



Civil Resolution Tribunal

Date Issued: January 12, 2022

File: SC-2021-004510

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Murdoch v. Mongovius*, 2022 BCCRT 42

B E T W E E N :

DAVID MURDOCH

APPLICANT

A N D :

DESEREY MONGOVIUS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a personal loan between now-former romantic parties. The applicant, David Murdoch, says the respondent, Deserey Mongovius, has failed to repay \$4,008 as agreed.
2. In the Dispute Response filed at the outset of this dispute, Miss Mongovius admitted “items were bought” and says they were either gifts “or would be paid back eventually”. In later submissions, she says because the parties were dating, she does not think she needs to repay Mr. Murdoch anything and denies she asked to borrow the claimed \$4,008.
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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT’s mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under CRTA section 42, 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 CRTA section 118, 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 CRT considers appropriate.

ISSUE

8. The issue is to what extent, if any, Miss Mongovius owes Mr. Murdoch the claimed \$4,008, and in particular whether any of the monies at issue gifts to her.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, as the applicant Mr. Murdoch has the burden of proving his claims, on a balance of probabilities (meaning “more likely than not”). However, a party alleging a gift (here, Miss Mongovius) has the burden to prove transferred monies were a gift rather than a loan. I have only referenced below what I find is necessary to give context to my decision. I note Miss Mongovius had the opportunity to submit documentary evidence but chose not to.
10. At the outset, I have not discussed the parties’ relationship breakdown as I find that is irrelevant to whether Miss Mongovius owes Mr. Murdoch the claimed debt.
11. The parties’ text messages show Miss Mongovius repeatedly asked to borrow various sums of money for various personal reasons, with express promises to repay and many missed repayment dates. I find the \$4,008 claim proven, as it is supported by the text messages, the e-transfer records, and because Miss Mongovius did not provide any evidence of any greater repayment than the \$700 Mr. Murdoch accounted for.
12. I do not accept Miss Mongovius’ unsupported assertion the money was a gift. That is not entirely consistent with her Dispute Response and is entirely inconsistent with the multiple texts where she expressly asked to borrow money and promised to repay. In any event, the burden is on Miss Mongovius to prove the money

transferred was a gift and I find she clearly has not done so. I find Mr. Murdoch is entitled to \$4,008.

13. Mr. Murdoch submits “there is no interest included” but seeks reimbursement of paid CRT fees. So, I find he has waived his right to interest under section 2(d) the *Court Order Interest Act*.
14. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Murdoch was successful, I allow his claim for reimbursement of \$175 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

15. Within 30 days of this decision, I order Miss Mongovius to pay Mr. Murdoch a total of \$4,183, broken down as follows:
 - a. \$4,008 in debt, and
 - b. \$175 for CRT fees.
16. Mr. Murdoch is entitled to post-judgment interest, as applicable.
17. Under CRTA section 48, 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.

18. Under CRTA section 58.1, the Provincial Court of BC can enforce a validated copy of the CRT's order. 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 a Provincial Court of BC order.

Shelley Lopez, Vice Chair