Civil Resolution Tribunal

Date Issued: March 10, 2020

File: SC-2019-001425

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tiernan v. Rankin,* 2020 BCCRT 275

B E T W E E N :

DARRAGH TIERNAN

APPLICANT

A N D :

CASEY RANKIN

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. The applicant, Darragh Tiernan, seeks repayment of a $3,934.60 loan from the respondent, Casey Rankin. The respondent disagrees and says this money was a gift.

2. The parties are self-represented.

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. 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. 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

7. The issues are as follows:

    a. Is the amount at issue a loan or a gift?

    b. Is the applicant's claim out of time?

    c. Is the respondent required to pay the applicant $3,934.60?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to them to the extent necessary to explain my decision.

9. On May 20, 2016, the applicant transferred $3,934.60 to the respondent. The bank transaction is documented, and the respondent does not deny receiving the funds.

10. It is undisputed that the parties were dating at the time, but the evidence and submissions before me do not indicate that they were in a common-law relationship.

11. The applicant says he loaned the respondent the money so that she could pay off credit card debts. The respondent disagrees it was a loan and says it was a gift.

12. 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: *Pecore v. Pecore,* 2007 SCC 17. A key component of a gift is the transferor's intent to donate: *Bergen v. Bergen,* 2013 BCCA 492.

13. I find the weight of evidence shows the money given was a loan. There are several text messages that support this conclusion:

    a. On May 21, 2016, the respondent wrote she was debt free, though she still owed the applicant. This supports the applicant's submissions about the loan and its purpose.

    b. On November 30, 2016, the applicant asked the respondent how she would pay him back. The respondent wrote, "I promise on my life that I will pay you back Darragh."

    c. On March 22, 2017, the respondent wrote that she planned to work as a tree planter, pay off a debt, "then pay [the applicant] off after". She acknowledged this was also the substance of the parties' conversation on March 21, 2017, one day earlier.

d. On December 8, 2017, the applicant asked, “what about the 4 grand you owe me”. The respondent replied, “yeah I’m working on it”.

e. On December 24, 2017, the applicant asked the respondent if she was going to pay him back after Christmas. The respondent said yes.

14. The respondent says the money was a gift, but the applicant said he would seek repayment if she left him. She says she agreed to pay back the gift in 2017 but only because she was afraid of the respondent. She does not directly address the 2016 messages. The respondent also relies on an email chain that includes a February 5, 2017 email in which the applicant wrote, “I’ve helped you out with your debt”, which she says shows the money was a gift.

15. On balance, I find respondent has not met the burden to show that the money was a gift. The written evidence does not support her submissions. The February 5, 2017 email is vague as compared to the text messages, which support the applicant’s position.

16. The respondent explains that she lacks further evidence because she deleted a number of messages in order to move on from the applicant. However, this does not change the respondent’s evidentiary burden.

17. The respondent also says the applicant’s text messages should not be trusted as he forged her signature on an affidavit of service. I disagree as the affidavit clearly shows it is meant to be signed by the process server and a commissioner for taking affidavits. There is nowhere for the respondent to sign.

18. The parties did not document the terms of the loan. I find the loan was a demand loan, with no specific due date.

19. Section 6 of the Limitation *Act* says that the basic limitation period is 2 years, and that a claim may not be started more than 2 years after the day on which it is discovered. A claim is “discovered” when the applicant knew or reasonably knew

they had a claim against the respondent and a court or tribunal proceeding was an appropriate remedy.

20. Section 14 of the *Limitation Act* says that a claim for a demand obligation is discovered on the first day that there is a failure to perform the obligation after a demand for the performance has been made.

21. The applicant started the tribunal proceeding on February 16, 2019. I asked the parties to provide submissions on when the limitation period started running and whether the applicant's claim was out of time.

22. The applicant referred to text messages on February 3 and 5, 2018, in which he demanded payment for the amount owing. I infer his position is that he discovered his claim on February 3, 2018, though in his application for dispute resolution he says he became aware of the claim on September 15, 2017.

23. The respondent says her relationship with the applicant ended in September or October 2016, and that he asked for repayment "once we were broken up". She acknowledged she had no texts or emails to further support her position.

24. Based on the submissions and evidence before me, I find it most likely that on March 21, 2017, the parties agreed that the respondent would work as a tree planter in the summer and then pay him off after the job was completed. So, I find the applicant first made a demand for payment on March 21, 2017. The March 22, 2017 text messages, referred to above, support the conclusion that the parties agreed to such a schedule for payment the previous day.

25. I reviewed the November 2016 text messages to see if the applicant made a demand for payment at the time, but I conclude he did not. At most he asked the respondent if she had a plan on how to make money to repay him at an undefined future date.

26. When did the respondent first fail to make the required payment? I find this date to be September 15, 2017, rather than the dates the applicant referred to in February

2018. As noted above, the applicant says he became aware of his claim on September 15, 2017 in his application for dispute resolution. By that time the respondent had finished her tree planting job and had not paid the loan back as contemplated.

27. I therefore conclude that the applicant discovered his claim on September 15, 2017, as by that time the applicant had demanded payment and the respondent had failed to perform. The applicant had to start this dispute by September 15, 2019 at the latest. As the applicant applied for dispute resolution on February 16, 2019, I find his claim is not out of time.

28. In summary, I find that the applicant loaned the respondent $3,934.60. This amount was not a gift and remains unpaid. The applicant's claim is not out of time. I find that the respondent must pay the applicant $3,934.60 in debt within 14 days of this decision.

29. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the $3,934.60 debt from September 15, 2017, the date the debt became due and payable, to the date of this decision. This equals $151.76.

30. 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 $200 in tribunal fees.

31. The applicant claims $87.01 for a process server without any receipt. However, the respondent provided a copy of the affidavit of service. This supports the conclusion that the applicant incurred this cost. I accept that a process server was necessary to serve the respondent in Ontario, as noted in the affidavit, as it is clear the parties' relationship had broken down. On a judgment basis, I allow the expense for $87.01.

32. The applicant also claims $45.79 in registered mail expenses. I decline to order this amount as it is not supported by receipts or invoices and I find it to be unreasonably high.

ORDERS

33. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of $4,373.37, broken down as follows:

    a. $3,934.60 in debt,

    b. $151.76 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $287.01, for $200.00 in tribunal fees and $87.01 for dispute-related expenses.

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

35. The applicant's remaining claims are dismissed.

36. 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.

37. 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.

David Jiang, Tribunal Member