



# Civil Resolution Tribunal

Date Issued: April 24, 2020

File: SC-2019-005315

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Miller v. Miller*, 2020 BCCRT 448

**BETWEEN:**

VICKIE MILLER

**APPLICANT**

**AND:**

SANDRA MILLER

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

### INTRODUCTION

1. The respondent, Sandra Miller, is a former employee or contractor of the applicant, Vickie Miller. The applicant wants the respondent to return borrowed work items that the applicant values at \$2,579.88. The applicant also asks the respondent to pay back a \$1,000 loan.

2. The respondent says the applicant has overstated the value of the work items, and denies having all but 2 of them. She also says the \$1,000 was a gift.
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. In some respects, both parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.
6. 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.

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

## **ISSUES**

8. The issues in this dispute are:
  - a. Is the applicant entitled to the return of the claimed work items, or compensation for their value?
  - b. Is the respondent obligated to repay the \$1,000?

## **EVIDENCE AND ANALYSIS**

9. In a civil dispute like this one, the applicant must prove her claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
10. The applicant says she owns a reporting service business. She says she contracted with the respondent starting in 2003 and loaned her the equipment needed to provide her services.
11. The respondent says the applicant terminated her employment of 15 years without cause and without severance pay. I find it is not necessary to determine the applicant's former status as employee or contractor because nothing turns on it in this dispute and the applicant did not counterclaim for wrongful dismissal damages.
12. The respondent suggests the applicant's claim is an attempt to recover some of the costs the applicant and her partner have incurred resulting from an incident involving the respondent's partner. There is no independent evidence about the incident or related costs, so I have not given this submission any significant weight.

## **Work items**

13. The applicant says she loaned the following items, with the following claimed values, to the respondent:

Marantz pmd671 digital recorder	\$1,159.00
Acer computer	\$600.88
VEC usb foot pedal	\$120.00
4 boundary microphones	\$400.00
Stenographer's mask	\$300.00

14. The applicant provided receipts for all but one boundary microphone and the stenographer's mask.

15. In her Dispute Response, the respondent said that the applicant can have her equipment back. She did not specify whether the list of borrowed items was accurate or whether she had each of the items. In submissions, the respondent agrees that she has the stenographer's mask and foot pedal and agrees to return them. She denies using the respondent's equipment for her current work. She also says the applicant "may have receipts for equipment but I do not have it." I take that to mean she denies having any of the items other than the stenographer's mask and the foot pedal. However, nowhere in her submissions does she deny borrowing these items, or provide any reason she is not obligated to return them.

16. Given the respondent says she no longer has most of the items, I find that an order to return the items would be inappropriate. Instead, I find the respondent must compensate the applicant for the value of the items.

17. I find the applicant has overstated the purchase prices of the computer and digital recorder by including warranties and shipping costs. I find the total purchase price of the items was \$2,384. The items range from 4 years old to 8 years old.

18. In *Robertson v. Stang*, 1997 CanLII 2122 (BC SC), the BC Supreme Court considered how to determine the value of disposed property, whether based on market value, replacement value, or actual value. The court said that actual value at the time of loss was the correct test. In determining actual value, the court said one considers the original purchase price for the goods, the retail value of the goods, the cost to replace the goods, and the estimated market value of the items, which includes a consideration of the depreciation in value.
19. I do not have evidence of the market value or replacement cost of the items. Considering the items' price, age and depreciation, on a judgment basis I find the total value of the items is \$1,200. The applicant must compensate the respondent this amount.

### ***Money loan***

20. The applicant says she loaned the respondent \$1,000 to hire a lawyer "some years ago." She says they had a verbal agreement that the respondent would pay her back with interest. The applicant supplied a "trial balance" or accounting worksheet that documents the loan to the respondent. The trial balance documents the loan as \$916.67, a difference the applicant does not explain.
21. The respondent admits the applicant provided \$1,000 but says there was no agreement to repay it. She says the applicant has given her many things of value in the past and says the money falls into that category.
22. 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.
23. On balance, I find respondent has not met the burden to show that the money was a gift. There is no correspondence between the parties suggesting the applicant intended to give the money. There is no objective evidence that the transfer was a

gift. The only documentary evidence, the trial balance, indicates the transfer was a loan. I find the money was a loan.

24. As for the amount, I find the applicant loaned the respondent \$916.67. I say this because I find the trial balance is the most reliable evidence of the loan amount. I find the trial balance more reliable than either parties' submissions, which lacked specificity.
25. Although the applicant says the loan would be repaid with interest, there is no evidence the parties agreed on an interest rate or a 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. Neither party says when the applicant first demanded repayment, so I find the applicant demanded repayment on July 9, 2019, the date of the Dispute Notice.
26. Because the parties did not agree to an interest rate, the *Court Order Interest Act* applies. The applicant is entitled to pre-judgment interest on the \$916.67 loan from July 9, 2019, the date of the Dispute Notice, to the date of this decision. This equals \$14.25.
27. I do not allow pre-judgment interest on the compensation for the work items as based on the evidence before me, the applicant has not yet replaced the items.
28. 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 \$175 in tribunal fees. She did not claim any dispute-related expenses.

## **ORDERS**

29. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,305.92, broken down as follows:

- a. \$916.67 in debt,
  - b. \$1,200.00 in damages,
  - c. \$14.25 in pre-judgment interest under the *Court Order Interest Act*, and
  - d. \$175.00 for tribunal fees.
30. The applicant is entitled to post-judgment interest, as applicable.
31. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
32. 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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Micah Carmody, Tribunal Member