Civil Resolution Tribunal

Date Issued: March 20, 2020

File: SC-2019-009675

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zhu v. Murillo,* 2020 BCCRT 323

B E T W E E N :

ZIHAN ZHU

**APPLICANT**

A N D :

KENNETH ROBERTO PADILLA MURILLO

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member: Chad McCarthy

## INTRODUCTION

1. The applicant, Zihan Zhu, loaned $5,000 to the respondent, Kenneth Roberto Padilla Murillo. The applicant says she demanded repayment of the loan, but the respondent has not repaid any of the $5,000. The respondent says he has paid the applicant amounts that nearly total the loan amount, and that the remainder of the

loan was repaid by the applicant selling his possessions, which the applicant denies. The respondent says he does not owe anything more.

2. The parties are each 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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. In this situation, the credibility of the witnesses cannot be determined solely by whose personal demeanour appears to be most truthful. Assessing the most likely version of events depends on the harmony of witness testimony with the rest of the evidence. Considering that the tribunal's mandate includes proportionality and speedy resolution of disputes, I find that an oral hearing is not necessary, and that I can properly assess and weigh the documentary evidence and submissions before me. This is consistent with the British Columbia Supreme Court's recognition of the tribunal's process, and its finding that oral hearings are not necessarily required where credibility is an issue, in the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38.

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.

7. The applicant says some of the respondent's evidence, including evidence of internet advertisements and a payment by his mother, is not relevant to her claim. She requests the option to respond with other evidence in her possession if the tribunal finds that the respondent's evidence is relevant. I infer that the applicant believes this evidence relates to payments for other debts, and not the $5,000 at issue here. Given the outcome of my decision below, nothing turns on this. The respondent also says he has further, unidentified evidence proving his ownership of some items, which he could provide immediately if given the chance. The tribunal's rules say that parties are responsible for providing evidence to support their position on each claim and they must also provide relevant evidence that might help the other party's position. Both parties have had an opportunity to provide evidence in this dispute, and both have done so. Both parties chose not to submit the additional evidence in their possession, or to describe what that evidence was, despite acknowledging that it might be relevant. Neither party took issue with the other party's failure to provide this additional evidence. As a result, I find it is fair to hear this dispute on the evidence submitted by the parties to date.

8. The parties lived together until their relationship broke down. On the evidence before me, it is not clear whether the parties were spouses within the meaning of the *Family Law Act* (FLA). In any event, I find the parties separated before the applicant loaned the respondent $5,000, and the loan was not made for the purposes of maintaining family property. Further, the respondent does not allege that the loan was made with money that was family property. As a result, I find the loan is not a family debt within the meaning of section 86 of the FLA. This means this dispute does not fall under the exclusive jurisdiction of the courts of British Columbia. The tribunal has statutory jurisdiction to hear small claims disputes in BC valued up to $5,000, and I find it has jurisdiction to hear this dispute.

## ISSUE

9. Does the respondent owe the applicant $5,000, or another amount, for repayment of a loan?

## EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proving her claim, on a balance of probabilities. I have read all the parties' evidence and submissions, but I have only addressed the evidence and arguments to the extent necessary to explain my decision.

11. The parties lived in a rented home for a little more than one year. The undisputed evidence is that the respondent was charged with a criminal offence in relation an event on June 30, 2019. The applicant then moved out of the rented home.

12. The applicant loaned the respondent $5,000 in cash to pay his lawyer. The respondent does not suggest that the money was a gift, as his arguments mostly focus on him having already repaid the loan. The respondent also says there was "no binding contract" for the loan, but a loan agreement does not have to be written down. On the evidence before me I find the respondent retained the lawyer to represent him, using the applicant's money.

13. So, I find the applicant loaned the respondent $5,000. No interest rate was discussed, and initially there was no due date. I find this loan was a demand loan, meaning a loan with no specific due date. Demand loans become due when the lender demands repayment. The applicant says she demanded repayment on several occasions but did not specify exactly when she made those demands. However, the applicant says the respondent agreed to repay her by September 1, 2019, but he did not repay her. The respondent does not deny that the applicant demanded the $5,000 back, and says he made some payments before September 1, 2019. On balance, I find the applicant demanded payment in full by September 1, 2019, and that the loan was due on that date.

14. The respondent says he used the $5,000 to pay his lawyer, and he received legal advice that he did not need to repay the applicant her money. A legal opinion given to the respondent is not binding on the tribunal, and the respondent did not provide any case law or statute references in support of his position. Further, this submission is at odds with the respondent's other submissions, addressed below, that he has already repaid the loan.

15. The parties agree that after June 30, 2019 the applicant received a total of $2,800 from the respondent. The applicant says these payments were for expenses for their daughter, and the respondent did not indicate that they were for the loan repayment. The respondent says he received a copy of a child support application which I infer was filled out by the applicant. The respondent says the application said he had not given any money to the applicant for rent or child support, so he assumed the applicant had not used these payments for those purposes. I give this argument little weight, because the respondent chose not to submit the child support application as evidence in this dispute, and did not say whether it was completed before or after he was loaned the $5,000. Further, there is no evidence that he asked the applicant whether she applied these payments to their daughter's expenses, or that he instructed her to apply them to the loan.

16. The respondent also said the money he sent to the applicant "could have been used for the loan." I consider this to be additional evidence that those payments were not specifically intended as loan repayments. Rather, I find this statement is the respondent's speculation, without supporting evidence, that the applicant could have used the $2,800 in payments to repay the loan. Having weighed the evidence, I find that the respondent's $2,800 in payments were not loan repayments.

17. The respondent says his mother gave the applicant $1,550. He submitted a video showing a woman giving another woman what appears to be cash, although the amount cannot be seen. The respondent says that if this payment was used for the parties' rent, the applicant's share would have been $750, leaving her with $800. I infer the respondent means the applicant should have used the excess $800 for the

loan repayment. However, the applicant says the respondent's mother gave her $1,000 for his share of their rent, and that this payment was made more than a week before she loaned the respondent $5,000. In any event, other than the parties' statements, there is no proof of the amount received by the applicant from the respondent's mother, what it was for, or when it was received. On balance, I find the payment from the respondent's mother was not a loan repayment.

18. The respondent says the applicant sold several items belonging to himself and his brother, which he says had originally been purchased by himself, his brother, and his sister-in-law. The respondent says the applicant should have applied the money from these sales to his loan debt. The respondent effectively seeks a set-off of money from sales of his belongings against his loan debt. The burden is on the respondent to prove that money from sales of his belongings should be set-off against the loan (see *Wilson v. Fotsch*, 2010 BCCA 226 at paragraph 73, quoting *Coba Industries Ltd. v. Millie's Holdings (Canada) Ltd. (1985)*, 1985 CanLII 144 (BC CA), 65 B.C.L.R. 31 (C.A.) at paragraph 38).

19. The respondent submitted screenshots of several internet sale advertisements that appeared to be posted by the applicant, for items such as a pool table, television, gaming system, and other items. The applicant says the respondent agreed to let her dispose of his items in the home before vacating it. She also says some of the items were hers, most of the advertised items were not sold, and some items were taken for free.

20. The respondent says he has evidence that proves the advertised items belonged to him and his brother, but as noted above, he chose not to submit that evidence. There is no evidence before me showing who owned any of the advertised items, whether they were sold, or how much they sold for. The respondent also says the applicant has his "important documents," but did not indicate whether those important documents included evidence of who owned the advertised items. As a result, I give no weight to this argument. I find there is no set-off for the items

allegedly sold by the applicant, as the ownership of, sale of, and money received for the items are all unproven.

21. The respondent also says the applicant never paid rent while they resided together, and that he gave her several hundred dollars. The respondent supplied no evidence to support of these arguments, so I give them little weight.

22. In her reply submissions, the applicant says the respondent sent her text messages in February 2020 and March 2020 agreeing to pay the $5,000 when he had the money. However, this was a new argument that the respondent did not have an opportunity to respond to, so I give this submission no weight. In any event, this evidence would not have changed the outcome of my decision.

23. Having carefully considered all the evidence, I find that the respondent made no loan repayments, and is not entitled to a set-off for amounts from sales of his belongings. So, I find the respondent owes the applicant the claimed $5,000.

24. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA), from the September 1, 2019 due date of loan until the date of this decision. This equals $53.69.

25. 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 to depart from this general practice here. The applicant is entitled to $200 for tribunal fees but did not claim any dispute-related expenses.

## ORDERS

26. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of $5,253.96, broken down as follows:

    a. $5,000 in debt for an outstanding loan,

b. $53.96 in pre-judgment interest under the *Court Order Interest Act*, and

c. $200.00 for tribunal fees.

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

28. 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.

29. 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.

Chad McCarthy, Tribunal Member