Civil Resolution Tribunal

Date Issued: January 18, 2019

File: SC-2018-002631

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bakken v. Bakken*, 2019 BCCRT 66

B E T W E E N :

Beverly Bakken

APPLICANT

A N D :

Gordon Bakken

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Lynn Scrivener

INTRODUCTION

1. This is a dispute about a debt of $4,500 the applicant, Beverly Bakken, says is owing to her by her brother, the respondent Gordon Bakken. The respondent says that the applicant's dispute was not brought in time.

2. The applicant is self-represented. The respondent is represented by Peter Bright, who is a lawyer.

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* (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.

4. 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 I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

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 126, 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

7. The issue in this dispute is whether the respondent must repay $4,500 to the applicant and, in particular, whether the applicant's claim is out of time.

EVIDENCE AND ANALYSIS

8. In a claim such as this, the applicant bears the burden of proof on a balance of probabilities. The parties have provided submissions and evidence in support of their respective positions. While I have read this information in its entirety, I will refer only to that which is necessary to provide context to my decision.

9. The applicant says that the respondent borrowed $4,500 from her in various increments. She says that the amount owing includes $1,000 for a bed and frame, a lawyer's bill of $1,500, $500 for books, $750 towards a legal matter, $500 for gas, $250 for dental work, as well as money for groceries and other expenses. The applicant says that she did not keep a complete tally of all the loans she made to the respondent, but suspects this amount would be in excess of the $4,500 she seeks.

10. The respondent does not dispute that he borrowed $4,500 from the applicant, or that he has failed to repay her. The respondent's representative says that a 2-year limitation period applies to the loan and, as it has expired, the applicant's claim was brought out of time.

11. A limitation period is a period within which a person may bring a claim. If that period expires, the right to bring the claim ends, even if the claim would have been successful. The *Limitation Act* applies to disputes before the tribunal.

12. The respondent's representative referred to the current version of the *Limitation Act*, which came into effect on June 1, 2013, and which does contain a 2-year limitation period for debts such as the one claimed by the applicant. However, the previous version of the *Limitation Act* applies to claims discovered before June 1, 2013. For those debt claims, a limitation period of 6 years applies.

13. The applicant's evidence, which the respondent did not dispute, is that she loaned the respondent money in "approximately 2012" and had an expectation of repayment around that time. The applicant did not identify the dates of the particular loan increments, but she did state that the respondent did not make any payments towards the loan amount. I am satisfied that, in these circumstances, the debt claim was discovered prior to June 1, 2013, and the previous version of the *Limitation Act* applies to this matter.

14. The applicant suggests that an October 6, 2016 letter she wrote to the respondent and a subsequent conversation with him in a lawyer's office amounted to an acknowledgment of the debt and extended the limitation period. However, as set out in section 5(5) of the *Limitation Act*, an acknowledgement must be in writing and signed by the maker. The applicant's own demand does not amount to an acknowledgment of the debt. Rather, the acknowledgment must come from the debtor, the respondent. There is no indication that the respondent has made such an acknowledgment in writing, and I am not satisfied that cause of action has been confirmed or the limitation period extended. In order for the applicant to be successful, the evidence must establish that the applicant brought her claim within 6 years of the loan being made.

15. The Dispute Notice was issued on April 16, 2018. Some loan increments advanced in 2012 may be within the limitation period, but others may be out of time. The burden is on the applicant to establish that each increment of the loan was made within the applicable 6-year limitation period. Although the applicant identified the intended use for each increment of the loan, she did not set out the dates on which they were made. As such, for the majority of the loan increments, I find that the applicant has not proved the claim was made in time.

16. However, the evidence does establish that one loan increment was made within the 6-year period. A statement from a law firm shows that the applicant paid a retainer of $1,500 on November 30, 2012. The applicant says, and the respondent did not dispute, that she advanced this money to assist the respondent with a legal matter.

17. I am satisfied that the applicant has established that $1,500 of the $4,500 loan was made within the applicable limitation period. I find that the applicant has not met her burden of proof to establish that the other increment amounts were made within that period, and decline to make an order for the remainder of the $4,500 debt claimed.

18. The respondent's representative also submits that the contents of an April 26, 2016 partnership agreement signed by the applicant, the respondent, and another family member amount to contractual forgiveness of the loan. Schedule C of the agreement, which is entitled Code of Conduct, contains the statement that the "Partners agree to take a 'clean slate' approach to the running of the business including avoiding past issues, family history, and finances and gifts."

19. I do not agree with the representative's interpretation of this statement. The agreement does not state that the "clean slate" applied to the entirety of the parties' relationship, but rather to the running of the business. I am not satisfied that this reference to finances indicates that the applicant agreed to forgive all outstanding loan amounts, which she described as a "trusting brother-sister deal" rather than business.

20. I find that the applicant is entitled to repayment from the respondent in the amount of $1,500, being the portion of the loan debt that was filed in time.

21. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the $1,500.00 in the amount of $87.51.

22. 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 is entitled to reimbursement of $175.00 in tribunal fees and $85.10 in dispute-related expenses.

23. The respondent asked that the applicant reimburse his legal fees in the amount of $560. Rule 131 provides that, except in extraordinary cases, the tribunal will not order one party to pay another party any fees charged by a lawyer or another

lawyer in the tribunal dispute process. I acknowledge the representative's submission that the respondent needed assistance from counsel as he does not have access to the internet or email. However, I do not find that the circumstances of this case are extraordinary such that an order for reimbursement is appropriate, and I decline to make such an order. Further, the respondent was partially unsuccessful, which I find supports my conclusion.

ORDERS

24. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of $1,847.61, broken down as follows:

    a. $1,500.00 in debt,

    b. $87.51 in pre-judgment interest under the COIA, and

    c. $260.10 for $175.00 in tribunal fees and $85.10 for dispute-related expenses.

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

26. 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.

27. 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.

Lynn Scrivener, Tribunal Member