



# Civil Resolution Tribunal

Date Issued: January 30, 2024

File: SC-2023-001136

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kishore v. Mahalingham*, 2024 BCCRT 91

BETWEEN:

KAMAL KISHORE

**APPLICANT**

AND:

SULOJAN MAHALINGHAM and MEENAMBIGA SULOJAN

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Christopher C. Rivers

## INTRODUCTION

1. This dispute is about a personal loan.

2. Kamal Kishore says he loaned \$2,800 to Sulojan Mahalingham for sponsorship expenses. Mr. Kishore says Mr. Mahalingham paid him back \$400 but owes the remainder. Mr. Kishore claims \$2,400 for the loan's unpaid balance.
3. Mr. Mahalingham agrees he received \$2,800 from Mr. Kishore but says the money was a gift given to him while they were at a casino. Mr. Mahalingham also alleges Mr. Kishore cashed a government-issued cheque for \$800 intended to benefit Mr. Mahalingham. That said, in his Dispute Response, Mr. Mahalingham agreed to pay Mr. Kishore either \$1,600 or \$2,400, subject to his argument about the cheque. Mr. Mahalingham also requested that any payments he make be in monthly installments.
4. Meenambiga Sulojan did not file a Dispute Response is therefore technically in default.
5. Mr. Kishore is represented by a family member. Mr. Mahalingham is self-represented.
6. For the reasons that follow, I allow Mr. Kishore's claim against Mr. Mahalingham and dismiss it against Meenambiga Sulojan.

## **JURISDICTION AND PROCEDURE**

7. 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). CRTA section 2 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.
8. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

9. CRTA section 42 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.
10. Where permitted by CRTA section 118, 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**

11. The issue in this dispute is whether either of the respondents owe a debt to Mr. Kishore, and if so, for how much.

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, Mr. Kishore, as applicant, 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. While he provided a Dispute Response setting out his basic position, Mr. Mahalingham did not provide any other written submissions or evidence in this proceeding. As noted above, Meenambiga Sulojan did not respond and is in default. I address their default status further below.

### ***Background Facts***

13. Mr. Kishore says he loaned \$2,800 to Mr. Mahalingham in three installments: \$1,300, \$1,000, and \$500. Mr. Kishore says he loaned the final installment to Mr.

Mahalingham on July 3, 2022, but does not explain any circumstances around the other installments. Mr. Kishore says when he loaned the money, Mr. Mahalingham promised to make monthly payments.

14. Mr. Kishore says on July 3, when he made the final payment, he wrote himself a note to track the money he was owed. He provided a simple note showing the three undated installments under the heading "O/D Money." While there appears to be a signature or a name on the note, I cannot clearly tell whose name or signature it may be, and neither party explained why it is there.
15. Mr. Mahalingham disagrees with Mr. Kishore's description of the facts. Mr. Mahalingham says Mr. Kishore gave him the money in installments of \$2,000 and \$800 on an unspecified night at a casino for the purpose of gambling. Mr. Mahalingham says he took the money on the understanding that, win or lose, he would not have to pay back Mr. Kishore.
16. In either event, the parties agree that on November 18, 2022, Mr. Kishore prepared a note for Mr. Mahalingham to sign setting out some basic terms. It required Mr. Mahalingham to make monthly payments of \$500 until the \$2,800 loan was repaid. The note includes the three initial loan amounts, the date of July 3, 2022, the basic terms, and an updated amount of \$2,400 beside what appears to be a signature.
17. Mr. Kishore says Mr. Mahalingham paid back \$400 on or by November 18, 2022, which is consistent with the handwritten note. While monthly is not defined in the simple note, I find it requires payments to be no later than the end of each calendar month. Given the balance owing, at \$500 per month, the loan would be repaid in full after five monthly payments – meaning the end of April 2023, at the latest.
18. Mr. Kishore says Mr. Mahalingham read and signed the note. Mr. Mahalingham says the note was written while he was intoxicated, and he did not know what was written on it. However, he does not deny that he signed the note, so I find the signature is his.

### ***Acknowledgement of the Debt***

19. As noted above, Mr. Mahalingham agrees in his Dispute Response to pay Mr. Kishore either \$1,600 or \$2,400. While he raises an argument that Mr. Kishore gave him the initial \$2,800 as a gift, Mr. Mahalingham does not provide any evidence other than his bare statement to support his argument.
20. I note I do not need to depend upon the handwritten notes and whether or not Mr. Mahalingham signed them. Since Mr. Mahalingham acknowledges the debt in his Dispute Response, and has undisputedly paid back \$400, I find he has agreed Mr. Kishore loaned him \$2,800 and is responsible for the remaining balance.
21. Mr. Mahalingham argues he is entitled to a credit of \$800 against the balance. He says Mr. Kishore cashed a government cheque that was intended to pay for Mr. Mahalingham's rent. Mr. Mahalingham says he also paid rent to Mr. Kishore that month.
22. However, Mr. Mahalingham did not provide evidence about the parties' apparent rental agreement or payments he made under it. Mr. Mahalingham also did not provide any evidence to show Mr. Kishore cashed the cheque, as he alleges. So, I find Mr. Mahalingham has not proven he is entitled to any credit against the outstanding debt and must pay Mr. Kishore \$2,400.
23. While Mr. Mahalingham seeks an order that his payments be made in monthly installments, he provided no evidence to support his request, and Mr. Kishore did not agree. While the parties allegedly agreed to a payment schedule in November 2022, I note the period of time allowed by that schedule has long-since lapsed. So, I find Mr. Mahalingham has not proven why he should make monthly payments instead of a lump sum.

### ***Meenambiga Sulojan's Liability***

24. As noted above, Meenambiga Sulojan did not file a Dispute Response. I find that Meenambiga Sulojan was likely served with the Dispute Response mailed to them by

the CRT under CRT rule 2.2 and failed to file a Dispute Response as required under CRT rule 3.1 This means that Meenambiga Sulojan is in default under the CRT's rules.

25. In general, where a respondent is in default, the CRT will assume liability against them. However, this is not automatic, and in the circumstances here, I decline to find Meenambiga Sulojan liable despite their default status.
26. Neither party explains who Meenambiga Sulojan is or how they are connected to the loan. Their name does not appear in any evidence or in either party's submissions. Mr. Kishore says he gave the money to Mr. Mahalingham, and it was only Mr. Mahalingham who Mr. Kishore says signed the note acknowledging the debt and repayment schedule.
27. The evidence does not support a finding that Mr. Kishore loaned any money directly to Meenambiga Sulojan. So, I find Mr. Kishore's loan was exclusively to Mr. Mahalingham. On that basis, I find Meenambiga Sulojan is not responsible for the debt, and I dismiss Mr. Kishore's claim against them.
28. The *Court Order Interest Act* applies to the CRT. Mr. Kishore is entitled to pre-judgment interest. While Mr. Kishore specifically claims pre-judgment interest, at one point in his argument, while explaining his requested resolution to his primary claim, he says is seeking "the remainder of what is owed without interest." I find this argument is about what is contained within the parties' loan agreement and is not about any entitlement to pre-judgment interest. So, I award Mr. Kishore pre-judgment interest on the loan's outstanding balance from April 30, 2023, the date by which the loan should have been fully paid, to the date of this decision. This equals \$88.29.
29. Under CRTA section 49 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. I see no reason in this case not to follow that general rule. I find Mr. Kishore is entitled to reimbursement of \$125 in CRT fees. While Mr. Kishore made a claim for reimbursement for registered mail as a disputed-related expense,

he did not specify the amount and did not provide any evidence in support. So, I dismiss his claim for disputed-related expenses.

## **ORDERS**

30. Within 14 days of the date of this order, I order Mr. Mahalingham to pay Mr. Kishore a total of \$2,613.29, broken down as follows:

- a. \$2,400 in debt,
- b. \$88.29 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

31. Mr. Kishore is entitled to post-judgment interest, as applicable.

32. I dismiss Mr. Kishore's remaining claims.

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.

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Christopher C. Rivers, Tribunal Member