Civil Resolution Tribunal

Date Issued: July 13, 2021

File: SC-2021-000408

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tremblay v. Finley*, 2021 BCCRT 766

B E T W E E N :

LORRAINE TREMBLAY

APPLICANT

A N D :

RICHARD FINLEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sherelle Goodwin

INTRODUCTION

1. This dispute is about an alleged personal loan.

2. The applicant, Lorraine Tremblay, and the respondent, Richard Finley, lived together in a romantic relationship. Ms. Tremblay says she paid for rent and utilities for February, March and April 2019 and that Mr. Finley agreed he would pay her back for these expenses once he moved into his new residence. Ms. Trembly also says she bought out Mr. Finley's cell phone contract. She claims $3,375.61 as a personal loan for the rent, utilities, and cell phone contract.

3. Mr. Finley denies that there was any loan agreement. He also says he has paid Ms. Tremblay back any money he owed her. Mr. Finley says Ms. Tremblay has falsified her claim in an attempt to hurt him after the relationship ended.

4. Each party represents themselves.

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). 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.

PRELIMINARY ISSUES

9. The CRT has no jurisdiction, or legal authority, over the division of family property or debts arising under the *Family Law Act* (FLA). Ms. Tremblay says she lived with Mr. Finley from May 2017 to April 2019, which Mr. Finley does not dispute. I find the parties lived together for less than 2 years and were not married so were not "spouses" as defined in the FLA. Therefore, I find the FLA does not apply and that the CRT has jurisdiction to consider Ms. Tremblay's small claims dispute.

10. Both parties submitted evidence after the deadline. Both parties were provided a copy of the other's late evidence, along with the opportunity to respond to it. I find neither party was prejudiced by the other's late evidence and so I accept the late evidence, keeping in mind the CRT's mandate, which includes flexibility.

11. I decline to strike Mr. Finley's response submissions from the record, as requested by Ms. Tremblay. In his submissions, Mr. Finley says Ms. Tremblay has colluded with another of his ex-girlfriends to bring this claim against him. I disagree with Ms. Tremblay that the submissions are irrelevant. Ms. Tremblay claims she and Mr. Finley had a verbal agreement, which Mr. Finley denies. In this case the credibility, and motivation, of both parties is relevant.

12. Ms. Tremblay also asks that I refuse to accept Mr. Finley's late evidence, or any of his evidence, because she says none of it is related to her claim for repayment of the loaned funds. While I agree that not all of Mr. Finley's, or Ms. Tremblay's, submitted evidence is relevant to the parties' alleged loan agreement, rejecting all Mr. Finley's evidence would be procedurally unfair to him. I find I can weigh each piece of

evidence, with a view to its date, author, and content, to determine whether the evidence is relevance to this dispute and, if so, how much weight to give it. In this way, I will address Ms. Tremblay's concerns about Mr. Finley's evidence.

ISSUE

13. The issue in this dispute is whether Mr. Finley must reimburse Ms. Tremblay for living expenses from 2019 or buying out his cell phone contract and, if so, how much?

EVIDENCE AND ANALYSIS

14. In a civil claim such as this the applicant, Ms. Tremblay, has the burden of proving her claims on a balance of probabilities. However, as explained below, if Ms. Tremblay establishes that she paid for Mr. Finley's living expenses, the burden shifts to Mr. Finley to prove that the payment was intended as a gift, or that Mr. Finley repaid Ms. Tremblay. I have read the parties' submissions and weighed the evidence provided but only refer to that necessary to explain, and give context to, my decision.

15. As noted above, I find the parties lived together until April 2019. Based on banking records provided by Ms. Tremblay, I find the parties paid their gas, hydro, phone, and cell phone bills from their joint banking account, until approximately February 2019. I also find they used the joint banking account to pay their rent each month because they withdrew $1,100 to $1,450 cash around the 1st of each month, which is approximately the same amount as the $1,480 monthly rent charge shown on receipts provided by Ms. Tremblay. The evidence shows Mr. Finley's pay was deposited into the joint account and I infer the other regular deposit was Ms. Tremblay's pay, as Mr. Finley does not argue the contrary. However, things changed in February 2019.

16. Ms. Tremblay's banking records show she opened a bank account in her own name in mid-February 2019 and used that account to pay the rent, gas, hydro, phone, and cell phone bills. In other words, I find Ms. Tremblay alone paid the joint living expenses for both parties from mid-February 2019 to April 2019. I note that Mr. Finley does not dispute that Ms. Tremblay paid his share of the living expenses during this

time or that he was saving to move out. It is undisputed that Mr. Finley moved out of the shared residence at the end of April 2019.

Personal Living Expenses

17. Ms. Tremblay says around February 1, 2019, she and Mr. Finley agreed that Ms. Tremblay alone would pay the rent and utilities so that Mr. Finley could save for a damage deposit and first month's rent for his own residence. She says the parties verbally agreed that Mr. Finley would repay Ms. Tremblay when he was settled into his new residence. Ms. Tremblay refers to this as a personal loan agreement.

18. Mr. Finley denies there was any loan, or loan agreement because there is no written agreement. There is no requirement for an agreement to be written down to be enforceable, although verbal agreements are harder to prove. However, in this case, I find Ms. Tremblay is not required to prove that Mr. Finley agreed to reimburse her for his share of the living expenses. Rather, I find Mr. Finley must prove that Ms. Tremblay intended the paid living expenses as a gift, rather than a loan. This is because the law presumes bargains rather than gifts and, to presume otherwise would result in Mr. Finley's unjust enrichment in receiving paid living expenses and having given Ms. Tremblay nothing of value in return (see *Proznik and Smith v. Proznik,* 2011 BCPC 0300, citing *Pecore v. Pecore,* 2007 SCC 17).

19. Did Ms. Tremblay intend the living expenses as a gift? What must be established is Ms. Tremblay's intention at the time she paid for the living expenses (see *Pecore*).

20. While the parties' romantic relationship is a factor to consider and may indicate that the living expenses were a gift, it is not determinative of the matter. In this case I find the parties' relationship changed in February 2019 as the parties planned to move into separate residences. The change in the spending pattern and relationship weighs in favour of a loan, rather than a gift.

21. Mr. Finley says Ms. Tremblay did not ask for repayment of the living expenses at any time, even though they continued seeing each other, off and on, until March 2020. In contrast, Ms. Tremblay says Mr. Finley repeatedly promised to pay then lied to her

and created excuses about why he could not pay. However, Ms. Tremblay provided no supporting evidence such as text messages or emails between the parties. Nor did Ms. Tremblay provide any reasonable explanation about why she did not have such supporting evidence. I find it more likely that Ms. Tremblay did not seek repayment until her January 10, 2021 demand letter, well after the parties' relationship ended. This delay weighs in favour of a gift, rather than a loan.

22. However, the evidence shows that Mr. Finley assigned himself into bankruptcy on September 12, 2019, which means that no creditor, including Ms. Tremblay, could pursue Mr. Finley personally for any outstanding debt or loan. I accept Ms. Tremblay's submission that she did not know she could pursue recovery of the living expenses until after Mr. Finley was discharged from bankruptcy for non-compliance. Ms. Tremblay provided a July 15, 2020 court order adjourning Mr. Finley's application for discharge and granting leave to the bankruptcy trustee to proceed to its discharge and reinstate the creditor's rights to proceed against Mr. Finley. While this is not a discharge order, it does support Ms. Tremblay's explanation about some of her delay in pursuing recovery of the expenses. I will address Mr. Finley's bankruptcy status further below.

23. Ms. Tremblay submitted an April 16, 2021 joint statement signed by A and B, Ms. Tremblay's friends. The friends say they were present when Mr. Finley left the shared residence on April 22, 2019 and that Mr. Finley refused to pay Ms. Tremblay for the rent or bills, as previously agreed. However, the statement provides no detail about any conversation the parties may have had about payment on April 22, 2019 or how the friends would remember such comments or conversations nearly 2 years later. For this reason, I do not give the statement much weight.

24. As noted, the burden is on Mr. Finley to rebut the legal presumption that the living expenses were a loan, on a balance of probabilities (see *Pecore,* at paragraphs 43 and 44). This means he must prove that it is more likely than not that Ms. Tremblay intended the living expenses as a gift at the time she paid them. On balance, I find the factors weighing in favour of a gift are evenly balanced with the factors weighing

in favour of a loan. So, I find Mr. Finley has failed to meet his burden and further find the living expenses were more likely intended as a loan.

25. Mr. Finley also says he has repaid any money he owed Ms. Tremblay. He provided an April 18, 2020 text message from Ms. Tremblay to Mr. Finley's mother where Ms. Tremblay says that Mr. Finley "did pay me the money he owed me which was really great" (reproduced as written). Ms. Tremblay acknowledges that she sent the text but says that relates to money Mr. Finley paid her on April 17, 2020 for other loans. This is supported by bank statements provided by Ms. Tremblay which show she e-transferred Mr. Finley a total of $560 between December 27, 2019 and February 3, 2020 while Mr. Finley e-transferred Ms. Tremblay a total of $600 between December 27, 2019 and April 17, 2020. I find Ms. Tremblay's text message likely refers to Mr. Finley's repayments of the e-transfers, rather than the 2019 living expenses. Mr. Finley provided no other evidence, such as bank statements or correspondence, showing that he repaid Ms. Tremblay the 2019 living expenses. On balance, I find Mr. Finley has failed to prove he repaid those amounts.

26. I now turn to consider how much money Mr. Finley owes Ms. Tremblay for living expenses.

27. Ms. Tremblay submitted monthly rent receipts showing she paid $1,480 monthly rent for February, March, and April 2019. However, the bank records show that the February 1, 2019 rent came from the shared account. So, I find Ms. Tremblay alone paid $2,960 in rent. Based on her banking records I find Ms. Tremblay also paid a total of $1,133.63 on gas, hydro, phone, and cell phone expenses on March 25, 2019 and a further $568.74 on the same expenses on May 6, 2019. I find it reasonable to conclude the utilities were for the shared home. So, I find Ms. Tremblay alone spent a total of $4,662.37 on rent and utilities over those 3 months, half of which, $2,331.19, was for Mr. Finley.

Cell Phone Contract

28. Ms. Tremblay also says she bought out Mr. Finley's cell phone contract. A January 7, 2019 phone bill in Ms. Tremblay's name shows Mr. Finley's monthly mobile plan cost, with $408.94 remaining owing on a $755 iPhone. I find the iPhone was provided as part of the mobile contract, with a monthly credit applied to the cost of the phone over a period of 24 months.

29. In their joint statement, Ms. Tremblay's friends say that Mr. Finley refused to return the phone Ms. Tremblay was paying for. I infer they mean when Mr. Finley arrived at the home to retrieve his possessions on April 22, 2019 while the friends were present. Mr. Finley does not dispute that he kept the cell phone listed on Ms. Tremblay's account under Mr. Finley's mobile plan. So, I find it likely that Mr. Finley kept the cell phone that was part of his contract, under Ms. Tremblay's mobile phone account.

30. I infer that Ms. Tremblay's claim for "buying out" Mr. Finley's cell phone contract is the cost of the monthly iPhone payments for the duration of the 24-month contract. However, Ms. Tremblay has provided no evidence that she ended the contract, bought out the phone that Mr. Finley kept, or otherwise had to pay anything more than the mobility bills already included in the living expenses calculated above. The January 2019 statement provided by Ms. Tremblay does not show whether bought out the contract or paid the remainder of the phone payments for Mr. Finley.

31. So, I find Ms. Tremblay has not proven that Mr. Finley must reimburse her any costs she incurred for his cell phone or mobility contract, other than the utility expenses mentioned above.

Bankruptcy Status

32. As noted above, Mr. Finley assigned himself into bankruptcy in 2019, which means most creditors, like Ms. Tremblay, cannot pursue Mr. Finley personally for debts owed at the time. Rather, the creditors must make a claim against Mr. Finley's bankrupt estate, through his bankruptcy trustee.

33. I find it likely that Mr. Finley's bankruptcy trustee was discharged from their obligations and that Mr. Finley himself was not discharged from the bankruptcy. Neither party provided a copy of the trustee's discharge order. However, given the July 5, 2020 court order granting leave to the trustee to apply for discharge, and not granting Mr. Finley's application for discharge, I find it likely that Mr. Finley remains an undischarged bankrupt. Further, Mr. Finley did not say otherwise or argue that the Ms. Tremblay can only recover against his estate in bankruptcy.

34. Mr. Finley's status as an undischarged bankrupt means that his creditors, including Ms. Tremblay, are no longer prevented from pursuing Mr. Finley personally for any outstanding debts he owed at the time of bankruptcy (see s. 69.3(1.1) of the *Bankruptcy and Insolvency Act*, and *Thiessen v. Antifaev,* 2003 BCSC 197, at paragraph 65). So, I find Mr. Finley's status as an undischarged bankrupt does not prevent Ms. Tremblay from recovering her debt against him personally.

35. In summary, I find Mr. Finley must repay Ms. Tremblay $2,331.19 for the loaned living expenses in 2019.

36. The *Court Order Interest Act* applies to the CRT. Ms. Tremblay is entitled to pre-judgment interest on the $2,331.19 from the January 10, 2021 demand letter to the date of this decision. This equals $5.32.

37. 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 Ms. Tremblay is entitled to reimbursement of $175 in CRT fees. She claimed no dispute-related expenses.

ORDERS

38. Within 30 days of the date of this order, I order Mr. Finley to pay Ms. Tremblay a total of $2,511.51, broken down as follows:

    a. $2,331.19 in debt,

b. $5.32 in pre-judgment interest under the *Court Order Interest Act*, and

c. $175 in CRT fees.

39. Ms. Tremblay is entitled to post-judgment interest, as applicable.

40. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

41. 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.

Sherelle Goodwin, Tribunal Member