



Civil Resolution Tribunal

Date Issued: October 6, 2022

File: SC-2022-001816

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yaworski v. Yaworski*, 2022 BCCRT 1099

B E T W E E N :

ROBERT YAWORSKI

APPLICANT

A N D :

KAREN YAWORSKI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a separation agreement. The applicant, Robert Yaworski, says the respondent, Karen Yaworski, breached the agreement by refusing to pay half of a student loan. He says Ms. Yaworski owes him \$6,000, though he only seek payment of \$5,000. So, I find he abandons \$1,000 to bring his claim within the Civil Resolution Tribunal's (CRT's) \$5,000 small claims monetary limit.

2. Ms. Yaworski denies liability. She says that Mr. Yaworski failed to advise her of the loan balance before she signed the agreement. She also says Mr. Yaworski never completed his studies and may have spent the funds on inappropriate purposes, like golfing.
3. The parties are self-represented.
4. For the reasons that follow, I find Mr. Yaworski has proven his claim.

JURISDICTION AND PROCEDURE

5. 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.
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.

The CRT's Jurisdiction Over Separation Agreements

9. As noted above, the parties signed a separation agreement dated November 13, 2021. As stated in the agreement, they were married at the time. Under the *Family Law Act* (FLA), the BC Supreme Court has exclusive jurisdiction to make orders about the division of family property and family debt, and to set aside or vary agreements about property and debt division.
10. As discussed below, I find the student loan at issue is a family debt under section 86 of the FLA. Although this dispute involves a separation agreement and family debt, I find Mr. Yaworski's claim is within the CRT's small claims jurisdiction over debt and damages, for the following reasons.
11. Courts have previously held that an action to enforce a written settlement agreement is not an action seeking an order about the division of property under the FLA. See, for example, *Heid v. Breland*, 2013 BCSC 2412 at paragraphs 8 to 9 and *Piche v. Piche*, 2017 BCSC 1043 at paragraph 14. I find that Mr. Yaworski's action is for debt or damages resulting from an alleged breach of the terms of the separation agreement. As such, I find that Mr. Yaworski's claim is to enforce the agreement and therefore not within the exclusive jurisdiction of the BC Supreme Court.
12. Further, the agreement lacks any terms that says any disputes about it must be decided in a particular venue. No party says that the CRT lacks jurisdiction over this dispute. Although Ms. Yaworski denies liability, she did not ask to vary the separation agreement. The BC Supreme Court may do so under FLA section 93(3), but only under certain circumstances and on application of a spouse. So, I find the issue of varying the agreement is not before me.

ISSUES

13. The issues in this dispute are as follows:
 - a. Did Ms. Yaworski breach the separation agreement by refusing to pay half of Mr. Yaworski's student loans?

b. Are any remedies appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicant Mr. Yaworski must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
15. I begin with the undisputed background. The parties signed a separation agreement on November 13, 2021. The agreement said the following. The parties were married at the time and agreed to divorce in a year. They intended the agreement to be a final settlement of both their property and support rights.
16. Section 7 said that upon the sale of the matrimonial home, "all debt" incurred throughout the marriage would be paid in full, from the sale proceeds. The remaining assets would be divided evenly between the parties. Paragraph 7(a) listed 6 specific "family debts" that would be paid from the sale proceeds. They were a mortgage, line of credit, 2 separate credit card balances, a car loan, and a "student loan". The student loan is at the centre of this dispute.
17. Notably, the agreement did not specify the balance for any of the 6 debt items. However, under section 12(b), the parties agreed that they had a general knowledge of each other's affairs, assets, and liabilities.
18. I find Mr. Yaworski's plumbing apprenticeship loan is the "student loan" referred to in the separation agreement. Loan documents show that Mr. Yaworski obtained \$12,000 for this "Canada Apprentice Loan". The funds were deposited into a bank account as follows: \$4,000 on each of December 29, 2015, November 2, 2016, and January 4, 2017. Given these dates, I find the loan was made during the parties' relationship. There is no indication that the loan accrued any interest.
19. Ms. Yaworski says she was unaware of the loan balance at the time she signed the separation agreement. I find it likely she was aware of the loan as I find it was

mentioned in the separation agreement as a “student loan”. However, I accept Ms. Yaworski did not know the exact amount. Ultimately, nothing turns on this, as discussed below.

20. The parties exchanged text messages and letters in January and February 2022. They show that the parties sold the matrimonial home on January 10, 2022. In a January 11, 2022 letter, Ms. Yaworski objected to paying half of the student loan. She requested paperwork about it. She also wrote in a January 20, 2022 letter to Mr. Yaworski that he should have disclosed the loan amount before they signed the separation agreement. She offered to pay \$2,000 only. I note that Ms. Yaworski submitted this letter as evidence, so I find settlement privilege does not apply. Mr. Yaworski rejected the offer, and requested \$6,000.

Did Ms. Yaworski breach the separation agreement by refusing to pay half of Mr. Yaworski’s student loans?

21. Mr. Yaworski says he is owed \$6,000 under the terms of the separation agreement. As noted, in this CRT dispute he limits his claim to \$5,000. Ms. Yaworski objects and says Mr. Yaworski failed to complete his plumbing apprenticeship. She alleges that he did not use the funds for a family purpose, so it is not a payable family debt under the agreement. She also says Mr. Yaworski failed to advise her about the loan balance.
22. For the reasons that follow, I find that Ms. Yaworski breached the agreement by refusing to pay \$6,000 for her half of the apprenticeship loan.
23. Under section 7, Ms. Yaworski agreed to pay half the loan. There is nothing in the agreement that said Mr. Yaworski had to complete the apprenticeship as a requirement for payment. Ms. Yaworski says Mr. Yaworski failed to advise her of the balance. However, I find it was her obligation to ask about the balance before signing the agreement if she needed to know the amount. There was no contract term that obligated Mr. Yaworski to discuss this topic.

24. Ms. Yaworski also acknowledged having a general knowledge of the parties' liabilities under section 12(b), which I find would include the loan in dispute. So, I find that, viewed objectively, one could reasonably assume that Ms. Yaworski knew about the loan balance. Consistent with my conclusion and section 12(b) of the contract, none of the debt items listed in section 7 stated a balance.
25. Ms. Yaworski says Mr. Yaworski spent the money on golf or other inappropriate purposes. Mr. Yaworski denies this and says he spent the money on family purposes.
26. Section 7 of the contract said that home sale proceeds would be used to pay "family debts", including the student loans. The contract does not define the term family debt, but under FLA section 86, family debt includes all financial obligations incurred by a spouse during the period beginning when the relationship between the spouses begins and ending when the spouses separate. I find the contract adopted this meaning. I also find that even if Mr. Yaworski spent the loan funds on golf during the parties' relationship, it would still be a family debt within the meaning of section 7 of the contract. In any event, I find Ms. Yaworski's allegations unsupported by any evidence and unproven.
27. For all those reasons, I find Mr. Yaworski is entitled to payment of the claimed \$5,000. I order Ms. Yaworski to pay this amount to him.
28. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Yaworski says no pre-judgment interest applies because Mr. Yaworski was not charged any interest on the student loan. However, COIA section 2 says that I must add interest to a monetary order from the date on which the cause of action arose to the date of the order. So, I find Mr. Yaworski is entitled to pre-judgment interest on the debt of \$5,000 from January 10, 2022, the date of the breach, to the date of this decision. This equals \$55.92. I note COIA interest and CRT fees are exclusive of the CRT's \$5,000 small claims monetary limit.

29. 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 Mr. Yaworski is entitled to reimbursement of \$175 in CRT fees.
30. Mr. Yaworski also claims \$12.27 as reimbursement for the cost of serving Ms. Yaworski by registered mail. This claim is supported by a receipt, so I order Ms. Yaworski to pay it as a dispute-related expense.

ORDERS

31. Within 30 days of the date of this order, I order Ms. Yaworski to pay Mr. Yaworski a total of \$5,243.19, broken down as follows:
- a. \$5,000 in debt,
 - b. \$55.92 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$187.27, for \$175 in CRT fees and \$12.27 for dispute-related expenses.
32. Mr. Yaworski is entitled to post-judgment interest, as applicable.
33. 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.

David Jiang, Tribunal Member