



Civil Resolution Tribunal

Date Issued: September 2, 2020

File: SC-2020-003246

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fothergill v. Martin*, 2020 BCCRT 974

BETWEEN:

DANE FOTHERGILL

APPLICANT

AND:

TYLOR MARTIN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about repayment of various personal debts.
2. The applicant, Dane Fothergill, says that he loaned the respondent, Tylor Martin, money over several months and that Mr. Martin crashed Mr. Fothergill's car and

agreed to pay him \$2,500 for it. Mr. Fothergill claims \$3,600 for the alleged outstanding amount owing to him for the loans and repayment for the car.

3. Mr. Martin says the loaned money has been repaid and there is no legally binding agreement that he would repay Mr. Martin for his crashed vehicle. Mr. Martin says the claims should be dismissed.
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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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 Mr. Martin owes Mr. Fothergill \$1,100 for outstanding personal loans, and
 - b. whether Mr. Martin made a binding agreement to pay Mr. Fothergill \$2,500 for his vehicle.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Mr. Fothergill bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. This dispute is between former friends. As noted above, Mr. Fothergill claims that he loaned Mr. Martin money on several occasions, and that \$1,100 is still owing. Mr. Martin does not dispute that Mr. Fothergill loaned him money but says he had paid it all back. Mr. Fothergill says that Mr. Martin also owes him \$2,500 for crashing his car.

Does Mr. Martin owe Mr. Fothergill \$1,100 for outstanding personal loans?

12. In support of the personal loans, Mr. Fothergill submitted bank statements showing e-transfers to and from Mr. Martin in January and February 2020. The bank statements show that Mr. Fothergill transferred \$3,170 to Mr. Martin and that he received \$300 back from Mr. Martin. However, it is undisputed that the bank statements do not accurately reflect either the full amount of the loans to Mr. Martin

or the amounts repaid because some of the loans and payments were not made by e-transfer. Therefore, I place very little weight on the bank statements.

13. In an undated text message thread, Mr. Fothergill set out his list of loans to Mr. Martin totaling \$4,950 and calculated that \$1,750 remained outstanding. There is no documentary evidence before me supporting most of the loans Mr. Fothergill listed in his text. I find the text messages in evidence generally show that while Mr. Martin agreed he owed Mr. Fothergill money, he did not necessarily agree with Mr. Fothergill's calculations of the money owing. Further, because the text messages in evidence are largely undated, I find they do not accurately reflect the amount currently owing.
14. While Mr. Fothergill says that he sent a demand letter to Mr. Martin on March 29, 2020 detailing the amount owing, he did not file a copy of this letter in evidence. In his Dispute Notice issued on April 30, 2020, Mr. Fothergill claims that he made loans to Mr. Martin totaling only \$2,000, and that \$1,100 remains outstanding. In his Dispute Response, Mr. Martin says that between cash payments to Mr. Fothergill and property of his that Mr. Fothergill has sold, he has paid Mr. Fothergill a minimum of \$1,500. Mr. Fothergill does not dispute that he sold some of Mr. Martin's property and put those amounts toward the outstanding loans.
15. Overall, I find that the documentary evidence filed in support of the loans Mr. Fothergill has made to Mr. Martin and Mr. Martin's payments, is unreliable. Bearing in mind that Mr. Fothergill has the burden of proof, I find that he has not proven that Mr. Martin owes him the claimed \$1,100.
16. However, Mr. Martin did not dispute Mr. Fothergill's claim that he had loaned him \$2,000 and I find Mr. Martin's submission that he has repaid at least \$1,500 constitutes an admission that \$500 remains outstanding to Mr. Fothergill. Therefore, I order Mr. Martin to pay Mr. Fothergill \$500 to satisfy the outstanding personal loans.
17. I turn now to the crashed car.

Did Mr. Martin make a binding agreement to pay Mr. Fothergill \$2,500 for his vehicle?

18. It is undisputed that in June 2019, Mr. Martin borrowed Mr. Fothergill's car, which Mr. Fothergill had recently purchased for \$2,500. Mr. Martin admits he got into an at-fault accident, and the car was declared a write-off. It is undisputed that Mr. Fothergill did not have any collision insurance, so he did not get any insurance payout.
19. Mr. Fothergill says that Mr. Martin agreed to pay him \$2,500 for the vehicle. Mr. Martin admits that he was going to give Mr. Fothergill some money towards the car as "an act of good will" but now refuses because he is "not legally obligated" to pay Mr. Fothergill for the car. Mr. Martin argues that Mr. Fothergill allowed him to use the car and it was Mr. Fothergill's fault that he did not have collision insurance.
20. While there may not have been any written agreement in place about repayment for the car, an oral agreement can be just as legally binding. In one of the text messages in evidence, Mr. Fothergill sets out that in addition to the personal loan items, Mr. Martin also owes him \$2,500 for the car. While Mr. Martin disputes some of the personal loan items, and Mr. Fothergill's loan total, Mr. Martin does not dispute in the text message thread that he owes Mr. Fothergill \$2,500 for the car. In another text message, Mr. Fothergill refers to the money owing for the car and Mr. Martin responds that he was planning on paying him when he can.
21. Based on the evidence and the parties' submissions, I am satisfied that Mr. Martin agreed to pay Mr. Fothergill \$2,500 for the car and that the full amount remains outstanding. I find this agreement amounts to an oral contract, so Mr. Martin must pay Mr. Fothergill for the car.
22. In addition to Mr. Martin's oral agreement to pay for the car, I find he is legally obligated to pay for the car under the law of bailment. When Mr. Fothergill lent his car to Mr. Martin, this created a legal relationship of bailment. A bailment is the temporary transfer of property from the "bailor" (in this case, Mr. Fothergill), to the

“bailee” (in this case, Mr. Martin). As a bailee, Mr. Martin was obligated to take reasonable care of Mr. Fothergill’s car. Given that Mr. Martin admits he was at fault for the accident that caused Mr. Fothergill’s car damage beyond repair, I find that Mr. Martin was negligent and failed to take reasonable care of the car while it was in his possession. He is therefore legally liable to pay Mr. Fothergill the value of the damaged property, which I find is the \$2,500 Mr. Fothergill paid for the car.

23. Therefore, I order Mr. Martin to pay Mr. Fothergill \$500 for the outstanding personal loans and \$2,500 for Mr. Fothergill’s car.
24. The *Court Order Interest Act* applies to the CRT. Mr. Fothergill is entitled to prejudgment interest on the \$3,000 from April 30, 2020, the date the Dispute Notice was filed, to the date of this decision. This equals \$12.27.
25. 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. Given that Mr. Fothergill did not pay any CRT fees and did not claim any dispute-related expenses, I make no order.

ORDERS

26. Within 30 days of the date of this decision, I order the respondent, Tylor Martin, to pay the applicant, Dane Fothergill, a total of \$3,012.27, broken down as follows:
 - a. \$3,000 in debt, and
 - b. \$12.27 in pre-judgment interest under the *Court Order Interest Act*.
27. Mr. Fothergill is entitled to post-judgment interest, as applicable.
28. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

29. 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.

Kristin Gardner, Tribunal Member