



Civil Resolution Tribunal

Date Issued: September 25, 2023

File: SC-2022-009202

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kaur v. Shergill*, 2023 BCCRT 815

B E T W E E N :

AMANDEEP KAUR

APPLICANT

A N D :

JAGPREET KAUR SHERGILL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about an alleged personal loan. In the spring of 2021, the applicant, Amandeep Kaur, paid for airfare and hotel accommodations for the respondent, Jagpreet Kaur Shergill. Ms. Kaur says these payments were a personal loan to Miss Shergill at her request, and Miss Shergill has refused to repay her. Ms. Kaur claims reimbursement of \$2,974.28 for the airfare and hotel accommodations.

2. Miss Shergill says the airfare and hotel accommodations were a gift from Ms. Kaur, and she does not owe her anything.
3. Both parties are 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). 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.
5. 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.
6. 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.
7. 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.
8. In her submissions Ms. Kaur suggests that she may bring a claim against Ms. Shergill for defamation. However, Ms. Kaur did not include a defamation claim in the Dispute Notice or amend the Dispute Notice to add such a claim. In any event, defamation claims are expressly outside the CRT's jurisdiction under section 119 of the CRTA, so I decline to address any such claim in this decision.

9. Ms. Kaur submitted some late evidence. Miss Shergill was given an opportunity to respond to it but chose not to do so. Given the CRT's mandate to be flexible, and since I find Miss Shergill is not prejudiced by admitting the late evidence, I accept the late evidence and have considered it in my decision.

ISSUE

10. The issue in this dispute is whether Ms. Kaur loaned Miss Shergill \$2,974.28 for airfare and hotel accommodations, and if so, whether Miss Shergill is required to repay Ms. Kaur.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Ms. Kaur must prove her claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
12. In 2021, at the time Ms. Kaur made the payments at issue in this dispute, Miss Shergill was married to Ms. Kaur's brother. Miss Shergill has since filed for divorce in India, which was finalized in November 2022. None of this is disputed.
13. At the outset, I note that Miss Shergill does not dispute the amount of Ms. Kaur's claim, she disputes only that the amount claimed was a loan. Ms. Kaur submitted credit card statements and emails which I find show she paid for Miss Shergill's airfare from Delhi to Mexico City on July 4, 2021, 1 night's hotel accommodation in Mexico City on July 4, 2021, and 3 nights' hotel accommodation in Toronto from July 6 to 9, 2021. Ms. Kaur also submitted an excerpt from a credit card statement showing she paid \$757.05 to "SOHI Vacations" on June 13, 2021. There is no corresponding email reservation for this amount, but Ms. Kaur says it is for airfare and Miss Shergill does not specifically dispute this amount, or that Ms. Kaur paid for her to fly from India to Canada. I find the \$757.05 payment was likely for Miss Shergill's airfare from Mexico City to Toronto. On balance, I am satisfied that Ms. Kaur paid a total of \$2,974.28 for

Ms. Shergill's airfare and hotel accommodations in July 2021. Next, I must address whether these payments were a loan or a gift.

14. Ms. Kaur says that in the spring of 2021, Miss Shergill asked Ms. Kaur to pay for her flight from India to Canada and for hotel accommodations when she arrived in Canada, because she did not have the money to pay for these expenses. Ms. Kaur says when Miss Shergill landed in Mexico City for a layover, she phoned and asked Ms. Kaur to pay for her hotel there. Ms. Kaur says Miss Shergill promised to repay her once she arrived in Canada but has not done so.
15. Miss Shergill denies ever requesting or agreeing to a loan. She says that earlier in the spring of 2021 she had already booked and paid for her flight from India to Canada on July 6, 2021, and her hotel expenses. Miss Shergill says Ms. Kaur insisted on paying for her airfare and hotel expenses, and that Ms. Kaur booked and paid for them without consulting her. Miss Shergill says she then had to cancel her original flight and lost money on the transaction. She does not specifically claim any amount for lost airfare in this dispute.
16. Although Ms. Kaur bears the burden of proving her claims, the law presumes bargains rather than gifts. So, since Miss Shergill alleges that Ms. Kaur paid the expenses as a gift, she is required to prove that Ms. Kaur intended the payments as a gift (see *Pecore v. Pecore*, 2007 SCC 17 at paragraph 24, and *Proznik and Smith v. Proznik*, 2011 BCPC 0300 at paragraphs 22 to 28). For the following reasons, I find Miss Shergill has failed to prove the payments were a gift.
17. Neither of the parties provided any emails, text messages, or other documentary evidence of their communications about the airfare and hotel expenses. Miss Shergill submitted a May 28, 2021 invoice from a travel agency for an Air Canada flight in her name from Delhi to Vancouver on July 6, 2021 for \$1,120. The invoice shows a date change fee on June 3, 2021, but it is not clear from the invoice whether the flight was cancelled or changed. I infer that this is the flight Miss Shergill says she booked and subsequently cancelled after Ms. Kaur insisted on paying for her airfare. She also submitted her aunt's credit card statement showing several payments for flights in

April 2021, though none of the amounts match the amount or date of the travel agency invoice.

18. Ms. Kaur says Miss Shergill booked her initial flight in January and cancelled it in March, but I find this invoice shows she booked it on May 28, 2021, and either cancelled or changed it on June 3, 2021. Ms. Kaur also says there were no direct flights from Delhi to Vancouver at that time because of COVID-19 travel restrictions, but she submitted no evidence to support that assertion. In any event, I find the fact that Miss Shergill had a previously booked flight that she later cancelled does not prove that Ms. Kaur paid for Miss Shergill's airfare or hotel accommodations intending it as a gift. Without more, I find Miss Shergill has failed to rebut the presumption that Ms. Kaur's payment of her airfare and hotel expenses was a bargain. I find this means the payments were a loan, not a gift.
19. Miss Shergill also says that her and Ms. Kaur's families signed legal agreements in India finalizing her divorce. She says there are no remaining debts between the 2 families, so she does not owe Ms. Kaur anything. She submitted several Punjabi documents with notarized English translations. However, Ms. Kaur's name does not appear anywhere on these documents. Ms. Kaur also says these agreements are for settling Miss Shergill's marriage expenses, and she denies that the money she spent on Miss Shergill was part of any marriage function or celebration, which Miss Shergill does not specifically dispute. I am satisfied that Ms. Kaur is not a named party in any of the agreements in evidence, and so they do not affect my finding about the loan.
20. Ms. Kaur does not say that Miss Shergill was required to repay the loan on a specific date, so I find it was a demand loan. This means the loan was due at Ms. Kaur's demand. Ms. Kaur says she previously demanded repayment from Miss Shergill, but she does not specify the dates of any demands or provide evidence of any demands. So, I find the first date for which I have evidence of Ms. Kaur's demand for repayment is the date Miss Shergill was considered to have received the Dispute Notice under CRT rule 2.10(2), which was February 7, 2023.

21. The *Court Order Interest Act* applies to the CRT. Ms. Kaur is entitled to pre-judgment interest on the \$2,974.28 owing calculated from February 7, 2023, which is the date Miss Shergill is considered to have been served with the Dispute Notice, to the date of this decision. This equals \$87.31.
22. 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. Since Ms. Kaur was successful, I find she is entitled to reimbursement of \$125 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

23. Within 30 days of the date of this order, I order Miss Shergill to pay Ms. Kaur a total of \$3,186.59, broken down as follows:
- a. \$2,974.28 in debt,
 - b. \$87.31 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
24. Ms. Kaur is entitled to post-judgment interest, as applicable.
25. 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.

Sarah Orr, Tribunal Member