



Civil Resolution Tribunal

Date Issued: June 18, 2024

File: SC-2023-006030

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Barton v. Endicott*, 2024 BCCRT 566

BETWEEN:

DEBORAH BARTON and Victoria Barton

APPLICANTS

AND:

BRUCE ENDICOTT and SHAELY WILBUR

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Maria Montgomery

INTRODUCTION

1. This dispute is about an alleged personal loan.
2. The applicants, Victoria Barton and Deborah Barton, say they sent \$2,000 to the respondents, Bruce Endicott and Shaely Wilbur, to bail a mutual family member out

of jail. The applicants claim the return of the \$2,000 payment. The respondents say the payment was a gift.

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, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
5. Some of the evidence in this dispute amounts to a "they said, they said" scenario. The credibility of interested parties, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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 note that neither party requested an oral hearing and 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 *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is at issue.
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 court.

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. Does Deborah Barton have standing to bring this dispute?
 - b. Must the respondents repay the \$2,000?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. 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.

Does Deborah Barton have standing to bring this dispute?

10. "Standing" refers to a person's legal right to bring a claim. To have standing, a person must have a legally recognized interest in the claims they are making (see *Extra Gift Exchange Inc v. Ernest & Twins Ventures (PP) Ltd.*, 2007 BCSC 426 at paragraph 51). Here, I find that Deborah Barton has not demonstrated that she has a legally recognized interest in reimbursement of the \$2,000 sent to the respondents. According to her submissions, she deposited \$2,000 on behalf of Victoria Barton. So, I find that Victoria Barton is the proper applicant in this dispute, and I dismiss Deborah Barton's claim. I will refer to Victoria Barton as Ms. Barton throughout the rest of this decision.

Must the respondents repay the \$2,000?

11. Ms. Barton has the burden of proving her claims on a balance of probabilities. As explained below, if Ms. Barton establishes that she sent \$2,000 to the respondents, the burden shifts to the respondents to prove that the payment was intended as a gift

or that they have repaid Ms. Barton. For the following reasons, I find the respondents have not met their burden.

12. It is undisputed that Ms. Barton had \$2,000 deposited into Ms. Wilbur's account. Ms. Barton says she sent this payment to assist in bailing a family member out of jail and that it was not a gift.
13. The respondents deny that there was a loan or loan agreement. However, I find that Ms. Barton is not required to prove that the respondents agreed to repay the \$2,000. Rather, I find the respondents must prove that Ms. Barton intended the payment as a gift, instead of a loan. This is because the law presumes bargains rather than gifts and to presume otherwise would result in the respondents' unjust enrichment in receiving the payment without giving Ms. Barton anything of value in return (see *Prozник and Smith v. Prozник*, 2011 BCPC 300, citing *Pecore v. Pecore*, 2007 SCC 17). Under the law of gifts, the respondents must prove that Ms. Barton intended to give the \$2,000, they accepted the \$2,000 and there was a sufficient act of delivery. (*Lundy v. Lundy*, 2010 BCSC 1004).
14. The respondents say the payment was intended as a gift for a family member and they spent it on that individual's behalf. As evidence, they provided a screenshot of a text message from Deborah Barton to Mr. Endicott stating, "my mom would like to send [the family member] some money". I note that while this demonstrates an intention to send money, the messages do not disclose details such as the purpose of the payment or what prompted this statement. I also note that the text message that references sending money has not been provided to me in its entirety. Upon review, I find that there are likely lines of text that are not captured by the screenshot. As a result, the context necessary to understand the message is missing. So, I am not able to conclude that this message reveals an intention on the part of Ms. Barton to give \$2,000.
15. I also note that Deborah Barton sent this text message a few weeks before the payment and that Ms. Barton sent the payment the day after the date on the bail

documents. I find this timing supports the possibility that the bail proceedings prompted the payment.

16. In text messages provided by Deborah Barton, she asked Ms. Wilbur when the bail monies would be returned. In response, Ms. Wilbur agreed to transfer an undisclosed sum to her. From this, I infer that Ms. Wilbur was not surprised by the expectation that the money sent for bail would be returned.
17. As noted, the law of gifts requires that the respondents prove that Ms. Barton intended the \$2,000 as a gift. I find that the evidence before me does not show that Ms. Barton had this intention. As the respondents have not met their burden of demonstrating that the \$2,000 they received was a gift, they must repay this amount to Ms. Barton.
18. In their submissions and evidence, both parties refer to numerous expenses benefiting the family member. However, none of these details are relevant to whether the payment was a gift or a loan, so I have not considered them in this decision.
19. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$2,000 from May 15, 2023, the date the applicant began asking for the return of the funds, to the date of this decision. This equals \$109.81.
20. 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. However, neither party paid CRT fees, so I make no order. Ms. Barton did not claim any dispute related expenses.

ORDERS

21. Within 30 days of the date of this order, I order Ms. Wilbur and Mr. Endicott to pay Victoria Barton a total of \$2,109.81, broken down as follows:
 - a. \$2,000 in debt, and

b. \$109.81 in pre-judgment interest under the *Court Order Interest Act*.

22. Ms. Barton is entitled to post-judgment interest, as applicable.

23. This is a validated decision and order. 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.

Maria Montgomery, Tribunal Member