Civil Resolution Tribunal

Date Issued: September 6, 2019

File: SC-2018-009448

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wilkes v. Rousselle*, 2019 BCCRT 1058

B E T W E E N :

KIMBERLEY WILKES

APPLICANT

A N D :

DEREK ROUSSELLE

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sarah Orr

INTRODUCTION

1. The applicant, Kimberley Wilkes, says she loaned the respondent, her son Derek Rousselle, $5,920.50 between June 2015 and September 2017 which he has only partially repaid. She wants him to repay her $4,620.50 for the outstanding balance of the loan.

2. The respondent admits to receiving a loan from the applicant, but only for $2,450, not for the full amount claimed. He says $1,250 of the applicant's claim was an investment rather than a loan. He acknowledges that he owes the applicant $1,150.

3. Both parties are self-represented.

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* (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.

5. 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, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. 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 the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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 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

8. The issue in this dispute is whether the respondent is required to pay the applicant $4,620.50 in loan repayments.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.

10. The respondent filed a Dispute Response and made submissions but chose not to provide evidence despite having the opportunity to do so. He says the applicant's evidence is incomplete and "manipulated" and does not show the full communications between the parties. He says he no longer has access to the email address he used to communicate with the applicant, so he is unable to provide the tribunal with the parties' full correspondence.

11. The respondent cites section 31.2 of the *Canada Evidence Act* (CEA), which says that for electronic documents the best evidence rule is satisfied on proof of the integrity of the electronic documents system in which the electronic document was recorded or stored. The applicant cites section 31.3 of the CEA which says that for the purposes of section 31.2, the integrity of the electronic documents system is

proven if the computer system used was operating properly and there are no other reasonable grounds to doubt the system's integrity.

12. There is no evidence the applicant's computer system was not working properly, and I find there are no other reasonable grounds to doubt the integrity of her emails in evidence. I also note that in addition to emails the applicant provided many text messages between herself and the respondent, and the respondent did not explain why he was unable to provide text messages to support his claim that the applicant manipulated her evidence.

13. I am satisfied that I can fairly decide this dispute on the evidence before me. I have only addressed the applicant's evidence and the parties' submissions to the extent necessary to explain and give context to my decision.

14. I note that in his submissions the respondent asks for legal counsel, however there is no indication he made a formal request for permission to have legal representation during the facilitation process or at any time before making his submissions. Nothing prevented the respondent from seeking legal advice before or during this dispute. Therefore, I decline to address these submissions further in this decision.

15. The applicant says that between June 2015 and September 2017 she loaned the respondent $5,920.50. The respondent does not dispute that between February and May 2017 the applicant loaned him a total of $2,450. The remaining $3,470.50 is in dispute, which the applicant says she paid to the respondent in the following payments:

    a. $1,250 in June or July 2015

    b. $50 on February 29, 2016

    c. $218.50 on July 14, 2016

    d. $1,500 on June 16, 2017

e. $425 on July 4, 2017

f. $27 on September 15, 2017

$1,250 in June or July 2015

16. In a July 31, 2017 email to the respondent the applicant said she loaned him $2,000 on June 5, 2015 for him to buy into “Sledgehammers.” The respondent says the applicant sent him $1,250 in July 2015, not $2,000 in June 2015, and that this was an investment, not a loan. However, in a July 31, 2017 email response to the applicant the respondent wrote, “can you please look into that Sledgehammers loan for me cause I am sure it was 1250 not 2000 but just let me know so I can pay exactly why’s owed” (quote reproduced as written). The applicant submitted bank statements showing that on July 13, 2015 she transferred $1,250 to the respondent. On the evidence before me, I find the applicant loaned the respondent $1,250 on July 13, 2015, and that he confirmed this was a loan on July 31, 2017.

17. Under the current *Limitation Act* (LA) a debt claim must be started within 2 years of the day it was discovered, which is the first day a person had knowledge of the matters in the claim or reasonably ought to have known about the claim. A debt obligation that does not specify a date for repayment is a demand loan (see *Leatherman v. 0969708 B.C. Ltd.*, 2018 BCCA 33). On the evidence before me, I find the applicant did not specify a repayment date for the $1,250 loan to the respondent, and therefore it was a demand loan. Under the LA a claim for a demand loan is discovered on the first day that there is a failure to perform the obligation after a demand for performance.

18. On the evidence before me, I find the earliest date the applicant requested payment was July 31, 2017. The Dispute Notice was issued on December 24, 2018, within the 2-year limitation period. Therefore, I find the respondent is required to repay the applicant the $1,250 loan she paid him on July 13, 2015.

$50 on February 29, 2016

19. The applicant submitted bank records showing she transferred the respondent $50 on February 29, 2016. She says he asked her for this loan over the phone, but she provided no other evidence to support this claim. On July 31, 2017 the applicant emailed the respondent detailing the amount of the loan payments she had made to him since June 2015. The February 29, 2016 payment of $50 was not included in this email.

20. However, under the law of gifts, once an applicant has proved a transfer, the burden shifts to the person receiving the transfer to establish it was a gift (see *Pecore v. Pecore*, 2007 SCC 17 (CanLII)). The respondent provided no evidence to establish that this payment was a gift. Therefore, I find the applicant's February 29, 2016 payment of $50 to the respondent was a loan. As there is no evidence the applicant specified a repayment date for this loan, I find it was a demand loan. Since there is no evidence the applicant demanded repayment of this loan prior to bringing this dispute before the tribunal, I find the applicant is within the 2-year limitation period under LA, and the respondent is required to repay the applicant $50.

$218.50 on July 14, 2016

21. The applicant submitted credit card statements showing she paid $218.50 on July 14, 2016 to the Appletree Inn in Penticton. She says this was for a room for the respondent when he needed to leave his home. She says he asked her for this loan over the phone, but she provided no other evidence to support this claim. I also note that this amount was not included in the applicant's July 31, 2017 email described above. On the evidence before me I find the applicant has not established that her $218.50 payment to a hotel on July 14, 2016 was a loan to the respondent or made on behalf of the respondent. Therefore, I find the respondent is not required to pay the applicant this amount.

$1,500 on June 16, 2017

22. The applicant submitted bank statements showing she transferred $1,500 to the respondent on June 16, 2017. She also submitted a series of text messages between her and the respondent between June 12 and 16, 2017 in which the respondent asks her for $1,500 and says, “I have a good cheque should be able to give it all back.” She says this loan was for the respondent to buy a travel trailer to live in. This $1,500 payment is also included in the applicant’s July 31, 2017 email in which she listed outstanding loan payments she had made to the respondent.

23. On July 31, 2017 the respondent replied to the applicant’s email in a series of emails stating, “you will receive your f****** money I assure. I will have it in two by the end of aug for sure…” (quote reproduced as written, except where noted). In another email he said, “I better just focus on getting this back to you over the next bit…” In another email he said, “I need to get this back to you asap as you both went out of your way to help me…” In text messages to the applicant on the same date he wrote, “You will have it mother as fast and as soon as I can... Want to get that paid back” [all quotes reproduced as written]. Except where otherwise noted, I find these emails and text messages were the respondent’s acknowledgement of all of the the loans listed in the applicant’s July 31, 2017 email.

24. On balance, I am satisfied that the applicant’s $1,500 transfer to the respondent on June 16, 2017 was a loan. I find the respondent is required to repay the applicant this amount.

$425 on July 4, 2017

25. The applicant submitted bank statements showing she transferred $425 to the respondent on July 4, 2017. She says the respondent requested this amount over the phone for daily living expenses, and she says she told him it was a loan. This amount was included in the applicant’s July 31, 2017 email described above, to which the respondent responded in various emails and text messages described above. On balance, I am satisfied that the respondent acknowledged that the

applicant's $425 transfer to him on July 4, 2017 was a loan. Therefore, I find he is required to repay her $425.

$27 on September 15, 2017

26. The applicant submitted credit card statements showing she paid BC Vital Statistics $27 on September 15, 2017. She says this payment was for the respondent to obtain a copy of his marriage license to begin divorce proceedings. However, she submitted no other evidence establishing that this payment was for a marriage license, that she made the payment on behalf of the respondent, or that this payment was a loan. Therefore, I find the respondent is not required to repay this amount.

27. In summary, I have found that between July 2015 and July 2017 the applicant loaned the respondent a total of $5,675. The parties agree that between May 5, 2017 and July 2017 the respondent paid the applicant a total of $1,300. Therefore, I find the respondent must pay the applicant the balance of $4,375.

28. The *Court Order Interest Act* (COIA) applies to the tribunal, so the applicant is entitled to pre-judgment interest under the COIA on the amount owing. The applicant asks for pre-judgment interest calculated from July 12, 2015. However, under the COIA, interest accrues from the date the claim arose, and I have found the claim arose on July 31, 2017, which is the day the applicant emailed the respondent asking for payment. Therefore, the applicant's pre-judgment interest under the COIA is calculated from July 31, 2017 to the date of this decision. This equals $129.13.

29. 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. Since the applicant was successful I find she is entitled to reimbursement of $175 in tribunal fees. She has not claimed any dispute-related expenses.

ORDERS

30. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of $4,679.13, broken down as follows:

    a. $4,375 as repayment of loans,

    b. $129.13 in pre-judgment interest under the COIA, and

    c. $175 in tribunal fees.

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

32. 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.

33. 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.

Sarah Orr, Tribunal Member