



# Civil Resolution Tribunal

Date Issued: October 13, 2020

File: SC-2018-009282

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Easyfinancial Services Inc. v. Engel*, 2020 BCCRT 1149

**B E T W E E N :**

Easyfinancial Services Inc.

**APPLICANT**

**A N D :**

Sheldon Engel

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Rama Sood

## **INTRODUCTION**

1. This small claims dispute is about a personal loan agreement. The applicant, Easyfinancial Services Inc. (Easyfinancial), says it loaned \$4,350 to the respondent, Sheldon Engel, at a contractual interest rate of 46.96% per year, requiring semi-monthly payments for a 36 month term. Easyfinancial says Mr. Engel failed to repay

the loan. Easyfinancial seeks \$3,940.37 for the outstanding balance, \$200 in non-sufficient funds (NSF) charges, plus contractual interest to date.

2. Mr. Engel agrees he is in arrears and says he is unable to make a lump sum payment. He also says Easyfinancial did not account for one of his loan payments and disputes the NSF charges.
3. Easyfinancial is represented by an organizational contact, WM. Mr. Engel is self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.
7. 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**

8. The issue in this dispute is whether Mr. Engel must pay the claimed debt plus 46.96% contractual interest.

## **EVIDENCE AND ANALYSIS**

9. In this civil claim, the applicant, Easyfinancial, must prove its claim on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
10. The parties agree on the following facts:
  - a. Mr. Engel borrowed \$4,350 from Easyfinancial on December 21, 2017.
  - b. The loan's terms included a contractual interest rate of 46.96%.
  - c. The loan's term was 36 months.
  - d. Mr. Engel agreed to make semi-monthly payments of \$112.38 by pre-authorized debit from his bank account.
  - e. A \$50.00 NSF charge applied if any pre-authorized debit was returned for insufficient funds.
11. Easyfinancial seeks \$3,940.37 for the outstanding principle. Mr. Engel says a \$250 payment made on December 4, 2018 was not accounted for. He did not provide any proof of this payment such as a bank statement, receipt, or cancelled cheque. Parties are told during the facilitation stage of a CRT dispute to provide all relevant evidence. Mr. Engel did not explain why he failed to provide any evidence, which on balance I find was likely available to him. I find Mr. Engel must pay Easyfinancial \$3,940.37, which is consistent with the loan agreement and payment records before me.
12. Mr. Engel says he does not have the means to pay at this time. While I acknowledge Mr. Engel's situation, his inability to pay does not negate his liability.

13. Easyfinancial also seeks \$200 for NSF charges. Mr. Engel disputes the NSF charges. He says even though he told Easyfinancial in early November 2018 that he had to update his banking information, Easyfinancial continued to withdraw money from his bank account through pre-authorized debit. Mr. Engel did not provide any evidence that he informed Easyfinancial in writing of any change in the account information as required in paragraph 4 of the pre-authorized debit form. For this reason, I give no weight to Mr. Engel's allegation.
14. Easyfinancial's summary of Mr. Engel's account shows \$50 NSF charges on July 6, July 18, August 7, October 17, 2018, November 5, November 19, and December 4, 2018. It also shows a \$150 NSF charge on November 30, 2018. Easyfinancial did not explain why it charged \$150 on November 30, 2018 when the loan agreement states the NSF charge is \$50. It also did not explain how it determined that \$200 was owing for NSF charges even though it applied the NSF charge on 7 separate dates. However, I am satisfied that Easyfinancial is entitled to \$200 for NSF charges.
15. Easyfinancial also seeks \$460.07 for contractual interest until December 21, 2018. However, it did not explain how this amount was calculated. Specifically, Easyfinancial did not provide the start date for the interest calculation or the principle amount. Assuming that it was calculated based on the current outstanding principle (\$3,940.37) and from December 21, 2017 until December 21, 2018, the interest would total \$1,769.28, which is significantly more than the amount Easyfinancial is claiming. Again, the burden is on Easyfinancial to prove its claim. I find it has not done so and I dismiss this claim.
16. Easyfinancial also claims pre-judgement annual interest at 46.96% from December 18, 2018 to the date of this decision. Mr. Engel says the interest rate is "exorbitant". Mr. Engel did not dispute that he signed the loan agreement or that the loan agreement was unenforceable or unconscionable and so I find Mr. Engel agreed to pay an annual interest rate of 46.96%. I find this equals \$3,345.92. Together with the outstanding loan balance of \$3,940.37 and the \$200 NSF charges, this would bring

Easyfinancial's total award to \$7,486.29, plus CRT fees and dispute-related expenses.

17. However, as discussed in the non-binding but persuasive decision in *Easyfinancial Services Inc. v. Rosvold*, 2019 BCCRT 68, contractual interest is a substantive claim that must, together with the principal debt, fall under the CRT's \$5,000 monetary limit (but exclusive of *Court Order Interest Act* interest, CRT fees, and dispute-related expenses). Interest under the *Court Order Interest Act* does not apply where there is an agreement on interest, as here. I therefore find Easyfinancial is only entitled to further contractual pre-judgment interest in the amount of \$1,059.63, bringing Easyfinancial's total claims to \$5,000, exclusive of CRT fees and dispute-related expenses.

## **CRT FEES, INTEREST AND EXPENSES**

18. 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 Easyfinancial is entitled to reimbursement of \$175 in CRT fees. Easyfinancial did not seek dispute-related expenses.

## **ORDERS**

19. Within 30 days of the date of this order, I order Sheldon Engel to pay Easyfinancial Services Ltd. a total of \$5,175, broken down as follows:
- a. \$3,940.37 in debt,
  - b. \$1,059.63 in pre-judgment contractual interest, and
  - c. \$175 in CRT fees.
20. Easyfinancial is entitled to post-judgment interest, as applicable.

21. 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.
  
22. 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.

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Rama Sood, Tribunal Member