



Civil Resolution Tribunal

Date Issued: May 3, 2022

File: SC-2021-007296

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Checkmate Cabs Ltd. v. Collins*, 2022 BCCRT 516

BETWEEN:

CHECKMATE CABS LTD.

APPLICANT

AND:

JODI COLLINS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a partially unpaid loan. The applicant, Checkmate Cabs Ltd. (Checkmate), says it loaned the respondent, Jodi Collins, money to purchase a vehicle. Checkmate claims \$4,000 as the unpaid balance plus \$400 for contractual interest, for a total of \$4,400.

2. Ms. Collins agrees she borrowed the money but says only \$3,900 is owing. She also denies owing interest. Further, she says she should be excused from repayment because Checkmate breached its contract with her. Ms. Collins did not file a counterclaim. So, I have considered if she is entitled to a set-off.
3. An employee or principal represents Checkmate. Ms. Collins represents herself.
4. For the reasons that follow, I find Checkmate has largely proven its claims and make the orders set out below.

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. Some of the evidence in this dispute amounts to a "they said, she said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

ISSUES

9. The issues in this dispute are as follows:
 - a. Is Checkmate entitled to repayment of \$4,000 for principal owing plus any late interest?
 - b. Is Ms. Collins entitled to a set-off of any amount owing?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Checkmate must prove its claims on a balance of probabilities. This means more likely than not. I have read all the parties' evidence and arguments but refer only to what I find relevant to provide context for my decision.
11. I begin with the undisputed facts. Ms. Collins entered into a November 29, 2018 written loan agreement with Checkmate. She agreed to borrow \$22,000 and repay according to the payment schedule. Under the agreement, payments commenced on January 1, 2019, ending with the final payment due on June 23, 2020. The payment schedule consisted of principal payments only. However, the loan agreement had terms to charge late interest, discussed below.
12. Ms. Collins drove for Checkmate for some time and Checkmate's documents show that she made the payments required under the schedule.

13. On August 11, 2021 Ms. Collins texted Checkmate to advise that she had COVID-19. Checkmate subsequently texted her to ask for Ms. Collins to provide a negative COVID-19 test result before driving for Checkmate again. Ms. Collins objected.
14. As detailed in Checkmate's September 8, 2021 demand letter, Ms. Collins refused to work further for Checkmate and returned its plate on August 25, 2021. Checkmate demanded \$4,000 as the balance owing for the loan. It also requested dispatch fees, but it has not claimed for them in this dispute, so I need not address them.

Issue #1. Is Checkmate entitled to repayment of \$4,000 for principal owing, plus contractual interest?

15. Checkmate provided a spreadsheet detailing all the loan payments. They total \$18,000, leaving a balance owing of \$4,000. In Ms. Collins' September 17, 2021 letter, she acknowledged owing \$3,900. She says Checkmate did not account for a \$100 payment for either the week of July 5 or July 12, 2021. However, as Checkmate's spreadsheet shows payments on July 6, 11, 21, and 29, 2021 for \$100, I find it likely that Checkmate accounted for these payments. In light of this evidence, I find Ms. Collins has not met the burden to prove otherwise. So, I find Checkmate is owed \$4,000 and order Ms. Collins to pay this.
16. I turn to interest. The loan agreement says that Ms. Collins is obligated to pay interest at the rate of 10% per month for all late payments or money owing after the term of the loan.
17. Section 4 of the federal *Interest Act* says that where a contract does not state an annual interest rate, a maximum of 5% annual interest applies. Neither the contract nor other documents state the annual interest rate. So, I find I may only order 5% annual interest. So, I calculate contractual interest from August 31, 2021, the date of the first missed payment, to the date of this decision on the \$4,000 debt. The total interest equals \$134.25.

Issue #2. Is Ms. Collins entitled to a set-off of any amount owing?

18. I next consider whether Ms. Collins is entitled to a set-off. A claimed set-off must arise from the same course of dealings between the parties and engage the same issues requiring resolution in the dispute. See *Wilson v. Fotsch*, 2010 BCCA 226 and *Dhothar v. Atwal*, 2009 BCSC 1203.
19. Ms. Collins seeks amounts described in a September 17, 2021 letter. These include \$1,440 for lost income, \$3,000.06 for dispatch fees paid to Checkmate from 2018 to 2021, \$339.15 for oil changes from 2018 to 2021, and \$13,000 in connection with another car loan. Ms. Collins also says Checkmate should return the \$5,000 sum it collected from her to use Checkmate's plate while driving. In the letter, Ms. Collins concludes that she is owed \$18,879.21, less any amounts owed to Checkmate.
20. I find these are not set-off claims and are properly separate claims or counterclaims. This is because they are separate issues that do not involve the terms of the loan agreement. I find that in order for me to properly consider them, Ms. Collins should have completed an application form and paid the required CRT fee under CRT rule 3.2. She has not done so here.
21. My conclusion is strengthened by separate procedural fairness issues. Ms. Collins did not fully outline her counterclaims in her Dispute Response. Instead, she only referred to them by saying they were in her response to Checkmate's demand letter, which "outlines the debt owed to me, due to being forced to leave company". As her counterclaims were not directly outlined in CRT documents, I find it would be procedurally unfair to consider Ms. Collins' claims in these circumstances.
22. Further, Ms. Collins' claims are also well beyond the CRT's small claims monetary limit of \$5,000, so I find I would not have jurisdiction to address them for that reason as well.
23. Ms. Collins also says she should not have to pay because Checkmate prevented her from working. She also says Checkmate constructively dismissed her. However, she

did not sue for damages for wrongful termination, and there is nothing in the loan agreement that says the debt ceased to be owing if she stopped working.

24. Further, Ms. Collins provided an undated excerpt from another document showing that she paid a non-refundable sum of \$5,000 to Checkmate. In return, Checkmate provided her a plate to work as a taxi driver. The document also says that Ms. Collins was an independent contractor and not an employee. There is no indication that this document was part of the terms of the written loan discussed above. I find the document tends to support the conclusion that Ms. Collins is not an employee in any event.
25. Given the above, I order Ms. Collins to pay Checkmate \$4,000 in debt plus contractual interest of \$134.25. I make no findings or order about Ms. Collins' allegations that Checkmate owes her money.
26. 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 Checkmate is entitled to reimbursement of \$175 in CRT fees. The parties did not claim for any specific dispute-related expenses.

ORDERS

27. Within 14 days of the date of this order, I order Ms. Collins to pay Checkmate a total of \$4,309.25, broken down as follows:
 - a. \$4,000 in debt,
 - b. \$134.25 in contractual interest, and
 - c. \$175 in CRT fees.
28. Checkmate is entitled to post-judgment interest, as applicable.

29. 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.
30. 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.

David Jiang, Tribunal Member