



Civil Resolution Tribunal

Date Issued: October 20, 2020

File: SC-2020-004647

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Salberg v. Smith*, 2020 BCCRT 1186

B E T W E E N :

RUSS SALBERG

APPLICANT

A N D :

SHARON SMITH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about various personal loans given by the applicant Russ Salberg, also known as Russell Scott, to the respondent Sharon Smith, also known as Sherri Mickelson. Mr. Salberg says the parties' agreement was that Ms. Smith would repay him when she received a lump sum retroactive payment from the government. Mr.

Salberg says she received that government payment on May 15, 2020 but has refused to repay him. He claims \$2,169 in total.

2. Ms. Smith says she feels she does not owe Mr. Salberg any money, saying much of the claimed debt was comprised of work he did on her van as she was “his taxi”. Ms. Smith also says she did other things for Mr. Salberg, such as cooking and cleaning for him, and so she denies she owes him anything.
3. The parties are each 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. Some aspects of this dispute amount to a “he said, she said” scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
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, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is to what extent, if any, does Ms. Smith owe Mr. Salberg for repayable loans?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, as the applicant Mr. Salberg bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. The parties appear to be former friends. Mr. Salberg says he loaned Ms. Smith “several thousand dollars the past few years”. He says there were multiple small cash loans, debt payments, bank overdrafts, residential dispute fees, vape smoking products, car parts, rear window, new tires and brakes. In his submissions, he also refers to beer money, shopping money, trips to Kelowna, “the list goes on”.
11. Mr. Salberg says Ms. Smith made “some attempts to pay me”, and that he had deducted costs for her doing some cooking, cleaning, and “other favors”. In submissions, he says she came and cooked for him twice, for which he paid her \$140 each time. Mr. Salberg does not explain why he paid Ms. Smith for cooking, when she already owed him money. I infer it is because he accepted her ability to repay him was deferred until she received a government payment, which she undisputedly received in May 2020.
12. Mr. Salberg denies Ms. Smith’s allegation that she served as his taxi service, and says there should be no set-off from the debts. In support, Mr. Salberg points to the fact that they live about 150 kilometers apart, and so he says the allegation she was his taxi service does not make sense. He says the same about her cooking for him,

that given their relative distance she only rarely visited and cooked for him in any event.

13. Based on Ms. Smith's submissions and the evidence before me, I accept Mr. Salberg advanced Ms. Smith funds as a repayable loan.
14. Mr. Salberg submitted a typed list of various amounts he e-transferred to Ms. Smith, with brief descriptions of each item. The list totals \$3,165.39, less \$1,000 he deducted to reflect credits to Ms. Smith, leaving the claimed \$2,169 (rounded down). Ms. Smith did not dispute the transfers were made.
15. In one April 30, 2020 message exchange, Mr. Salberg referred to Ms. Smith's "3000 dollar debt", and in response Ms. Smith wrote, "I said I will pay you, in the meantime I own all your vehicles". I pause to note that any claims about the vehicles are not before me, so I make no finding about them.
16. Given the tenor of the parties' text messages, which includes Ms. Smith's admission of a debt and the fact that she did not refute the particular amount loaned, I find it more likely than not that Ms. Smith owes Mr. Salberg the claimed \$2,169. My conclusion is supported by the fact that Ms. Smith does not allege in the April 30 messages that she owes nothing due to cleaning, cooking or taxi services. Mr. Salberg started this proceeding 6 weeks after that hostile April 30 exchange, so I find it unlikely that Ms. Smith provided any cooking or cleaning in the interim. Further, Ms. Smith provided no proof that she cleaned or cooked for Mr. Salberg beyond what he admits and deducted. Given the undisputed distance between the parties' residences, I find Mr. Salberg's version of events more likely.
17. I acknowledge the parties' submissions about a prior settlement offer, relating to Mr. Salberg's vehicles. I find that prior offer is not binding since the terms are not clear in the evidence before me and because the matter did not settle and instead proceeded through this dispute process.
18. In summary, I find Ms. Smith must repay Mr. Salberg \$2,169. It is undisputed the parties had prior unsuccessful payment agreements, including \$50 per month and

later that Ms. Smith would pay something when she received funds from a particular source.

19. On balance, I find the loans were likely contingent loans rather than demand loans. 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 the 2-year 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. Either way, based on the evidence of payments and contingencies (events triggering Ms. Smith's obligation to pay), I find there is no suggestion Mr. Salberg's claims are out of time.
20. Next, I acknowledge Ms. Smith says she cannot afford to pay Mr. Salberg anything. However, an inability to pay is not by itself a defense to a debt claim.
21. Finally, there is no evidence the parties had an agreement on interest. However, the *Court Order Interest Act* (COIA) applies to the CRT and Mr. Salberg is entitled to pre-judgment COIA interest on the \$2,169. Bearing in mind the CRT's mandate that includes proportionality, I have calculated this interest from May 15, 2020 (the date of Mr. Salberg's demand and about when Ms. Smith received a government payment) to the date of this decision. The interest equals \$8.42.
22. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees and reasonable dispute-related expenses. Mr. Salberg was successful and so I find he is entitled to reimbursement of \$125 in CRT fees. No dispute-related expenses were claimed.

ORDERS

23. Within 30 days of this decision, I order Ms. Smith to pay Mr. Salberg a total of \$2,302.42, broken down as follows:
 - a. \$2,169.00 in debt,

- b. \$8.42 in pre-judgment COIA interest, and
- c. \$125 in CRT fees.

24. Mr. Salberg is entitled to post-judgment interest, as applicable.
25. 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.
26. 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.

Shelley Lopez, Vice Chair