



Civil Resolution Tribunal

Date Issued: August 10, 2020

File: SC-2020-001620

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *S v. M*, 2020 BCCRT 886

BETWEEN:

TS, TS as Litigation Guardian of ES, Minor, and GS

APPLICANTS

AND:

TM

RESPONDENT

AND:

TS, TS as Litigation Guardian of ES, Minor, and GS

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This small claims dispute flows from the breakdown of a romantic relationship. The applicants (and respondents by counterclaim), TS, TS as litigation guardian of ES, and GS (collectively, the Applicants) say that the respondent (and applicant by counterclaim) TM was in a relationship with ES, and borrowed money from her which he has not repaid in full. They ask for an order that TM pay them \$4,900.
2. TM admits that he received money from ES, but says that he repaid what was owing and, in fact, overpaid by \$3,500. By counterclaim, TM asks for an order that the Applicants return the \$3,500 overpayment. He also seeks the return of a sheep carving lamp or \$1,500 in compensation. The Applicants deny that there was any overpayment, and say the lamp was given to ES as a gift.
3. TS represents herself, ES and GS. TM is represented by a family member.
4. I have anonymized the published version of this decision in order to protect the identity of ES, who is still a minor.

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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the CRT's process and that oral hearings are not necessarily required where credibility is in issue.

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 TM had an agreement with the Applicants that requires him to pay them \$4,900,
 - b. Whether TM has overpaid the Applicants such that he is entitled to the return of \$3,500, and
 - c. Whether ES must return the sheep carving lamp to TM or pay him \$1,500 in compensation.

EVIDENCE AND ANALYSIS

10. In a civil dispute like this, an applicant (in a claim or counterclaim) bears the burden of proof on a balance of probabilities. The parties have provided evidence and submissions in support of their positions. While I have considered all of this information, I will refer to only what is relevant to the issues before me and necessary to provide context to my decision.

Loans and Repayment

11. ES and TM had a romantic relationship when they were both minors. Evidence before me shows that, during the course of the relationship, ES and TM transferred money into each other's bank accounts and paid for various items for each other. ES and TM did not put their intentions in writing about whether these transactions amounted to loans or gifts.

12. At some point, TS and GS became aware of the financial aspect of ES's relationship with TM. They say that they transferred funds to ES from their own accounts to assist her with the resulting shortfalls. TS and GS felt that TM had taken advantage of their daughter and, with the involvement of one of TM's family members, arranged for a repayment plan.

13. On November 5, 2019, TM signed a document stating that he would pay TS and GS \$200 bi-weekly starting on November 15, 2019, with the option of increasing this amount in the future. The document did not include the total amount owing, did not identify which items were intended to be covered by the repayment plan, and did not state whether any payments had been made already.

14. The parties agree that TM paid \$5,000 to the applicants. On February 8, 2020, through a family member, TM told the Applicants that his obligation was repaid in full due to the payments he made and the \$1,500 value of the sheep carving lamp that is the subject of the counterclaim in this dispute.

15. The Applicants say that TM owes them an additional \$4,900. They provided bank records that show transfers from ES to TM and expenditures that they say were loans. TM says that ES made purchases for him as gifts and insisted on paying for various items. The evidence also shows that TM transferred funds into ES's bank account, and he provided receipts for items he says ES had him buy for her.
16. While the evidence before me does not establish the amounts exchanged between ES and TM, I find that it does show that the parties had an agreement about the amount TM owed the Applicants. As noted, the document signed by TM does not contain an amount owing. The evidence before me contains a number of text and social media messages that show estimates of the amount owing ranging from \$3,000 to \$9,000. There also appear to have been some verbal discussions that were not documented. On November 4, 2019 TS sent a message to TM's relative stating that \$8,500 was owing but that ES was "willing to walk away from \$2000 to have the situation done and over with". On that same date, GS and TS sent an email to TM that sets out an agreement to "settle on \$6,500". This is consistent with TM's position that the \$5,000 in payments plus the \$1,500 value of the sheep carving lamp satisfied his obligation.
17. While the Applicants may feel that additional amounts are owing and TM may have decided that he should have paid less, on balance and based on the evidence before me, I am satisfied that the parties had a verbal agreement that TM would pay the Applicants \$6,500. I find that agreement remains binding on the parties, and did not contemplate that TM would receive credit for the value of the sheep carving lamp or any other property. Further, I find that the Applicants did not agree to modify the agreement to allow for such credit.
18. So, I find that TM is responsible for the remaining \$1,500 under the parties' agreement, and he must pay the Applicants this amount.
19. The Applicants are also entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from February 8, 2020 (being the date TM communicated his view that his obligation was repaid), this equals \$53.15.

20. As I am satisfied that TM paid only \$5,000 of the agreed-upon \$6,500, I find that he did not make an overpayment of any amount. I dismiss TM's counterclaim for a \$3,500 overpayment.

Sheep Carving Lamp

21. During his relationship with ES, TM won a sheep carving lamp in a raffle. TM says he asked ES to keep the lamp for him because he was concerned that it would be damaged or stolen at his rental home. TM says that he and ES agreed that, if their relationship ended, the lamp would be returned to him. He asks for the lamp to be returned to him or that the Applicants pay him \$1,500 in compensation.

22. The Applicants say they believe TM gave the lamp to ES as a gift and there is no evidence to prove otherwise. The Applicants deny that ES is required to return the lamp or pay TM compensation for it. They also say that the value of the lamp is approximately \$200 rather than the \$1,500 TM claims.

23. The fact that ES and TM were in a relationship is not determinative of whether the lamp was a gift. As discussed in *Pecore v. Pecore*, 2017 SCC 17 and *Lundy v. Lundy*, 2010 BCSC 1004, in order for a gift to be established, there must be an intention to donate, an acceptance, and a sufficient act of delivery. The evidence should show that the intention of gift was inconsistent with any other intention or purpose (see *Lundy* at paragraph 20). The burden of proof is on the person alleging the existence of a gift (see *Pecore* at paragraph 24).

24. There is no dispute that ES has had the lamp since February of 2019. To prove that the lamp was a gift, the Applicants must prove that the lamp being in ES's possession was inconsistent with any other intention or purpose. ES did not provide a specific statement about the circumstances around the lamp, or address TM's submission about his intention to keep the lamp where it was safe. I find this to be significant as TM only seeks the return of the lamp, and is not making claims over other items that he says he gave to ES as gifts during the course of the relationship.

25. I find that the weight of the evidence does not show that TM intended to gift the sheep carving lamp to ES. As there was no intention to donate, ES could not have accepted the lamp as a gift even if it was in her possession. I find that TM retains ownership of the sheep carving lamp. Given the dispute over the lamp's value and TM's submission that he wishes to give the lamp to family members to celebrate a milestone anniversary, I find that the return of the lamp would be a more appropriate remedy than compensation.
26. Within 60 days, the Applicants must deliver the sheep carving lamp to TM. The parties may wish to consider pandemic-related precautions in arranging this delivery. The parties may make arrangements to return the sheep carving lamp in person at an agreed-upon time and place, or they may deliver it to third parties at a mutually agreeable location. If the sheep carving lamp is returned by post or a delivery service, the Applicants will be responsible for any associated costs.
27. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. In this case, the parties claimed for reimbursement of CRT fees but not dispute-related expenses. As the parties achieved roughly equal success, I find that they should bear their own expenses.

ORDERS

28. Within 30 days of the date of this order, I order TM to pay the Applicants a total of \$1,553.15, broken down as follows:
 - a. \$1,500 under the parties' agreement, and
 - b. \$53.15 in pre-judgment interest under the *Court Order Interest Act*.
29. The Applicants are entitled to post-judgment interest, as applicable.
30. Within 60 days, the Applicants must deliver the sheep carving lamp to TM. The parties may make arrangements to return the sheep carving lamp in person or

through third parties at an agreed-upon time and place. If the sheep carving lamp is returned by post or a delivery service, the Applicants will be responsible for any associated costs.

31. I dismiss TM's counterclaim for an alleged \$3,500 overpayment.
32. 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.
33. 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.

Lynn Scrivener, Tribunal Member