



Civil Resolution Tribunal

Date Issued: January 11, 2024

File: SC-2023-000326

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Antonio v. Diaz*, 2024 BCCRT 26

B E T W E E N :

DONNA ANTONIO

APPLICANT

A N D :

LEOMAR RAZ DIAZ

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. Donna Antonio and Leomar Raz Diaz used to be in a romantic relationship. Ms. Antonio says during the relationship, she loaned Mr. Diaz \$2,000 to resolve a family issue. She says she also loaned Mr. Diaz \$755 for various miscellaneous expenses after the relationship ended. Ms. Antonio says Mr. Diaz refused to repay the loans, and claims \$2,755 in debt.

2. Mr. Diaz denies Ms. Antonio's allegations. He says Ms. Antonio loaned his brother the \$2,000, so he (Mr. Diaz) is not responsible to repay it. He also says the \$755 was money Ms. Antonio offered to spend on things like groceries and eating out. So, Mr. Diaz says he owes Ms. Antonio nothing.
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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
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. I was initially unable to open 1 piece of Ms. Antonio's evidence. Through CRT staff, I asked her to resubmit it in an accessible format, which she did. Mr. Diaz was offered the opportunity to comment on the resubmitted evidence, but he did not do so. In these circumstances, I find there is no prejudice to Mr. Diaz in considering the resubmitted evidence, and I have considered it in coming to my decision.

9. Ms. Antonio says in Mr. Diaz's submissions, he disclosed information about settling this dispute discussed by the parties during the CRT's facilitation process. CRT Rule 1.11 requires that settlement discussions be kept confidential unless the parties agree to disclose them. Ms. Antonio says she did not agree to such disclosure. So, I have not considered information about settling this dispute in coming to my decision.

ISSUE

10. The issue in this dispute is whether Mr. Diaz must pay Ms. Antonio the claimed \$2,755.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Ms. Antonio, as the applicant, must prove her claims on a balance of probabilities (meaning more likely than not). However, when a person claims something is a gift, the burden shifts to them to prove it was a gift, as discussed further below. I have read all the parties' submissions and evidence but refer only to that which I find necessary to explain my decision.
12. It is undisputed that Ms. Antonio and Mr. Diaz were in a 6.5-year relationship, but did not live together. The relationship ended in February 2022.
13. Ms. Antonio says in October 2021, she loaned Mr. Diaz \$2,000 to resolve a family issue. She also says after the relationship ended, she incurred expenses in favour of Mr. Diaz totaling \$755 that the parties agreed he would repay.
14. For his part, Mr. Diaz says Ms. Antonio loaned his brother the \$2,000. So, he says he is not responsible to repay it. As for the miscellaneous expenses, Mr. Diaz says Ms. Antonio offered to pay for various things. He says he offered to pay her back "as a kind gesture", and the parties joked about putting the expenses on Mr. Diaz's "tab".
15. First, the \$2,000. Text messages show the parties discussed a loan in this amount. Although it is clear the money was to assist Mr. Diaz's brother, I find the parties agreed Ms. Antonio would lend Mr. Diaz the money and he would pay her back.

Numerous messages show Mr. Diaz agreed to reimburse the money, and promised to prioritize repaying Ms. Antonio. In addition, Ms. Antonio submitted evidence of her bank records showing a \$2,000 e-transfer to Mr. Diaz on October 29. There is no evidence Ms. Antonio loaned any money to Mr. Diaz's brother. So, I find Ms. Antonio loaned Mr. Diaz \$2,000, and Mr. Diaz must repay Ms. Antonio that amount.

16. Next, the \$755. After the parties separated, they continued to text and spend time with each other. Ms. Antonio incurred expenses on Mr. Diaz's behalf, including rent, rideshares and travel, meals out, entertainment, clothing, and personal items. I infer Mr. Diaz's position is that these were gifts, not loans.
17. The law presumes bargains rather than gifts. So, the person receiving 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).
18. Text messages between the parties show that from time to time, Mr. Diaz asked Ms. Antonio how much he owed her, and she kept a running tally of the expenses. There is no evidence Mr. Diaz disputed any of the specific amounts Ms. Antonio said he owed her when she provided him updated totals. Contrary to Mr. Diaz's assertion that his "tab" was a joke, I find the messages do not support that. While the tone of the parties' text conversations about money was generally light, I find there is no basis to conclude the money Ms. Antonio spent on Mr. Diaz was gifted rather than loaned. So, I find Mr. Diaz has not established any of the claimed expenses were a gift.
19. Though Ms. Antonio did not provide receipts for all the expenses she says she incurred on Mr. Diaz's behalf, as noted above, Mr. Diaz does not dispute that she spent the claimed \$755. So, I find Ms. Antonio loaned Mr. Diaz \$755 for the expenses described above, and he must also repay her that amount.

20. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Antonio is entitled to pre-judgment interest on the \$2,755 debt award from October 31, 2022, the date by which Ms. Antonio asked Mr. Diaz to repay her, to the date of this decision. This equals \$141.81.
21. 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. Antonio was successful, I find she is entitled to reimbursement of \$125 in CRT fees. Ms. Antonio did not claim dispute-related expenses, so I order none.

ORDERS

22. Within 30 days of the date of this order, I order Mr. Diaz to pay Ms. Antonio a total of \$3,021.81, broken down as follows:
- a. \$2,755 in debt,
 - b. \$141.81 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
23. Ms. Antonio is entitled to post-judgment interest, as applicable.
24. 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