



Civil Resolution Tribunal

Date Issued: September 6, 2022

File: SC-2022-002097

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marcano v. Rempel*, 2022 BCCRT 991

BETWEEN:

JASON THOMAS SHAW MARCANO

APPLICANT

AND:

NICOLE REMPEL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about repayment of alleged personal loans. The applicant, Jason Thomas Shaw Marcano, says they loaned a total of \$4,000 to the respondent, Nicole Rempel. Mr. Marcano says Miss Rempel did not pay back the loans as agreed, and claims \$4,000. Miss Rempel says Mr. Marcano only loaned her \$1,500 and then forgave the loan, so she owes nothing.

2. The parties are each self-represented in this dispute.

JURISDICTION AND PROCEDURE

3. These are the formal 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.
4. 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. Although the parties' submissions each call into question the credibility of the other party to some extent, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions
5. 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.
6. 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.

ISSUE

7. The issue in this dispute is whether Miss Rempel failed to pay back loans as agreed, and if so, does she owe Mr. Marcano \$4,000 or another amount?

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, as the applicant Mr. Marcano must prove their claims on a balance of probabilities, meaning “more likely than not.” I have read the parties’ submissions and evidence, but refer only to the evidence and arguments I find relevant to provide context for my decision.
9. The parties agree that they met in September, but their submissions give different years. On the evidence before me, I find that they likely met in September 2021 and entered into some sort of relationship shortly after that. Mr. Marcano says they were dating, and Miss Rempel says Mr. Marcano was “trying to actively pursue me for a relationship.” The parties’ relationship undisputedly ended when they had a falling out, which Mr. Marcano says occurred on March 10, 2022. Miss Rempel does not dispute that date. Miss Rempel admits that she cut off contact with Mr. Marcano and blocked their telephone number after the falling out.
10. This dispute is about alleged loans Mr. Marcano made to Miss Rempel during their relationship. As explained below, I find Miss Rempel alleges that some of the alleged loans were gifts. The burden is on Mr. Marcano to prove that they transferred money to Miss Rempel. However, under the law of gifts, once Mr. Marcano proves that they transferred money to Miss Rempel, the burden shifts to Miss Rempel to prove that the money was more likely than not a gift (see *Pecore v. Pecore*, 2007 SCC 17 at paragraphs 22 to 25, and 43). To make a legally effective gift, the person transferring it must intend for it to be a gift and deliver it to the receiver, who must accept it.
11. Mr. Marcano says they loaned Miss Rempel money at her request on 3 occasions: \$1,000 on September 25, 2021, \$1,500 on October 25, 2021, and \$1,500 on December 1, 2021. Mr. Marcano says they loaned the money because Miss Rempel

could not pay her rent and feared eviction. Miss Rempel has undisputedly not made any payments on the alleged loans.

12. Did Mr. Marcano transfer the 3 alleged loan amounts to Miss Rempel? The parties agree that Mr. Marcano loaned Miss Rempel \$1,500 on December 1, 2021.
13. However, I find there is no evidence before me showing that Mr. Marcano transferred \$1,000 to Miss Rempel in September 2021, such as bank records, receipts, text messages, or other evidence. Mr. Marcano does not say whether they transferred the funds in cash, by internet transfer, or by another method. Miss Rempel says that Mr. Marcano “offered” her \$1,000 from an inheritance to help her out, but does not confirm that she actually received any money. I find Mr. Marcano has not met their burden of proving that they transferred \$1,000 to Miss Rempel in September 2021. So, I dismiss Mr. Marcano’s claim for that alleged \$1,000 debt as unproven.
14. Mr. Marcano also submitted an October 25, 2021 online banking receipt. I find the receipt confirmed that Mr. Marcano sent \$1,500 to Miss Rempel on that date, and that it was successfully deposited in her account. Miss Rempel says she “did not borrow the monies in November” because to her recollection Mr. Marcano only “offered another \$1,500 to help me out as we discussed,” but she did not have any text messages confirming that. I infer that by writing “November” Ms. Rempel refers to the alleged October 25, 2021 loan.
15. However, Miss Rempel does not directly comment on the October 25, 2021 transfer of \$1,500 from Mr. Marcano shown on the online banking receipt. Notably, I find she does not directly deny receiving that specific \$1,500 from Mr. Marcano. Given Ms. Rempel’s submissions, I find that in saying she did not borrow the \$1,500, Miss Rempel likely relies on the absence of text messages about that transfer. I find a lack of text messages about the transfer does not mean the transfer did not occur.

16. On the evidence before me, I find it is more likely than not that the \$1,500 “offered” by Mr. Marciano and shown on the October 25, 2021 online banking receipt, was transferred to Miss Rempel. I find that by saying she “did not borrow” that money, Miss Rempel likely considered it to be a gift.
17. As noted, Miss Rempel bears the burden of proving that the \$1,500 transfer on October 25, 2021 was a gift. I found above that Mr. Marciano delivered the \$1,500 to Miss Rempel, who accepted it. However, there is no written evidence showing that Mr. Marciano intended the \$1,500 transfer to be a gift. Further, I find that Miss Rempel does not directly say that Mr. Marciano gifted her the \$1,500, although her submissions imply that. I find that Miss Rempel has not met her burden of proving that the \$1,500 was more likely than not a gift. So, I find the \$1,500 was a loan.
18. When were the October 2021 and December 2021 loans due? I find the evidence before me does not show that Miss Rempel was expected to repay the October 2021 loan on a particular schedule. So, I find it was likely a demand loan, where Mr. Marciano could demand its repayment at any time.
19. However, in Miss Rempel’s text message requesting the December 2021 loan, she said she would “start paying in January for the total.” I find Miss Rempel likely meant that she would start making payments on both the October 2021 and requested December 2021 loans in January 2022. Given that Mr. Marciano undisputedly agreed to the December 2021 loan, I find the parties amended both of those loan agreements to require Miss Rempel to start making payments on both loans in January 2022.
20. Miss Rempel undisputedly did not start repaying the loans in January 2022 or at all. Mr. Marciano admits that they gave Miss Rempel repayment extensions until March 2022. However, I find the evidence does not show that Mr. Marciano provided any extensions past the March 10, 2022 date of the parties’ falling out. So, I find Miss Rempel did not repay the loans as agreed.
21. Miss Rempel says she did not repay Mr. Marciano because they allegedly forgave the loan debts in a March 19, 2022 text message. The message said, “In hindsight, \$4k

is a bargain” to be rid of Mr. Marciano’s relationship with Miss Rempel, and that “I’m at peace with this decision.” I find this message does not show that Mr. Marciano intended to forgive the alleged loans. Rather, I find it shows that in hindsight, which I infer means after Miss Rempel’s refusal to repay the alleged loans, Mr. Marciano was glad the parties’ relationship had ended. On the evidence before me, I find Mr. Marciano did not abandon any allegedly loaned money or forgive any loans.

22. So, I find Ms. Rempel failed to repay the \$1,500 October 2021 loan and the \$1,500 December 2021 loan as agreed. I allow Mr. Marciano’s claim for both of those loans, which totals \$3,000.

CRT Fees, Expenses, and Interest

23. I find the evidence does not show that the parties agreed Miss Rempel would pay interest on the loans. Mr. Marciano says Miss Rempel should pay 5% in “standard” interest because she was late paying back the loans, but again, I find Miss Rempel did not agree to that. In the absence of an agreement about interest, I find the *Court Order Interest Act* (COIA) applies. I find that under the COIA, Mr. Marciano is entitled to pre-judgment interest on the \$3,000 owing. I find this interest is reasonably calculated from the date of their March 10, 2022 falling out until the date of this decision. This equals \$13.68.
24. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, I see no reason not to follow that general rule. Mr. Marciano was partly successful in this dispute, so I find they are entitled to reimbursement of half their paid CRT fees, which equals \$87.50. Miss Rempel paid no CRT fees, and neither party claims CRT dispute-related expenses.
25. Mr. Marciano says Miss Rempel should be subject to wage garnishment, or non-renewal of her driver’s licence or vehicle insurance, although Mr. Marciano did not formally request those remedies in their Dispute Notice. In addition to being premature, I note that those collection-related requests are outside of the CRT’s small

claims jurisdiction set out in CRTA section 118. So, I make no order about those requested remedies.

ORDERS

26. I order that, within 30 days of the date of this decision, Miss Rempel pay Mr. Marcano a total of \$3,101.18, broken down as follows:
 - a. \$3,000 in debt,
 - b. \$13.68 in pre-judgment interest under the COIA, and
 - c. \$87.50 in CRT fees.
27. Mr. Marcano is also entitled to post-judgment interest under the COIA, as applicable.
28. I dismiss Mr. Marcano's remaining claims.
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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Chad McCarthy, Tribunal Member