Civil Resolution Tribunal

Date Issued: December 19, 2024

File: SC-2023-008632

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Laird v. Gilligan*, 2024 BCCRT 1291

B E T W E E N :

GLENDEN LAIRD

APPLICANT

A N D :

ROBERT GILLIGAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr, Vice Chair

INTRODUCTION

1. The applicant, Glenden Laird, and the respondent, Robert Gilligan, are former friends. The applicant says he lent the respondent $2,400 and a lawnmower worth another $2,400. The applicant says the respondent has only repaid him $600 and refuses to return the lawnmower. He asks for an order that the respondent pay him $1,800 and give him the lawnmower back.

2. The respondent says that they only owe the applicant $1,300. They also say that the lawnmower was a gift. The respondent asks me to dismiss the applicant's claims.

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 says 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. 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. In some respects, both parties of this dispute question the credibility, or truthfulness, of the other. As discussed below, I am properly able to assess and weigh the evidence and submissions before me and make the necessary credibility findings based on the documentary evidence. There is no other compelling reason for an oral hearing, especially considering the CRT's mandate to provide proportional and speedy dispute resolution. I therefore decided to hear this dispute through written submissions.

6. CRTA section 42 says the CRT may accept as evidence any information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

7. Where permitted by CRTA section 118, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:

    a. How much does the respondent owe the applicant for the loans?

    b. Was the lawnmower a gift?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove his claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

The Loan

10. As noted, the applicant alleges he loaned the respondent a total of $2,400. The applicant provided his bank account history showing the e-transfers he made to the respondent. This shows a total of $2,200 transferred to the respondent between March 2 and July 11, 2022. The applicant does not explain the discrepancy, but given my conclusion below, nothing turns on this.

11. The parties agree that the respondent paid some amount back, but also "reborrowed" some of those payments. The applicant says the net repayment was $600. The respondent says that the final amount owing is $1,300. The repayments were in cash so there is no documentary evidence about them.

12. In an August 9, 2023 text message, the respondent told the applicant that they only owed $900, which they knew because they were "keeping a very close on my bill". The respondent provided no evidence to support this assertion, and their submissions indicate they no longer believe that to be accurate. Instead, the respondent admitted to owing $1,300 in the Dispute Response they filed. As for the applicant, he insisted in multiple text messages from that time that the respondent owed $1,300. There is no mention in these messages about the respondent owing $1,800, or any other amount.

13. Given these text messages, I find that respondent owes the applicant $1,300, and I order them to repay that amount.

The Lawnmower

14. The parties agree that the respondent took possession of a ride-on lawnmower in July 2022. As an initial point, the parties dispute whether it was the applicant's lawnmower or his father's. The applicant says he owns the land and his elderly parents live with him. In that context, I accept that it was the applicant's lawnmower.

15. The applicant says he lent the lawnmower to the respondent because they needed one. The applicant says the lawnmower needed a new sand belt but was otherwise in "great condition". He denies it was a gift.

16. The respondent says the applicant told them they could have the lawnmower because it was not running correctly and was never used because the applicant had a newer one. The respondent says they made sure to clarify it was a gift because they did not want to drive from Prince George to Quesnel just to borrow an old, broken lawnmower. When they arrived, the respondent says they asked the applicant whether he wanted anything for the lawnmower and the applicant said no.

17. Under the law of gifts, the person who receives the item in question must prove that the person who gave it to them intended it to be a gift. So, the respondent must prove that the applicant intended that the lawnmower be a gift, and that the applicant's actions were inconsistent with another intention. The relevant time is when the applicant gave the respondent the lawnmower, because once a gift is made, it cannot be revoked.[1]

18. I find that the circumstances in July 2022 make it more likely that the applicant intended to give the respondent the lawnmower as a gift. The parties were old friends. The applicant does not deny that he owned and used a newer lawnmower, meaning he had no use for the one he gave the respondent.

[1] *Pecore v. Pecore*, 2007 SCC 17.

19. Also, the lawnmower was around 10 years old and did not work. The applicant provided evidence showing a comparable used lawnmower was worth $1,000, which means the non-functioning lawnmower likely had limited market value. The respondent says they spent about three hours and $275 repairing the lawnmower. They provided receipts proving about $165 of this for a belt and a battery. They say they lost the other receipts, so I find only $165 is proven. Still, I find it unlikely that the respondent would make that sort of investment in a broken lawnmower they were only borrowing.

20. Finally, there is no evidence the applicant asked about the lawnmower for over a year. Instead, he only brought it up once the parties' relationship broke down over the unpaid loans. The text messages at the time suggest that he wanted the lawnmower back not because he still believed he owned it, but as collateral for the debts. In particular, the applicant offered to cancel the debts if the applicant gave the lawnmower back. It was only after the respondent refused this offer that the applicant began demanding both the loan and the lawnmower. This suggests that the applicant was attempting to revoke the gift, but as noted above, gifts are permanent.

21. In summary, I find that the lawnmower was a gift. I dismiss the applicant's claim for its return.

22. aUnder CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The applicant was somewhat successful in that he obtained an order for repayment of part of the claimed loan. However, the respondent attempted to repay him in August 2023 before the applicant started this dispute. The applicant refused the e-transfer. In these circumstances, I find that the fair result is for the applicant to pay his own fees.

23. The *Court Order Interest Act* applies to the CRT. There is no evidence about the loans' due date, so I find the appropriate start date for interest is August 9, 2023, the day the applicant texted the respondent demanding full payment. However, the respondent says they attempted to pay the applicant $1,300 in two instalments starting on August 19, 2023. The respondent provided evidence of a $1,000 e-transfer (his daily e-transfer limit) that the applicant rejected because the dispute was "going to court". I accept that the respondent intended to pay the entire $1,300 if the applicant had accepted the first payment. It was unreasonable for the applicant to reject the payments. So, I do not consider it appropriate to award interest after August 19, 2023. Pre-judgment interest for that 10 days is $1.94.

ORDERS

24. Within 30 days of this decision, I order the respondent to pay the applicant a total of $1,301.94, broken down as follows:

    a. $1,300 in debt, and

    b. $1.94 in pre-judgment interest.

25. The applicant is entitled to post-judgment interest, as applicable.

26. I dismiss the applicant's remaining claims.

27. This is a validated decision and order. Under CRTA section 58.1, 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.

Eric Regehr, Vice Chair