



Civil Resolution Tribunal

Date Issued: June 25, 2021

File: SC-2020-009039

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tidy v. Fernandes*, 2021 BCCRT 705

B E T W E E N :

DEBRA TIDY

APPLICANT

A N D :

MONICA FERNANDES

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about personal loans. The applicant, Ms. Tidy, says she loaned \$6,500 to the respondent, Ms. Fernandes, for car repairs and veterinarian services. Ms. Tidy claims these debts are partially unpaid. Ms. Tidy claims \$5,000, the maximum Civil Resolution Tribunal (CRT) small claims amount, and waives her claim to any amount over \$5,000.

2. In her Dispute Response filed at the outset of this proceeding, Ms. Fernandes denies Ms. Tidy's claim. She says that the money she received for car repairs was a gift, not a loan and that she repaid the loan for the veterinarian services. Ms. Fernandes also says that she is financially unable to pay Ms. Tidy anything. However, in a Statement of Facts prepared before this dispute was assigned to me for adjudication, Ms. Fernandes agreed that she owes Ms. Tidy \$5,025.
3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.

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 issues in this dispute are:
 - a. How much, if any, does Ms. Fernandes owe Ms. Tidy for unpaid personal loans?
 - b. Did Ms. Tidy start this dispute within the deadline under the BC *Limitation Act* (LA)?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Ms. Tidy must prove her claim on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision. Ms. Fernandes did not provide any evidence or submissions, though she had the opportunity to do so.
10. In the Statement of Facts, the parties agreed on the following:
 - Ms. Tidy sent Ms. Fernandes \$2,500 on June 13, 2017.
 - Ms. Tidy sent Ms. Fernandes \$2,000 on June 14, 2017.
 - Ms. Tidy paid \$1000 on her credit card towards Ms. Fernandes' veterinarian bills on April 9, 2018.
 - Ms. Fernandes' paid Ms. Tidy \$500 towards the veterinarian bills on March 11, 2018.

- Ms. Fernandes paid Ms. Tidy \$1,000 towards the veterinarian loan, over four months from February to May 2019.
- Ms. Fernandes owes Ms. Tidy \$5,025.

Car repairs

11. Ms. Tidy says she loaned Ms. Fernandes \$4,500 for car repairs in June 2017, which is supported by a financial statement showing a June 13, 2017 transfer of \$2,500 and a June 14, 2017 transfer of \$2,000. Ms. Fernandes does not dispute receiving this money and, as discussed above, she agreed to this in the Statement of Facts. Based on the financial statements and Ms. Fernandes' agreement in the Statement of Facts, I find that Ms. Tidy sent Ms. Fernandes \$4,500 in June 2017.
12. In her Dispute Response, Ms. Fernandes argues that this money was a gift and not a loan. Under the law of gifts, after Ms. Tidy proved that she delivered the \$4,500 to Ms. Fernandes, the burden shifts to Ms. Fernandes to establish that Ms. Tidy intended to give the money as a gift. (see *Pecore v. Pecore*, 2017 SCC 17). Further, the evidence should show that the gift intention was inconsistent with any other intention or purpose (*Lundy v. Lundy*, 2010 BCSC 1004).
13. Ms. Fernandes says that Ms. Tidy's partner told her that this was a gift from "extra" money which Ms. Tidy and her partner did not need. However, I place no weight on this evidence because it is hearsay. While the CRT may accept hearsay evidence, I find no reasonable basis to do so here. Since Ms. Fernandes did not provide any further submissions or evidence, and based on her agreement in the Statement of Facts that she owes Ms. Tidy \$5,025, I find that the \$4,500 she received for car repairs was a loan.
14. Based on Ms. Tidy's undisputed submission that there was no specific payment due date, I find that this was a demand loan. This means that repayment was due when demanded by Ms. Tidy.

15. Ms. Fernandes says that she is financially unable to repay Ms. Tidy. However, Ms. Fernandes' ability to pay does not change her obligation to repay the debt. For the above reasons, I find Ms. Fernandes owes Ms. Tidy \$4,500 for the car repairs loan, subject to the LA discussed below.

Veterinarian services

16. Ms. Tidy claims that Ms. Fernandes borrowed \$2,025 for veterinarian expenses. Ms. Tidy provided a financial statement showing a \$1,025 transfer on February 24, 2018. She also provided a credit card statement showing a \$1,000 payment on April 9, 2018 to a veterinarian.

17. Ms. Fernandes says that Ms. Tidy only loaned her \$1,000 for the veterinarian services. However, based on Ms. Tidy's financial statement and credit card statement, I find that Ms. Fernandes borrowed \$2,025 for veterinary expenses. Since Ms. Fernandes does not dispute Ms. Tidy's submission that there was no specific repayment date, I find that this was a demand loan.

18. Ms. Fernandes says she repaid the entire veterinarian loan. However, Ms. Fernandes did not provide the dates or the amounts of her loan payments. Ms. Tidy's application for dispute resolution says that Ms. Fernandes has repaid \$1,500 of the veterinarian loan, which Ms. Fernandes does not dispute. This amount is also consistent with the agreed Statement of Facts which says that Ms. Fernandez has repaid \$1,500 towards the veterinarian loan. Based on Ms. Fernandes' agreement in the Statement of Facts, I find that Ms. Fernandes has repaid \$1,500 towards this loan, leaving \$525 unpaid.

19. Based on the above, I find that Ms. Fernandes owes Ms. Tidy \$525 for the veterinarian loan, subject to the LA discussed below and the CRT's \$5,000 small claims jurisdictional limit.

Limitation period

20. I asked both parties to provide submissions about whether this dispute was timely started under the LA. Ms. Tidy provided a submission which I considered. Ms. Fernandes did not provide a submission, though she had the opportunity to do so.
21. The LA applies to disputes before the CRT and it sets out a 2-year deadline to start a claim. Under section 14 of the LA, the 2-year deadline starts for demand loans when a demand for payment has been made (see, *Gavriel v. Gavriel*, 2017 BCSC 1653).
22. Ms. Tidy says she contacted Ms. Fernandes in May of 2020 by text and email to “resolve the financial situation.” Ms. Fernandes did not dispute this submission. I find that these communications were a demand for repayment. Since there is no evidence before me of any prior demand for repayment, I find that Ms. Tidy demanded repayment in May 2020 and that she timely filed her application for dispute resolution within 2 years of that demand.
23. For the above reasons, I find that Ms. Fernandes owes Ms. Tidy a \$5,000 debt.
24. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Tidy is entitled to pre-judgment interest on the debt from the date she demanded repayment in May 2020. Since Ms. Tidy did not provide the specific day in May 2020 when she requested repayment, I find that she is entitled to interest starting on May 31, 2020, to the date of this decision. This equals \$30.93.
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. I see no reason in this case not to follow that general rule. Since Ms. Tidy was successful in her claim, I find that she is entitled to reimbursement of \$175 in CRT fees. Ms. Tidy did not claim reimbursement of dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order Ms. Fernandes to pay Ms. Tidy a total of \$5,205.39, broken down as follows:
- a. \$5,000 in debt,
 - b. \$30.39 in pre-judgment COIA interest, and
 - c. \$175 in CRT fees.
27. Ms. Tidy 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.

Richard McAndrew, Tribunal Member