



# Civil Resolution Tribunal

Date Issued: May 13, 2019

File: SC-2018-008034

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *STUNDER et al v. James Thirsk (Doing Business As Singin Gospel Music Productions, 2019 BCCRT 571*

**B E T W E E N :**

WALTER STUNDER and Aime Stunder

**APPLICANTS**

**A N D :**

James Thirsk (Doing Business As Singin Gospel Music Productions)

**RESPONDENT**

**A N D :**

WALTER STUNDER

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. This dispute is about a loan.
2. The applicants Walter and Aime Stunder say they loaned the respondent James Thirsk (dba Singin Gospel Music Productions) (Singin Gospel) \$2,000 on February 20, 2017, to be repaid by May 30, 2017 with a \$100 interest fee. Singin Gospel did not pay them back. The Stunders claim \$2,100.
3. Singin Gospel counterclaims against Mr. Stunder, saying he owes it \$1,200, broken down as two \$500-dollar payments for advertising and promotion packages it provided, and \$200 worth of concert tickets. Singin Gospel says that after deducting these items owing from the admitted loan of \$2,000 plus \$100 interest, it owes Mr. Stunder only \$900.
4. In response to the counterclaim, Mr. Stunder says that the \$2,000 was loaned by Aime Stunder to Singin Gospel. He denies any agreement to offset that loan against advertising packages billed to Humanitarian Aid Response Team (HART), an organization which Mr. Stunder was representing. Mr. Stunder says that Mr. Thirsk should reverse the two \$500 invoices charged to HART, and the \$200 invoice for the tickets. Mr. Stunder says he would then return the tickets for credit. He asks that Mr. Thirsk repay Ms. Stunder the \$2,100 owed to her.
5. The applicants are represented by Walter Stunder. James Thirsk represents Singin Gospel.

## **JURISDICTION AND PROCEDURE**

6. 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*. 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.

7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a “he said, he said” scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
8. 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
9. 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.
10. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

11. The issues in this dispute are:

- a. whether Singin Gospel owes Mr. or Ms. Stunder, or both, the claimed \$2,100?
- b. on the counterclaim, whether Mr. or Ms. Stunder, or both, owe Singin Gospel \$1,000 for promotional packages provided plus \$200 for concert tickets.

## **EVIDENCE AND ANALYSIS**

12. In this civil claim, Mr. and Ms. Stunder must prove their claims on a balance of probabilities. Singin Gospel bears that same burden in its counterclaim.
13. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
14. On February 20, 2017, Mr. Stunder loaned \$2,000 to Singin Gospel, via a cheque he wrote on his wife's account. The parties agreed that Singin Gospel would repay the \$2,000, plus \$100 interest, no later than May 30, 2017.
15. The parties disagree about whether the loan was made by Mr. Stunder or Ms. Stunder. Based on the email evidence and the fact that Mr. Stunder signed the loan cheque, I find that the loan was made by Mr. Stunder to Singin Gospel.
16. HART, through Mr. Stunder, bought a \$500 sponsorship package from Singin Gospel for promotion of HART at a concert on May 6, 2017.
17. After the May 6, 2017 concert, Mr. Stunder and Mr. Thirsk agreed that, rather than charging HART the \$500 package fee, Mr. Stunder would deduct \$500 from the \$2,000 loan that Singin Gospel took in April 2017.
18. Mr. Stunder bought a second \$500 sponsorship package for HART to be promoted at a May 12, 2018 concert. The concert program shows that HART received promotional billing.
19. In June 2017, Mr. Thirsk fell ill and was unable to run Singin Gospel for several months. He spoke with Mr. Stunder, who agreed that the \$500 fee for the May 12, 2017 concert would also be deducted from the \$2,000 loan owed by Singin Gospel.

20. In May 2018, Singin Gospel was going to have another concert. Mr. Thirsk gave Mr. Stunder 10 concert tickets, valued at \$20 each, to be sold. The agreement was that Mr. Stunder would pay Mr. Thirsk \$200 for the tickets or return the tickets if they did not sell.
21. On May 28, 2018, Mr. Stunder emailed Mr. Thirsk laying out the financial situation between them and showing a calculation of \$900 owing on the personal loan if the \$1000 for HART's promotional packages was deducted. I interpret this communication as an offer to resolve the outstanding loan, if the parties could agree to the terms of repayment.
22. On May 30, 2018, the parties met, and Mr. Stunder asked to be repaid the \$900 owing. Mr. Thirsk said Singin Gospel could pay by the end of June.
23. Although Mr. Stunder contests whether he ever agreed to deduct the two \$500 promotional packages from the money owing by Singin Gospel, I find, based on the May 28, 2018 email, that Mr. Stunder agreed to reduce the loan owing to only \$900, but only if Mr. Thirsk paid him promptly. When Mr. Thirsk was unable to do so, I find that the offer was withdrawn, and Mr. Stunder decided to pursue the whole amount owing under the verbal loan agreement.
24. On June 18, 2018, Mr. Stunder filed a Notice of Claim in Small Claims Court that included a claim of money owing by Singin Gospel. Although the claim noted a \$900 amount, it also noted an \$8,000 amount, and described other financial claims involving Mr. Thirsk. The Notice of Claim also said "This amount is outstanding from a loan I made to Mr. Thirsk to promote his 2017 concert amount \$2,000."
25. Mr. Thirsk says that, shortly following a settlement conference on that matter, the parties agreed to settle this outstanding loan by Singin Gospel paying \$900, and Mr. Stunder vacated that claim. While there may have been some settlement discussions, I find that no settlement was reached between the parties because, by Mr. Thirsk's own admission, no documentation was completed.

26. Then, on January 31, 2018, Mr. Stunder applied to a judge to remove the personal loan claim from his Notice of Claim. He says the application was granted. I accept his uncontested evidence on this point, which was supported by documentary evidence.
27. Mr. Stunder then opted to pursue the personal loan claim before the tribunal, and a Dispute Notice was issued on October 29, 2018.
28. I find that Mr. Thirsk did not repay the \$2,000 loan and agreed interest of \$100 before May 30, 2017. I find that no aspect of that loan was forgiven but rather there were settlement discussions between the parties that failed.
29. I find that Mr. Stunder is entitled to pursue the \$2,100 loan amount, because Mr. Thirsk did not promptly repay the \$900 amount offered and the deductions were being applied based on invoices issued by Mr. Thirsk to HART, not to Mr. Stunder personally.
30. As HART is a non-party, I dismiss the \$1,000 portion of the counterclaim made by Singin Gospel. For the same reason, I dismiss the \$200 claimed for concert tickets as those were provided to Mr. Stunder in his capacity as a representative of HART, not in his personal capacity. Nothing in this decision prevents Mr. Thirsk from pursuing payment for \$1,200 from HART directly.
31. I find that Mr. Thirsk owes Mr. Stunder \$2,100.
32. As for pre-judgement interest, I find that *Court Order Interest Act* (COIA) interest applies, on the \$2,000 only, from May 30, 2017 to the date of this decision. Mr. Stunder argued that his usual 7% rate ought to apply to late payments, but I find that no agreement was reached for contractual interest of 7%.
33. Mr. Stunder also argued that he should receive \$500 in punitive damages. Punitive damages are an exceptional remedy meant to deter malicious or high-handed conduct. Failure to repay a loan, in itself, does not justify an award of punitive

damages. I find there is no evidence supporting an award of punitive damages. I dismiss this claim.

34. 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. I see no reason in this case not to follow that general rule. I find the applicant Walter Stunder is entitled to reimbursement of \$125 in tribunal fees. As Singin Gospel was not successful, I dismiss its claim for tribunal fees.

35. I dismiss the claims of Aime Stunder against Singin Gospel.

36. I dismiss Singin Gospel's counterclaim.

## **ORDERS**

37. Within 30 days of the date of this order, I order Singin Gospel to pay Mr. Walter Stunder a total of \$2,273.76, broken down as follows:

- a. \$2,000 in payment of the personal loan,
- b. \$100 in agreed interest,
- c. \$48.76 in pre-judgment interest under the *Court Order Interest Act*, from May 30, 2017 to the date of this decision, on the \$2,000 loan, and
- d. \$125 in tribunal fees.

38. Mr. Stunder is entitled to post-judgment interest, as applicable.

39. Aime Stunder's claims are dismissed. Singin Gospel's counterclaim is dismissed.

40. 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.

41. 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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Julie K. Gibson, Tribunal Member