



# Civil Resolution Tribunal

Date Issued: December 10, 2019

File: SC-2019-004717

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Otto v. Cueto*, 2019 BCCRT 1386

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

ANTONY OTTO

**APPLICANT**

**A N D :**

ROCIO ALVEREZ DEL CASTILLO CUETO

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kathleen Mell

### **INTRODUCTION**

1. This dispute is about the money transferred during the parties' romantic relationship between early 2018 and April 2019. The applicant, Antony Otto, says that he made loans to the respondent, Rocio Alvarez Del Castillo Cueto, while they were a couple which she did not repay. The applicant requests \$5,000.00 he says is outstanding. The applicant represents himself.

2. The respondent says that the applicant lent her money that she repaid in full. She states that the additional amount the applicant is claiming were gifts he gave her during their relationship. The respondent represents herself.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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, she said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 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 therefore decided to hear this dispute through written submissions.
5. 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.
6. 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**

7. The issue in this dispute is whether the money provided to the respondent were repayable loans or gifts.

## **EVIDENCE AND ANALYSIS**

8. In a civil dispute such as this, the applicant must prove his claim. He bears the burden of proof on a balance of probabilities. Although I discuss the impact of the law of gifts below.
9. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
10. It is undisputed that the applicant loaned the respondent \$35,000.00 in June 2018. He obtained a promissory note and put a mortgage against the respondent's property. The respondent repaid the \$35,000.00 in May 2019. The applicant says in his evidence that other money was transferred to the respondent which has not been repaid.
11. In his Dispute Notice and his submissions, the applicant originally requested \$4,670.16. In his evidence he states that he actually lent the respondent much more than that. The new amount indicated totals close to \$10,000.00. However, the applicant says he wants to abandon any claim over the tribunal's small claims limit of \$5,000.00. The respondent had notice that the applicant had increased the amount claimed to \$5,000.00. I also note that the \$5,000.00 the applicant now claims is not a substantial difference from the original \$4,670.16 originally claimed. Therefore, I will consider this dispute based on the \$5,000.00 the applicant claims.

12. It is unclear on the evidence how the applicant arrived at the amount originally requested. The applicant's lawyer sent the respondent a letter on June 6, 2019 saying that \$4,670.16 was outstanding. Some of the items listed in the applicant's evidence include \$2,000.00 in e-transfers from April and June 2018, \$1,322.63 for a passport or passports and 3 flights to Mexico in January 2018 for the applicant and her two children, as well as a \$400.00 loan to purchase shares. Then there are expenses to renovate the respondents' property as well as a service contract with a computer repair company. The applicant also paid \$2,500.00 for the respondent to attend real estate consulting services with him. The applicant has provided multiple receipts and bank records to support that these sums were transferred to the applicant.
13. The respondent does not dispute that the applicant transferred her this money or paid for these items. Instead, she says that beyond the \$35,000.00 the other money transferred and expenses paid for by the applicant were freely given to her and that the applicant did not say it was a loan.
14. 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. It is also the law that once someone has made a true gift to another person, the gift cannot be revoked (*Bergen v. Bergen*, 2013 BCCA 492). I acknowledge the respondent's submission that the applicant is trying to after-the-fact get back money she says he gave her outright or used to buy her things. However, under the law the respondent must prove the money spent was a gift in the first place.
15. Here, the applicant has proved the transfer of money. It is undisputed and the evidence shows that the applicant paid the amounts listed above and they exceed the \$5,000.00 claimed. Again, the respondent does not dispute this.
16. So, in this dispute the respondent bears the burden of proof to establish that a gift was made, rather than the applicant giving her the money as a repayable loan. I find the respondent has not proved a gift, as discussed further below.

17. For there to be a legally effective gift, three things are required: an intention to donate, an acceptance, and a sufficient act of delivery. The context of the parties' romantic relationship is relevant, but not determinative. The evidence needs to show that the intention of the items as gifts was inconsistent with any other intention (see *Lundy v. Lundy*, 2010 BCSC 1004). I find the weight of the evidence does not show the applicant intended to gift these amounts to the respondent.
18. The parties had no written contract about money beyond the promissory note for the \$35,000.00. The respondent has provided insufficient evidence to support her claim that the money beyond the \$35,000.00 was a gift. It is clear on the evidence that the applicant was providing money to the respondent and even went so far as to get a promissory note signed when the amount was particularly significant. However, the respondent has not shown that the money at issue in this dispute was a gift rather than a loan. While the respondent submits that the applicant never said it was a loan, she does not claim and has not provided evidence that he ever said it was a gift.
19. I find it relevant that the parties' relationship was of relatively short duration when determining whether the applicant gifted this amount of money to the respondent. I have also considered the fact that the applicant obtained a promissory note for the \$35,000.00 but did not do so for the other amounts. I find that these other amounts were less and incremental. This does not mean they were a gift. I find it more likely that the applicant did not go through the steps of getting a promissory note every time he lent money to the respondent.
20. In summary, I find the weight of the evidence does not establish the money transferred and the money spent on other items and expenses was a gift. So, I find the respondent must repay the applicant \$5,000.00.
21. The *Court Order Interest Act* (COIA) applies to the tribunal. I find the applicant is entitled to interest on that amount from June 6, 2019 which is the date the respondent's lawyer demanded repayment. This equals \$49.95.

22. 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. As the applicant was successful in his claim he is entitled to \$175.00 reimbursement of his tribunal fees.

## **ORDERS**

23. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$5,224.95, broken down as follows:

- a. \$5,000.00 in debt,
- b. \$49.95 in pre-judgment interest under the COIA, and
- c. \$175.00 in tribunal fees.

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

25. 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.

26. 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.

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Kathleen Mell, Tribunal Member