



Civil Resolution Tribunal

Date Issued: August 7, 2024

File: SC-2023-005137

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Amaranth Financial Services Inc. v. O'Brien*, 2024 BCCRT 755

B E T W E E N :

AMARANTH FINANCIAL SERVICES INC.

APPLICANT

A N D :

SEAN O'BRIEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about an alleged unpaid payday loan. Amaranth Financial Services Inc. says it loaned Sean O'Brien \$800. Amaranth seeks repayment of that amount, plus \$120 for a loan fee, and \$20 for a non-sufficient funds (NSF) fee. It also seeks 30% yearly contractual interest on the principal amount. An employee represents Amaranth.

2. Sean O'Brien denies Amaranth's claims. However, they also say it is possible they took out the loan and do not remember doing so, due to health issues they were suffering at the time of the alleged loan. As they did not specify their title or pronouns, I refer to Sean O'Brien by their full name, and I use gender neutral pronouns, intending no disrespect. Sean O'Brien is self-represented.

JURISDICTION AND PROCEDURE

3. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states 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.
4. 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. Here, I find I am properly able to assess and weigh the submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality, I find an oral hearing is not necessary in the interests of justice.

ISSUE

5. The issue in this dispute is whether Amaranth is entitled to \$940 for the payday loan, loan fee, and NSF fee, plus contractual interest on the principal amount.

EVIDENCE AND ANALYSIS

6. As the applicant in this civil proceeding, Amaranth must prove its claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions, but I only refer to information relevant to my decision. Neither party provided documentary evidence, despite being given the chance to do so.

7. Amaranth says it loaned Sean O'Brien \$800 in cash on January 5, 2023. It says the loan was to be repaid by debiting Sean O'Brien's bank account on January 12, 2023. As noted, Amaranth provided no documentary evidence of the loan, such as a loan agreement or an invoice, although it referred to both of these in submissions. It also did not provide evidence it unsuccessfully tried to debit Sean O'Brien's bank account.
8. Again, Amaranth bears the burden of proving its claim. While Sean O'Brien says it is possible he may have taken out the loan, I find this is insufficient to find he likely did. Amaranth could have submitted documentary evidence of a loan agreement, invoice, or NSF transaction to support its claim. It did not do so, and it did not explain why not, even though CRT staff communicated the importance of evidence to both parties. Also, Amaranth has filed previous CRT claims and submitted evidence, so I find it is aware of the need for supporting evidence.
9. If a party fails to produce evidence to support their position without explanation, an adverse inference may be drawn. This means the CRT can assume the evidence does not exist, or is damaging to the party's position. I find it is appropriate to draw an adverse inference here. That is, I find it likely that either no evidence of the loan exists, or if it does, it does not support Amaranth's position. So, I find it unproven that Amaranth is entitled to its claimed amount, and I dismiss its claim.
10. 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. Amaranth was unsuccessful, so I dismiss its claim for CRT fees. Sean O'Brien did not pay fees or claim dispute-related expenses.

ORDER

11. I dismiss Amaranth's claims, and this dispute.

Megan Stewart, Tribunal Member