Civil Resolution Tribunal

Date Issued: August 6, 2019

File: SC-2019-000955

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lesko v. Solhjell*, 2019 BCCRT 941

BETWEEN:

DANIEL J.V. LESKO

APPLICANT

AND:

ANNETTE SOLHJELL

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. The applicant, Daniel J.V. Lesko, says he made 4 loans to the respondent, Annette Solhjell in 2015 and 2016. He says the respondent refused to repay the loans. The respondent says the amounts provided were gifts, not loans.

2. The applicant seeks an order for $4,092.25, the total amount of the 4 loans.

3. Both parties are self-represented.

4. The Dispute Notice identified the respondent's surname as "Solhjill", but the respondent has identified the correct spelling of her name is "Solhjell". I infer the applicant agrees that "Solhjell" is the correct spelling given the applicant used that spelling in later submissions. In any event, I find nothing turns on it given my decision to dismiss the applicant's claims. Accordingly, I have amended the style of cause to reflect the correct spelling.

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* (CRTA). 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. 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.

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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted by section 118 of the CRTA:
    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

9. The issues in this dispute are:
    a. Is the applicant's claim out of time under the *Limitation Act*?
    b. If not, is the respondent required to pay the applicant $4,092.25 in outstanding unpaid loans?

EVIDENCE AND ANALYSIS

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

11. The applicant submits that he made 4 loans to the respondent in 2015 and 2016, summarized as follows:
    a. February 3, 2015: $1,000 plus $60.50 in Western Union fees,
    b. April 16, 2015: $1,000 plus $56.00 in MoneyGram fees,
    c. April 30 and May 1, 2016: $1,275.75 in moving expenses, and
    d. July 21, 2016: $664 plus $36 in MoneyGram fees.

12. The respondent submits that the amounts were not loans, but gifts.

13. The applicant provided several text messages and emails in evidence from August 3, 2016 to August 24, 2017 in which the respondent acknowledged owing "thousands" and stated she would "start paying him back". In this dispute, the respondent submits the applicant gave her the money as a gift. She states that although she admitted to owing the loans in emails, that she felt "overwhelmed and pressured" and did not know what to say. The respondent submits she is not in a financial position to pay the respondent any money.

14. Generally speaking, the burden of proof shifts to the person alleging it was a gift, which in this case is the respondent (see: *Pecore v. Pecore*, 2007 SCC 17).

15. On balance, I find the parties' text messages and emails show the respondent acknowledged the money was lent to her by the applicant, and was not a gift. She stated several times over the course of 2016 and 2017 that she would start paying the applicant back when she could. On balance, I find the weight of the evidence shows that the loans were not an outright gift, but rather an indefinite loan (or what is known as a "demand loan"), with no specific due date.

16. The issue then is whether the applicant's claims are out of time under the *Limitation Act*. As the parties did not specifically address this issue in their submissions, I requested submissions from the parties about the applicability of the *Limitation Act*.

Limitation Period

17. The *Limitation Act* applies to disputes before the tribunal. The *Limitation Act* sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed.

18. Section 6 of the *Limitation Act* says that the basic limitation period is 2 years, and that a claim may not be started more than 2 years after the day on which it is discovered. A claim is "discovered" when the applicant knew or reasonably knew

they had a claim against the respondent and a court or tribunal proceeding was an appropriate remedy.

19. Section 14 of the *Limitation Act* says that a claim for a demand obligation is discovered on the first day that there is a failure to perform the obligation after a demand for the performance has been made. This means that the limitation on a demand loan under the *Limitation Act* begins to run only after a demand for payment has been made (see: *Gavriel v. Gavriel*, 2017 BCSC 1653).

20. The evidence before me is that the applicant sent a text message to the respondent on January 17, 2017 requesting repayment of the money he was owed. On January 19, 2017, the respondent replied by email stating "I know I still owe you money. I have not forgotten", and later "I can't pay". I find the applicant made a demand for payment on January 17, 2017, and the respondent failed to perform. In his additional submissions, the applicant again stated that he emailed the respondent in January 2017 to pay him back, but that he decided to give her more time. Therefore, I find January 17, 2017 was the date on which the applicant's claim was discovered. According to the *Limitation Act*, the applicant was required to start his dispute before January 17, 2019.

21. The applicant started the tribunal proceeding on February 1, 2019, more than 2 years after the applicant's claim was discovered on January 17, 2017. However, section 24 of the *Limitation Act* says that a limitation period may be extended if a person acknowledges liability before the expiry of the limitation period. Section 24(6) of the *Limitation Act* says an acknowledgement of liability must be: a) in writing, b) signed by hand or by electronic signature as defined in the *Electronic Transactions Act*, c) made by the person making the acknowledgement, and d) made to the person with the claim.

22. The applicant submits that the respondent acknowledged the debt in emails and text messages up until August 24, 2017, which he says is when the claim was discovered as the respondent stopped communicating with him. There is no dispute

that the emails and text messages are in writing and were made by the respondent to the applicant. However, the correspondence does not contain a signature.

23. An electronic signature is defined in the *Electronic Transactions Act* as information in electronic form that a person has created or adopted in order to sign a record that is in, attached to, or associated with the record. In *Johal v. Nordio*, 2017 BCSC 1129, the court said that the statute's language focuses on whether the sender of the electronic message intended to create a signature to identify themselves as its composer and sender. In *Johal*, the defendant did not deny sending the email in question and had attached his name, position and contact information to the bottom of the email acknowledging liability. The court found the email satisfied the requirements of section 24(6) of the *Limitation Act*.

24. In *Druet v. Girouard*, 2012 NBCA 40, a decision not binding on me but which I find helpful, the court said formal requirements for signatures serve the purposes of identifying the source and authenticity of the document, as well as establishing the signatory's approval of the document's contents.

25. I have reviewed the various emails and text messages from the respondent in evidence and note they do not contain a signature of any kind, which differentiates this case from *Johal*. Based on the courts' rationale for requiring a signature and the strict requirement for a signature in the *Limitation Act*, on balance I find the respondent's emails and text messages fail to meet the requirements of an acknowledgement of liability under section 24(6) of the *Limitation Act*.

26. Therefore, I find the limitation period expired on January 17, 2019. Given the applicant started this dispute on February 1, 2019, I find that the applicant's claim is barred under the *Limitation Act*. I therefore dismiss this dispute.

27. Because the I find the applicant's claim is out of time, I do not need to consider the issue of whether the respondent is required to pay back the money.

28. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no

reason to deviate from that general rule. As the applicant was not successful, I find that he is not entitled to reimbursement of his tribunal fees or dispute-related expenses. The respondent did not pay any tribunal fees or claim any expenses.

ORDER

29. I order the applicant's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair