



Civil Resolution Tribunal

Date Issued: August 9, 2019

File: SC-2019-002320

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *iFinance Canada Inc. v. Annis*, 2019 BCCRT 955

B E T W E E N :

IFINANCE CANADA INC.

APPLICANT

A N D :

SCOTT ANNIS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about a debt.
2. The applicant, IFINANCE CANADA INC., loaned the respondent, SCOTT ANNIS, a total of \$4,490.00 plus a fee of 6% to finance laser vision correction. It says the respondent defaulted on the loan payments. It claims \$3,253.32 in outstanding

payments, (\$2,278.21 as the outstanding principal and \$975.11 in outstanding interest charges). It claims a contractual interest rate of 18.95% per year.

3. The respondent does not deny that he owes the applicant money or that he failed to make the required payments under the financing agreement. However, he says the balance was down to “approximately \$2,000.00”.
4. The applicant is represented by an individual who I infer is an employee. 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* (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. I decided to hear this dispute through written submissions because the discrepancy about payments can be resolved on the written record.
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 under 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.

ISSUE

- 9. The issue in this dispute is to what extent, if any, does the respondent owe the applicant the claimed amount of \$3,253.32 and contractual interest at a rate of 18.95% per year.

EVIDENCE AND ANALYSIS

- 10. In a civil claim such as this, the applicant bears the burden of proving its claims on a balance of probabilities.
- 11. The parties entered into a financing agreement on August 12, 2013. According to the signed contract in evidence, the applicant loaned the respondent \$4,490.00 (principal), over a 60-month term. Under the agreement, the applicant charged the respondent a loan financing fee of \$269.40 (6% of \$4,490.00).
- 12. The terms of the agreement provide that the respondent pay equal monthly payments of \$123.56 starting September 15, 2013 and ending August 15, 2018, with any remaining balance due on the last day. The agreement shows the parties agreed to an interest rate of 18.95% per year on the principal. The agreement provides that any Non-Sufficient Funds (NSF) cheque will be subject to a \$30.00 service fee.
- 13. The respondent did not file evidence. In his submissions, he says that he will resume payments but has not been able to afford them. He says that the claimed amount is incorrect. As noted, he says he had it down to approximately \$2,000. However, he provided no evidence to explain how the claimed amount is incorrect.
- 14. The applicant provided the financing agreement and a payment history record showing the balances on the agreement over time. Based on these documents, I

find the applicant has proven that the respondent borrowed the money on the terms as described above and that he failed to repay the loan as required.

15. According to the payment history record, the respondent's starting balance on August 12, 2013 was \$4,759.40 (\$4,490.00 principal, plus the \$269.40 financing fee). The payment record shows the respondent made monthly payments of \$123.56 for a period of 43 months starting September 15, 2013. It shows that the respondent's last payment was made on March 24, 2017. Based on the payment record, the respondent paid a total of \$5,313.08 (\$123.56 x 43 months) towards the loan. The payment record specifies that \$2,381.89 of this amount was for interest. Therefore, I find the respondent paid \$2,931.19 towards the principal and financing fee. I find an outstanding balance of \$1,828.21 remains, broken down as \$1,751.88 on the principal and \$76.33 on the financing fee. The reason the amount of the debt is different than the applicant's claim, is that the claim includes NSF fees of \$450.
16. The payment record shows 15 unpaid NSF fees between April 20, 2017 and May 17, 2018, for a total of \$450.00. I find the respondent owes the applicant \$450 in outstanding NSF fees.
17. Based on the claimed interest amount, I find the applicant seeks to collect interest on the fees. The applicant does not explain the basis for adding contractual interest to the fees, and there is no evidence the parties agreed to such a term. The terms of the financing agreement provide contractual interest on the principal (\$4,490.00) only.
18. I find the respondent is not required to pay contractual interest on the NSF fees or on the financing fee. Instead, I find he is required to pay pre-judgment interest on the NSF fees under the *Court Order Interest Act* (COIA) calculated from the date of the fees. I find he is also required to pay COIA interest on the outstanding financing fee from April 15, 2017, the due date of the first missed payment.

19. On the outstanding principal of \$1,751.88, I find the respondent must pay the applicant contractual interest at a rate of 18.95%, calculated from April 15, 2017, which again, is the due date of the first missed payment.
20. In summary, I find the respondent must pay the applicant:
- a. \$1,751.88 on the outstanding principal,
 - b. \$76.33 on the outstanding financing fee,
 - c. \$450.00 in outstanding NSF fees,
 - d. \$653.05 in contractual interest of 18.95% per year on the outstanding principal only, for the period up to the date of the Dispute Notice.
 - e. \$115.51, in contractual interest at 18.95% per year from April 4, 2019, the date the Dispute Notice was issued to the date of this decision, on the outstanding principal only.
 - f. \$13.93, in interest under the COIA, as \$2.28 for the financing fee and \$11.65 for the NSF fees.
21. Under section 49 of the CRTA, 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 is entitled to reimbursement of \$125 in tribunal fees. It did not claim any dispute-related expenses.

ORDERS

22. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$3,185.70, broken down as follows:
- a. \$2,278.21 in debt for money owed under the loan agreement, including the fees,

- b. \$768.56 in pre-judgment interest calculated at the contractual interest of 18.95% per year on the loan principal,
 - c. \$13.93 in pre-judgment interest under the COIA on the NSF and financing fees, and
 - d. \$125.00 in tribunal fees.
23. The applicant is entitled to post-judgment interest, as applicable.
24. Under section 48 of the CRTA, 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 CRTA, 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.

Trisha Apland, Tribunal Member