



Civil Resolution Tribunal

Date Issued: June 22, 2021

File: SC-2021-000663

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ferguson v. Casselman*, 2021 BCCRT 686

B E T W E E N :

ANDREW FERGUSON

APPLICANT

A N D :

ALECIA CASSELMAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about repayment of an alleged loan.
2. The applicant, Andrew Ferguson, and the respondent, Alecia Casselman, were in a romantic relationship. Mr. Ferguson says that during their relationship he loaned Ms.

Casselman money to pay for various expenses, travel, and other purchases. Mr. Ferguson says that when their relationship ended in February 2018, they entered an agreement that Ms. Casselman would repay him \$5,050 by monthly payments of \$200. Mr. Ferguson says that he and Ms. Casselman amended the repayment terms over time, but that Ms. Casselman ultimately defaulted on the loan. Mr. Ferguson claims \$2,750 as the outstanding loan balance of the loan.

3. Ms. Casselman says the Civil Resolution Tribunal (CRT) does not have jurisdiction to hear this dispute because the claimed debt occurred while they were in a domestic relationship that lasted more than 2 years. Further, while Ms. Casselman does not dispute that she agreed to pay Mr. Ferguson \$5,050 after their relationship ended, she says Mr. Ferguson has not provided any proof about the loan's amount, and she disputes several of the items he says he paid for.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly 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 in the interests of justice.

7. Section 42 of the CRTA says 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.

Family Law Act Jurisdiction

9. As noted, Ms. Casselman says the CRT does not have jurisdiction to hear this dispute because it is about an alleged debt incurred during the parties' relationship, which lasted more than 2 years. Under the *Family Law Act* (FLA), the BC Supreme Court has exclusive jurisdiction to make orders about the division of family property and family debt. However, I find Mr. Ferguson is not seeking an order about how to divide family property or family debt.
10. Rather, I find the parties made an agreement about the division of property and debt after they separated, as permitted under FLA section 92. Mr. Ferguson now seeks an order for payment according to the terms of that agreement. While the FLA says the BC Supreme Court has exclusive jurisdiction to set aside such an agreement, that is not what is being sought here. I find the FLA does not give the BC Supreme Court exclusive jurisdiction to enforce an agreement made between spouses respecting the division of property.
11. Given the above, I find this is a claim for breach of contract, which is a civil matter that the CRT has jurisdiction to decide under its small claims jurisdiction over debts and damages. Bearing in mind the amount at stake and the CRT's mandate to provide accessible and economical dispute resolution, I find it is appropriate for the CRT to resolve this dispute.

ISSUE

12. The issue in this dispute is whether Ms. Casselman owes Mr. Ferguson the claimed \$2,750.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant Mr. Ferguson must prove his claims on a balance of probabilities. I have read all the parties' evidence and submissions, but I will refer only to the evidence and arguments that I find relevant to provide context for my decision.
14. It is undisputed that the parties were in a romantic relationship and lived together for more than 3 years, between June 2014 and February 2018. The parties agree that they generally intended to contribute equally to their shared living expenses, including rent and utilities. Ms. Casselman says there was no formal agreement about finances and that they worked together to maintain their household.
15. Mr. Ferguson claims that over the course of their relationship, he loaned Ms. Casselman a considerable amount of money. He says he often helped her pay her portion of the rent and utilities, paid for her dental work on one occasion, a trip they went on together, and other purchases. He says that they kept a running total of the amount Mr. Ferguson had loaned Ms. Casselman on a sticky note posted to the fridge, with the mutual understanding that she would eventually pay him back.
16. Ms. Casselman does not directly address Mr. Ferguson's submission that they kept an ongoing tally of money Ms. Casselman agreed she owed to Mr. Ferguson throughout their relationship. Ms. Casselman disputes several of the specific items Mr. Ferguson alleges he paid for and says she does not trust Mr. Ferguson's word about the amount she owed him. Nevertheless, Ms. Casselman agrees that after their relationship ended in February 2018, she accepted that she owed Mr. Ferguson a \$5,050 debt.

17. In an April 2, 2018 email to Ms. Casselman, Mr. Ferguson confirmed their agreement about repayment terms. It is undisputed that Ms. Casselman agreed to pay Mr. Ferguson \$200 per month, starting on May 15, 2018, for 25 months. The email stated that Mr. Ferguson agreed to waive the final \$50 owing so long as Ms. Casselman made all the agreed payments.
18. It is undisputed that Ms. Casselman made monthly \$200 payments between May and September 2018, and that she made further \$200 payments in November 2018, January 2019, March 2019, and October 2019. Emails between the parties in evidence show that Mr. Ferguson agreed to give Ms. Casselman various extensions or to pause payments when Ms. Casselman said she was struggling financially. However, Ms. Casselman continued to acknowledge the outstanding debt and her intention to fulfill all agreed payments.
19. The email evidence before me shows that Ms. Casselman failed to explain or seek Mr. Ferguson's agreement about further extensions after she made the October 2019 payment. Mr. Ferguson sent Ms. Casselman a February 25, 2020 demand letter. The letter stated that Ms. Casselman had failed to make payments under their agreement between November 2019 and February 2020 and demanded the \$800 in missed payments within 15 days. The letter stated that if the \$800 was not received, Mr. Ferguson may declare the loan in default and demand the full balance of the principal amount, plus interest and costs.
20. Ms. Casselman responded to the demand letter by email and advised Mr. Ferguson she could not afford to pay the outstanding \$800 in the short term. However, Ms. Casselman confirmed that she would pay the entire \$3,250 still owing on the total debt by June 15, 2020, to which Mr. Ferguson agreed.
21. On June 1, 2020, Ms. Casselman emailed Mr. Ferguson that she was not working due to the COVID-19 pandemic, so would be unable to pay off the debt as planned. However, Ms. Casselman made a \$500 payment to Mr. Ferguson as a "show of good faith". Mr. Ferguson again agreed to delay final payment of the loan, and in August

2020, Ms. Casselman advised him that she would pay the balance by the end of the year.

22. On January 1, 2021, Ms. Casselman advised Mr. Ferguson she would have to delay payment again. Mr. Ferguson responded that if she did not pay the outstanding \$2,750 by January 15, 2021, he would declare the loan in default. Ms. Casselman responded that she questioned the legality of their agreement and would not be making any further payments.
23. Contrary to Ms. Casselman's submissions, I find it is unnecessary for Mr. Ferguson to prove how much money he loaned to Ms. Casselman over the course of their relationship. This is because Ms. Casselman undisputedly agreed in February 2018 to repay Mr. Ferguson \$5,050. The time for Ms. Casselman to dispute how much she owed Mr. Ferguson was when she entered the agreement to repay him. I find her agreement to the loaned amount in February 2018 constituted a binding agreement, and Ms. Casselman has affirmed that agreement several times since then. In any event, as noted above, the CRT does not have jurisdiction to set aside the agreement under the FLA.
24. Given the terms of their agreement and the undisputed payments Ms. Casselman made, I find that she owes Mr. Ferguson the claimed \$2,750. Based on the evidence of payments and Ms. Casselman's repeated acknowledgement of the debt, as recently as January 2021, I find there is no evidence that Mr. Ferguson's claims are out of time.
25. I acknowledge that Ms. Casselman has generally said she cannot afford to pay Mr. Ferguson. However, an inability to pay is not by itself a defense to a debt claim.
26. There is no evidence the parties had an agreement on interest. However, the *Court Order Interest Act* (COIA) applies to the CRT and Mr. Ferguson is entitled to pre-judgment COIA interest on the \$2,750. Bearing in mind the CRT's mandate that includes proportionality, I have calculated this interest from January 15, 2021 (the

date of Mr. Ferguson's latest demand for payment) to the date of this decision. The interest equals \$5.38.

27. 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. Mr. Ferguson was successful and so I find he is entitled to reimbursement of \$125 in CRT fees.
28. Mr. Ferguson also claims \$309.75 for hiring a skip tracer to obtain Ms. Casselman's address so he could serve her with the Dispute Notice. I am satisfied on the evidence before me that Ms. Casselman refused to provide Mr. Ferguson with her new address. Her last email to Mr. Ferguson in January 2021 also suggested she would be blocking his communication. In the circumstances, I find Mr. Ferguson reasonably ordered the skip trace, and he is entitled to reimbursement of the \$309.75 fee.

ORDERS

29. Within 30 days of the date of this decision, I order the respondent, Alecia Casselman, to pay the applicant, Andrew Ferguson, a total of \$3,190.13, broken down as follows:
 - a. \$2,750 in debt,
 - b. \$5.38 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$434.75, for \$125 in CRT fees and \$309.75 for dispute-related expenses.
30. Mr. Ferguson is entitled to post-judgment interest, as applicable.
31. 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.

32. 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