDERS

31. I order that within 30 days of the date of this decision, the respondent pay the applicant a total of $942.49, broken down as follows:

    a. $800 for the debt

    b. $13.88 in pre-judgment interest under the COIA, and

c. $128.61 for tribunal fees and dispute-related expenses.

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

33. 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.

34. 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.

Kate Campbell, Tribunal Member