



Civil Resolution Tribunal

Date Issued: June 26, 2020

File: SC-2019-011035

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Roth v. Wheeler*, 2020 BCCRT 709

BETWEEN:

ULRIKE ROTH

APPLICANT

AND:

KAREN WHEELER and BRIAN BANDURA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This small claims dispute is about a loan. The applicant, Ulrike Roth, says that the respondents, Karen Wheeler and Brian Bandura, borrowed \$1,000 from her and have not paid her back. Ms. Roth asks for an order that the respondents repay the \$1,000 loan. Mr. Bandura says that he did not borrow any money from Ms. Roth. Ms. Wheeler admits that she borrowed money from Ms. Roth, but says that Ms. Roth did not show up to collect the repayment.
2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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 CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. how much Ms. Roth loaned to whom, and
 - b. whether Mr. Bandura and Ms. Wheeler are responsible for the repayment of the loan.

EVIDENCE AND ANALYSIS

8. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. Ms. Roth provided evidence and submissions in support of her position. Mr. Bandura and Ms. Wheeler provided information on their Dispute Responses filed at the outset of this proceeding, but no additional evidence or submissions despite being given the opportunity to do so. While I have considered all of the information provided by the parties, I will refer to only what is necessary to provide context to my decision.
9. Ms. Roth says that she made 2 loans to Mr. Bandura and Ms. Wheeler for \$1,000 and \$200. Although the \$200 loan was repaid promptly, she says she has not received repayment of the \$1,000 loan despite issuing a demand for repayment on April 12, 2019 and offering to accept a repayment plan.
10. Mr. Bandura says that he did not borrow the money, and that the loan was “something between” Ms. Roth and Ms. Wheeler. Ms. Wheeler admits in her Dispute Response that she received \$1,000 from Ms. Roth. She says that she tried to repay the loan, but Ms. Roth first ignored her and then did not show up to receive the money. Ms. Wheeler says that the reason for the loan Ms. Roth identified in her Dispute Notice is false. However, I find that the reason for the loan is not relevant to my analysis.
11. I accept that Ms. Roth loaned \$1,000 to Ms. Wheeler. I must also consider whether Mr. Bandura was a party to the loan such that he is also responsible for repaying it.

12. The loan was not documented in writing. In an October 9, 2018 text message, Ms. Wheeler asked if she and Mr. Bandura could come to Ms. Roth's home to "pickup that loan". Ms. Roth's position is that, as both Ms. Wheeler and Mr. Bandura came to her home to collect the money, they are both responsible for the loan. However, I find that Mr. Bandura's presence on its own does not establish that he agreed to be a party to the loan agreement.
13. I find that the evidence before me establishes that Mr. Bandura was aware of the loan, but not that he was a party to it. So, I dismiss Ms. Roth's claim against Mr. Bandura.
14. Contrary to Ms. Wheeler's suggestion, the evidence before me does not prove that Ms. Roth failed to attend a planned meeting with Ms. Wheeler to receive repayment of all or part of the loan. However, even if this did occur, I find it would not relieve Ms. Wheeler of her responsibility to repay the loan. I find that Ms. Wheeler must repay the \$1,000 loaned to her by Ms. Roth.
15. The loan was intended to be short-term and the parties did not contemplate the payment of interest. However, the *Court Order Interest Act* applies to the CRT. I find that Ms. Roth is entitled to pre-judgment interest of \$22.97.
16. Under section 49 of the CRTA and CRT's rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Ms. Roth is entitled to reimbursement of \$125 in CRT fees. Ms. Roth also claims reimbursement of \$13.30 in registered mail expenses, which were supported by a receipt. I find that these expenses are reasonable, and Ms. Roth is entitled to reimbursement of this amount.

ORDERS

17. Ms. Roth's claim against Mr. Bandura is dismissed.

18. Within 30 days of the date of this order, I order Ms. Wheeler to pay Ms. Roth a total of \$1,161.27, broken down as follows:
 - a. \$1,000 in debt, as repayment of the loan,
 - b. \$22.97 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$138.30, for \$125 in CRT fees and \$13.30 for dispute-related expenses.
19. Ms. Roth is entitled to post-judgment interest, as applicable.
20. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
21. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

