Civil Resolution Tribunal

Date Issued: June 26, 2020

File: SC-2020-002203

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Naples v. Reid*, 2020 BCCRT 713

B E T W E E N :

DONNA NAPLES and BARRY NAPLES

APPLICANTS

A N D :

DANIEL REID

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about repayment of an alleged loan.

2. The applicants, Donna and Barry Naples, loaned their daughter and the respondent, Daniel Reid, $10,000 for the purchase of a home in 2010. Mr. Reid and the Naples'

daughter later divorced and the Naples seek repayment of Mr. Reid's $5,000 share of the loan.

3. Mr. Reid says that he believed the money was a gift and it was only when he and their daughter separated that it was treated as a loan. Further, Mr. Reid says the Naples' first demand for payment was 10 years after the alleged loan was made, which is unfair.

4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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.

6. 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.

7. 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.

8. 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

9. The issues in this dispute are:

    a. Whether the Naples are out of time to collect the alleged debt against Mr. Reid.

    b. If the Naples are not out of time, does Mr. Reid have to repay them $5,000?

EVIDENCE AND ANALYSIS

10. In a claim such as this, the applicants Donna and Barry Naples, bear the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I will refer only to that which is necessary to provide context to my decision.

Are the Naples out of time to collect the alleged debt?

11. The *Limitation Act* applies to disputes before the CRT. A limitation period is the period of time within which a person may bring a claim. If that time period expires, the right to bring the claim ends, even if the claim would have been successful.

12. In British Columbia, the current *Limitation Act* became law on June 1, 2013. However, for debts arising before June 1, 2013, the previous *Limitation Act* applies, which sets a 6-year limitation period for debt claims.

13. The case law establishes a distinction between demand loans and contingent loans for when the running of the limitation period starts. Demand loans are loans payable on demand, and under the previous *Limitation Act*, the limitation period begins to run on the day the loan is made. Contingent loans are loans payable on a future date or when a specific event occurs, and the limitation period begins on the repayment date or the occurrence of the contingency: see *Kong v. Saunders*, 2014 BCCA 508.

14. Because Mr. Reid did not specifically raise a limitation defence in his Dispute Response, I asked the parties to provide further submissions on the limitation issue. There is no dispute that the alleged loan was made in 2010, but the exact date the Naples made the alleged loan is not in evidence. The Naples acknowledge that there is no documentation about the terms of the alleged loan and that no repayment date or terms were ever communicated to Mr. Reid. The Naples say there were only ever "casual conversations" about the alleged loan, but they did not provide the details of those conversations or the dates they took place.

15. Mr. Reid says that it was only after his separation from the Naples' daughter in 2017 that the issue of whether the money was repayable to the Naples was raised. The Naples' daughter and Mr. Reid signed a separation agreement on November 2, 2017, which was filed in the BC Supreme Court. The agreement included a term under the heading "Debts", that the "debt to Donna and Barry Naples of $10,000 will be divided equally" between Mr. Reid and the Naples' daughter. This agreement appears to be Mr. Reid's first documented acknowledgement that the money may have been a loan.

16. As noted above, Mr. Reid now disputes that the money was a loan constituting a family debt and argues that it was a gift. Nothing turns on this issue here, but I find that I do not have jurisdiction to determine whether or not the money constitutes a family debt because under section 94 (1) of the *Family Law Act* (FLA), the BC Supreme Court has exclusive jurisdiction to make orders about the division of family property and related family debt. Therefore, Mr. Reid would have to bring a separate application in BC Supreme Court to amend the separation agreement and ask the court to determine whether the Naples' money was a gift or constitutes a family debt.

17. In any event, despite Mr. Reid's apparent acknowledgement of the alleged loan in the 2017 separation agreement, he says that the first time the Naples demanded repayment of his $5,000 share was by email on February 6, 2020. The Naples submitted an email chain between them and Mr. Reid, in which they tell Mr. Reid

that repayment of the loan was not pursued before his separation from their daughter because he was "considered family". They further say that after Mr. Reid signed the 2017 separation agreement, they delayed pursuing repayment for 28 months because they were giving him "a break".

18. I find that if the money the Naples' gave to Mr. Reid and their daughter was a loan, it was a demand loan. There is no evidence that when the Naples provided the money, repayment would only be required if Mr. Reid and the Naples' daughter separated. In fact, the Naples submit that the only reason they did not pursue repayment of the alleged loan during the marriage was because their daughter and Mr. Reid were under financial pressure. However, I find the Naples could have demanded repayment of the alleged loan at any time after it was made.

19. As state above, the time starts running for demand loans from the date the loan was made. According to the previous *Limitation Act* ss. 5 (1) and 5 (2), the limitation period may be re-set if the debtor acknowledges their liability for the debt in writing or by making a payment toward it, so long as they do so before the limitation period expires: see *Podovinikoff v. Montgomery*, 1984 CanLII 52 (BCCA) and *Zellweger v. Zellweger*, 2018 BCSC 1227.

20. I find the 6-year limitation period started running the day the alleged loan was made in 2010. Because the specific date the Naples made the alleged loan in 2010 is unknown, I find that the latest possible date that the Naples could have brought an action was December 31, 2016. That limitation date could be extended if Mr. Reid had acknowledged his liability for the alleged loan in writing at some point before December 31, 2016. However, I find that his first written acknowledgement was in the separation agreement signed on November 2, 2017, after the limitation period had already expired. Any subsequent acknowledgements Mr. Reid made, including any offers to repay the alleged loan, that were after December 31, 2016, are equally ineffective to extend the limitation period.

21. Since the Naples did not submit their dispute application until March 6, 2020, approximately 10 years after the alleged loan was made, I find this dispute is out of

time. I find the Naples' claims are statute barred by the *Limitation Act*. I dismiss this dispute on this basis.

22. Under section 49 of the CRTA and CRT rules, the CRT will generally 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 the applicants were unsuccessful and so I dismiss their claim for tribunal fees. Mr. Reid did not pay any fees or claim expenses.

ORDER

23. I dismiss the Naples' claims and this dispute.

Kristin Gardner, Tribunal Member