Civil Resolution Tribunal

Date Issued: December 21, 2023

File: SC-2023-000883

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bortnick-Marks v. Okot*, 2023 BCCRT 1130

B E T W E E N :

LEA-RAYONE BORTNICK-MARKS

APPLICANT

A N D :

ISAAC FRANCIS OKOT

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Megan Stewart

INTRODUCTION

1. This is a dispute between former romantic partners. Lea-Rayone Bortnick-Marks claims $3,484.10 from Isaac Francis Okot for unpaid personal loans she says she made to him while the parties were in a relationship. In submissions, she reduces that amount to $3,304.83.

2. Mr. Okot says some of the money Ms. Bortnick-Marks claims was a gift, and he has repaid some of it. Mr. Okot also says Ms. Bortnick-Marks took $640 from him as "collateral" and failed to pay him $397.71 for her portion of the cost of his mobile phone while he was abroad, so she owes him $1,037.71. As Mr. Okot did not file a counterclaim, I infer he requests a set-off against any award I make to Ms. Bortnick-Marks.

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). 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. In some respects, the parties call into question the credibility, or truthfulness, of the other. 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.

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.

ISSUES

8. The issues in this dispute are:
    a. Must Mr. Okot repay Ms. Bortnick-Marks the claimed $3,304.83, or any other amount, for personal loans?
    b. If so, is Mr. Okot entitled to a set-off?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Ms. Bortnick-Marks, as the applicant, must prove her claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to the evidence and argument I find necessary to explain my decision.

10. The parties began dating in October 2021, and Ms. Bortnick-Marks moved in with Mr. Okot and his brother in December 2021. The parties separated, and Ms. Bortnick-Marks moved out in August 2022. None of this is disputed.

11. The parties agree that during their relationship, Ms. Bortnick-Marks loaned Mr. Okot some money. What is in dispute is the amount of the loans, and whether they have been repaid.

12. Ms. Bortnick-Marks says she loaned Mr. Okot the following amounts:
    a. $2,400 for Mr. Okot's various expenses while he was abroad in 2022,
    b. $288.75 for a COVID PCR test,
    c. $68.08 for a travel visa,
    d. $80 for a flight seat upgrade and airport parking,
    e. $168 for 9 cash advance fees and 3 Western Union cash transfer fees, and
    f. $300 to help with Mr. Okot's sick family member.

Money for expenses while Mr. Okot was abroad.

13. It is undisputed that while Mr. Okot was abroad between April and July 2022, he had difficulty accessing his Canadian bank account to withdraw money. So, the parties arranged for Mr. Okot to e-transfer Ms. Bortnick-Marks money, and for Ms. Bortnick-Marks to then send Mr. Okot funds via Western Union. On April 13, Mr. Okot e-transferred Ms. Bortnick-Marks $2,000. He asked her to send him $1,500 through Western Union and to hold onto $500, which she did. On April 19, Ms. Bortnick-Marks sent Mr. Okot another $1,900, made up of the remaining $500 plus an additional $1,400. On May 13, Mr. Okot e-transferred Ms. Bortnick-Marks $1,000, and on May 14 Ms. Bortnick-Marks sent Mr. Okot another $2,000. Deducting the amounts Mr. Okot e-transferred Ms. Bortnick-Marks from the amounts she sent him via Western Union leaves $2,400.

14. The parties agree the $1,400 Ms. Bortnick-Marks sent Mr. Okot on April 19 was a loan. Ms. Bortnick-Marks says the $2,000 she sent Mr. Okot on May 14 was also a loan. However, Mr. Okot says it was a gift.

15. The law presumes bargains rather than gifts. So, the person who received the alleged gift must establish a) it was intended to be a gift, b) they accepted the gift, and c) there was a sufficient act of delivery (see *Pecore v. Pecore*, 2007 SCC 17 and *Lundy v. Lundy*, 2010 BCSC 1004). The evidence should show the giver's intention to make a gift was inconsistent with any other intention or purpose (see *Lundy* at paragraph 20). Once someone has made a gift to another person, that gift cannot be revoked (see *Bergen v. Bergen*, 2013 BCCA 492).

16. Text messages between the parties on May 14 indicate Ms. Bortnick-Marks sent Mr. Okot "some money". When Mr. Okot asked if it was a loan, Ms. Bortnick-Marks replied "No babe it's for you. I love spoiling you. No payment is necessary. I got you." (reproduced as written). Based on the timing of Ms. Bortnick-Marks' Western Union transfer of $2,000, I find "some money" in her May 14 text likely refers to that amount.

17. Ms. Bortnick-Marks says Mr. Okot fabricated this evidence and she did not send him these messages. She points to the appearance of certain letters in the messages and the language used in support of her assertion.

18. I find that whether communications over a messaging app have been fabricated is a matter that requires expert evidence to prove, as it is beyond ordinary knowledge. Ms. Bortnick-Marks did not provide any such expert evidence. In addition, on review of all the messages in evidence between the parties, I find based on the tone, language, sequence, and context, the disputed messages were likely from Ms. Bortnick-Marks.

19. Overall, I find Mr. Okot has proven the $2,000 Ms. Bortnick-Marks sent him by Western Union on May 14 was a gift. So, I find Mr. Okot owes Ms. Bortnick-Marks $400 for funds she sent him in April and May 2022.

COVID PCR test, travel visa, flight seat upgrade, and airport parking

20. Next, Ms. Bortnick-Marks claims $288.75 for a COVID PCR test Mr. Okot was required to take before travelling abroad. Ms. Bortnick-Marks paid for the test, but Mr. Okot says he paid her back. Mr. Okot relies on a bank statement showing a withdrawal of $1,000 on the test date as well as notes on his phone that record, he paid Ms. Bortnick-Marks $300 for the test. However, I find this is insufficient evidence of repayment. In part, this is because the amount Mr. Okot says he repaid Ms. Bortnick-Marks is more than the test's cost. So, I find Mr. Okot must repay Ms. Bortnick-Marks $288.75 for the COVID PCR test.

21. Ms. Bortnick-Marks also claims $68.08 for a travel visa for Mr. Okot. She relies on a May 19 email in which Mr. Okot asked her to pay for the visa because his payment had not gone through. She also relies on her credit card statement showing the charge. In submissions, Mr. Okot points to text messages that suggest Ms. Bortnick-Marks disputed the credit card charge, but there is no evidence the charge was reversed. In any case, Mr. Okot does not deny asking Ms. Bortnick-Marks to pay for the travel visa or say he repaid her for it. So, I find the $68.08 was a loan for the travel visa that Mr. Okot must repay to Ms. Bortnick-Marks.

22. Next, Ms. Bortnick-Marks claims $50 for an upgraded seat with extra legroom for Mr. Okot's return flight on June 14, and $30 for airport parking. She relies on her credit

card statement that shows a $50 charge for Turkish Airlines UK on June 13, and a $30 charge for airport parking on June 14. For his part, Mr. Okot's says he did not get any extra legroom on his return flight as he was in the middle section of the plane. I note Mr. Okot's boarding pass shows he was in seat 49A, which I find is likely a window seat, and not in the middle section of the plane. Based on the above and the fact that at least part of the reason Mr. Okot travelled abroad was to have knee surgery, I find it likely Ms. Bortnick-Marks loaned Mr. Okot $50 for a seat upgrade. However, Ms. Bortnick-Marks has not explained how the $30 for airport parking was a loan, or that Mr. Okot knew about or agreed to that expense, so I find it unproven. I find Mr. Okot must repay Ms. Bortnick-Marks $50 for the seat upgrade, but I dismiss the part of Ms. Bortnick-Marks' claim for airport parking.

Cash advance and cash transfer fees

23. Next, Ms. Bortnick-Marks claims $168, for 9 cash advance fees of $5 each, and 3 Western Union cash transfer fees of $35, $43, and $45. Mr. Okot does not dispute the Western Union cash transfer fees. However, as I have found the May 14 $2,000 cash transfer was a gift, I find the associated $45 cash transfer fee was also a gift. So, I find Mr. Okot must only repay Ms. Bortnick-Marks $78 for the other 2 Western Union cash transfer fees. I turn to the cash advance fees, described generally as "online banking transfer" withdrawals on Ms. Bortnick-Marks' bank statements. There is no evidence any of these fees were incurred in connection with loans to Mr. Okot. So, I find this part of Ms. Bortnick-Marks' claim unproven, and I dismiss it.

Help for sick family member.

24. Finally, Ms. Bortnick-Marks claims $300 for a loan she says she made to Mr. Okot to help a sick family member. Mr. Okot agrees with the loan amount. However, he says he repaid Ms. Bortnick-Marks $200, and relies on his bank statement showing a $200 withdrawal on July 28, as well as a July 30 note on his phone to support his assertion. Again, I find this is insufficient to prove Mr. Okot repaid part of the loan. I find Mr. Okot owes Ms. Bortnick-Marks $300 for the loan to help his family member.

25. In total, I find Mr. Okot owes Ms. Bortnick-Marks $1,184.83 for personal loans she made to him in 2022.

Set-off.

26. Mr. Okot says Ms. Bortnick-Marks owes him money. He says the parties had an agreement that while Mr. Okot was abroad, the parties would share the cost of his mobile phone. Mr. Okot says further to that agreement, Ms. Bortnick-Marks owes him $397.71. Mr. Okot also says Ms. Bortnick-Marks took $640 from him as "collateral" around August 28. While Ms. Bortnick-Marks does not say this, I infer from the context the "collateral" was for amounts she said Mr. Okot owed her.

27. As noted above, in the absence of a counterclaim for the amount Mr. Okot says Ms. Bortnick-Marks owes him, I infer he requests a set-off. A set-off is a right between parties that owe each other money where their respective debts are mutually deducted. A party who owes someone money, like Mr. Okot, can claim a set-off if it is so closely connected with the other party's claim that it would be unjust not to set them off against each other (see *Jamieson v. Loureiro*, 2010 BCCA 52, at paragraph 34). I find Mr. Okot's phone cost while he was abroad and the $640 as collateral are closely related to the personal loans owing, and a set-off is appropriate if proven.

28. First, the alleged phone cost-sharing agreement. Mr. Okot submitted receipts for his call and data bundles, and WhatsApp messages between the parties showing they discussed Mr. Okot's data consumption while he was out of the country. However, I find this falls well short of establishing an agreement to share the cost of his mobile phone while he was abroad. Even if there were an agreement, there is nothing to show how the cost would be shared. So, I find Mr. Okot has not proven he is entitled to the $397.71 he says Ms. Bortnick-Marks owes him for his mobile phone.

29. Second, the $640 as "collateral". Text messages show on August 28, Mr. Okot asked Ms. Bortnick-Marks what the point was of taking the "piggy bank money", to which she replied "collateral". Ms. Bortnick-Marks does not address this exchange or the $640 at all in submissions. I find that had she not taken the money or if the money

had been hers, she would have said so. Since she said nothing, I infer Ms. Bortnick-Marks took $640 belonging to Mr. Okot without his permission, and so engaged in the tort of conversion. Conversion is the intentional taking of another person's personal property without due authority, and handling, disposing, or destroying that property in a way that interferes with, or denies, the owner's right or title to the property.

30. In these circumstances, I find Mr. Okot is entitled to a set-off of $640. This leaves $544.83 owing to Ms. Bortnick-Marks ($1,184.83 - $640). I order Mr. Okot to pay Ms. Bortnick-Marks $544.83.

CRT FEES, INTEREST, AND DISPUTE-RELATED EXPENSES

31. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Bortnick-Marks is entitled to pre-judgment interest on the $544.83 debt award from September 30, 2022, the date by which she asked Mr. Okot to repay the personal loans, to the date of this decision. This equals $27.24.

32. 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. As Ms. Bortnick-Marks was partially successful, I find she is entitled to reimbursement of half her CRT fees, which is $87.50. Ms. Bortnick-Marks did not claim any dispute-related expenses, so I order none.

ORDERS

33. Within 30 days of the date of this order, I order Mr. Okot to pay Ms. Bortnick-Marks a total of $659.57, broken down as follows:

    a. $544.83 in debt,

    b. $27.24 in pre-judgment interest under the COIA, and

    c. $87.50 in CRT fees.

34. Ms. Bortnick-Marks is entitled to post-judgment interest, as applicable.

35. 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.

Megan Stewart, Tribunal Member