



# Civil Resolution Tribunal

Date Issued: February 5, 2020

File: SC-2019-006587

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cote v. Clippingdale*, 2020 BCCRT 138

BETWEEN:

MARJORIE COTE

**APPLICANT**

AND:

ANDREW CLIPPINGDALE

**RESPONDENT**

AND:

MARJORIE COTE

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## **INTRODUCTION**

1. The applicant, Marjorie Cote, claims that respondent, Andrew Clippingdale, owes her \$5,000, plus interest, for a debt related to camera equipment Ms. Cote had paid for but which Mr. Clippingdale retains. Mr. Clippingdale claims that Ms. Cote owes him professional service fees. Mr. Clippingdale counterclaims against Ms. Cote for \$5,000, plus interest, for non-payment of professional services.
2. Ms. Cote argues that Mr. Clippingdale's professional services contract was with an unrelated third party and not her personally. Ms. Cote argues that Mr. Clippingdale's counterclaim exceeds this tribunal's jurisdiction and that it was filed too late.
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. 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.
6. Ms. Cote argues that Mr. Clippingdale's counterclaim exceeds this tribunal's monetary jurisdiction because Mr. Clippingdale has alleged a loss of \$30,458. However, section 118(2) of the *Civil Resolutions Tribunal Act* allows disputes relating to losses over \$5,000 if the claim is limited \$5,000. Since Mr. Clippingdale

has limited his claim to \$5,000, I find that I do have jurisdiction to hear his counterclaim.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUES**

9. The issues in this dispute are:
  - a. Does Mr. Clippingdale owe a debt to Ms. Cote for a camera equipment loan? If so, how much does Mr. Clippingdale owe Ms. Cote?
  - b. Does Ms. Cote owe a debt to Mr. Clippingdale for unpaid professional services? If so, how much does Ms. Cote owe Mr. Clippingdale?

## **EVIDENCE AND ANALYSIS**

10. In civil claims such as these, the burden of proof is on the applicant Ms. Cote to prove her claims on a balance of probabilities. Mr. Clippingdale bears this same burden on his counterclaim. Although I have reviewed all the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.

### ***Ms. Cote's Claim for \$5000***

11. Ms. Cote claims that she loaned \$5,808.06 to Mr. Clippingdale to purchase camera equipment which has not been repaid.

12. It is undisputed that:

- a. Ms. Cote delivered \$5,808.06 to Mr. Clippingdale in August 2017 for the purchase of camera equipment.
- b. Ms. Cote requested repayment of the loan on March 19, 2018.
- c. Mr. Clippingdale acknowledged that he owed the money for the camera equipment and he agreed to make a repayment plan on March 19, 2018.
- d. Mr. Clippingdale has not made any repayments to Ms. Cote.

13. Mr. Clippingdale argues that he was entitled to withhold repayment because Ms. Cote owed \$38,458 from a personal services contract. Mr. Clippingdale claimed that he purchased the camera equipment to perform the professional services contract for Ms. Cote.

14. Ms. Cote claims that she was not a party to the personal services contract and that she is not personally responsible for that debt. Ms. Cote argues that Mr. Clippingdale actually entered this contract with another business referred to by the parties alternatively as Equity Unlimited, Equity Unlimited U.S.A. Ltd. and Equity Unlimited U.S.A. Inc. (Equity Unlimited). Ms. Cote states that Equity Unlimited is a corporation and she is not a shareholder.

15. Based on Mr. Clippingdale's own admissions, I find that Ms. Cote has loaned him the sum of \$5,808.06 which has not been repaid

16. Given my conclusion above that the money was a repayable loan, I find Mr. Clippingdale must reimburse \$5,000 to Ms. Cote. I will address Mr. Clippingdale's claim that Ms. Cote also owed him a debt separately below.

17. Ms. Cote is entitled to pre-judgement interest on the loan from March 19, 2018, the date of the repayment demand, to the date of this decision. This equals \$160.76.
18. 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 Ms. Cote is entitled to reimbursement of \$150 in tribunal fees.

***Mr. Clippingdale's Counterclaim for \$5,000***

19. Mr. Clippingdale argues that Ms. Cote owes \$30,458 for professional services based on an August 4, 2017 quote. The quote was addressed to Equity Unlimited and it did not mention Ms. Cote.
20. Mr. Clippingdale argues that Ms. Cote is responsible for the payment of these services because she accepted the quote and she agreed to pay.
21. Ms. Cote says that Mr. Clippingdale is out of time to make this claim. The *Limitation Act* applies to tribunal claims and establishes a basic limitation period of 2 years. A limitation period is a specific time within which a person may pursue a claim. If that time period expires, the claim may not be brought even if it may have been successful.
22. However, section 4 (1)(a) of the *Limitation Act* permits a counterclaim after the 2-year deadline when the counterclaim relates to the original claim and if the original claim was filed in time. For the reasons provided below, I find that Mr. Clippingdale's counterclaim relates to Ms. Cote's claim.
23. Mr. Clippingdale states that Ms. Cote's money was used to purchase camera equipment to prepare a professional services quote. This equipment expense was referenced on Mr. Clippingdale's quote. In his counterclaim, Mr. Clippingdale is claiming payment for professional services relating to the same quote. As such, I find Ms. Cote's claim and Mr. Clippingdale's counterclaim are related and the counterclaim was filed in time.

24. So, what about Mr. Clippingdale's claim for unpaid services? Does Ms. Cote have a contract with Mr. Clippingdale?
25. Ms. Cote argues that she did not have an agreement with Mr. Clippingdale. Rather, she argues Mr. Clippingdale's agreement was with Equity Unlimited.
26. Mr. Clippingdale did not provide a written contract to establish an agreement with Ms. Cote. Instead, Mr. Clippingdale provided Ms. Cote's emails to try to prove the existence of a contractual relationship. For the following reasons, I do not find Ms. Cote's emails are enough to prove that she had a services contract with Mr. Clippingdale.
27. Ms. Cote's August 31, 2017 email stated that she would have their payment ready. On September 1, 2017, Ms. Cote told Mr. Clippingdale to send the invoice to her corporation. Later that day, Ms. Cote told Mr. Clippingdale to send the invoice to a different corporation because an individual named Dail was unavailable and unable to make the transfer. Ms. Cote's September 7, 2017 email stated that they were in the process of incorporating Equity Unlimited and she told Mr. Clippingdale to send the invoice to another corporation.
28. The invoice referenced in these emails was not submitted. The only invoice provided was dated November 13, 2017 for \$800. This invoice was issued to Equity Unlimited and it did not refer to Ms. Cote.
29. As for whether Ms. Cote is personally liable, I have considered Ms. Cote's emails to see whether she meant to be bound in a contract with Mr. Clippingdale. I find that the emails show that Ms. Cote made payment arrangements on behalf of Equity Unlimited. I do not find that Ms. Cote intended to be personally bound to the agreement. Rather, Ms. Cote's emails indicate that she was trying to make different arrangements to pay Mr. Clippingdale on behalf of Equity Unlimited because that entity was not available.
30. Ms. Cote's lack of a contractual relationship with Mr. Clippingdale is also supported by Mr. Clippingdale's invoice addressed to Equity Unlimited and not to Ms. Cote.

31. I have also considered whether Ms. Cote is responsible for the debt as an agent of Equity Unlimited.
32. The law of agency provides that, when an agent enters a contract on behalf of a principal, the agent is generally not personally liable under the contract. There are certain circumstances where an agent can be personally liable such as when the contract states or implies that the agent will be bound the contract. An agent can also be personally liable when the agent signs the contract in their personal capacity or the agent does not disclose the principal when the contract was entered. However, I do not find that any of these circumstances have been established in this matter.
33. There was no written contract provided and, on the balance, the emails disclosed that Ms. Cole was acting on behalf of Equity Unlimited. Accordingly, I find that general agency principle applies and Ms. Cote is not personally liable for the contract as Equity Unlimited's agent.
34. Accordingly, I find that Mr. Clippingdale has failed to prove that Ms. Cote has a responsibility to pay the debt from the services contract. I dismiss his counterclaim.
35. As Mr. Clippingdale was unsuccessful in his counterclaim, I dismiss his claim for reimbursement of tribunal fees, in accordance with the tribunal's rules.

## **ORDERS**

36. Within 14 days of the date of this order, I order Mr. Clippingdale to pay Ms. Cote a total of \$5,310.76, broken down as follows:
  - a. \$5,000 in debt as loan repayment,
  - b. \$160.76 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$150 in tribunal fees.
37. Ms. Cote is entitled to post-judgment interest, as applicable.

38. Mr. Clippingdale's counterclaim is dismissed.
39. 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.
40. 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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Richard McAndrew, Tribunal Member