



Civil Resolution Tribunal

Date Issued: July 30, 2018

File: SC-2017-007176

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vogt v. Koene*, 2018 BCCRT 389

B E T W E E N :

Francis Vogt

APPLICANT

A N D :

Christopher Koene

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about a cat named Chanel. The applicant, Francis Vogt, says he asked his then boyfriend, the respondent Christopher Koene, to watch Chanel until he obtained housing. The applicant says he obtained stable long term housing, but the respondent has refused to return Chanel, stating that the applicant abandoned the cat.

2. The applicant says Chanel was always his cat and seeks an order that Chanel be returned to him. The respondent did not file a counterclaim. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the Civil Resolution Tribunal Act (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these.
5. Much of the evidence in this dispute amounts to a "he said, he said" scenario with each party essentially stating that the other is lying about certain alleged facts. 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. As noted in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BCCA), the assessment of what is the most likely account depends on its harmony with the rest of the evidence. In considering what is most likely to be the truth, I consider what "a practical and informed person would readily recognize as reasonable in that place and in those conditions". In the circumstances here, I find that I am able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

6. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is about whether the applicant owns the cat Chanel, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. I accept that both parties love Chanel. However, the law is clear that pets should not be treated in law as family members but rather as personal property (see *Henderson v. Henderson*, 2016 SKQB 282, and *Brown v. Larochelle*, [2017] B.C.J. No. 758).
11. The parties dated and lived together briefly and broke up in around July 2015, around the time Chanel came into the parties' lives. It is undisputed that at the time of the parties' break-up, the applicant took Chanel with him, but later returned the cat to the respondent as the applicant was unable to care for the cat at the time. I find the fact that the applicant took Chanel at the time of the break-up is evidence in support of the applicant's ownership of the cat.
12. In his Dispute Response, the respondent explained he got Chanel with the applicant, then the applicant had no contact for over 1.5 years after the parties broke up:

I got Chanel while we were dating as a cat for both of us to enjoy, and incurred all the costs of getting Chanel ...

I made it clear more than one year ago, that by continuing to leave Chanel in my care and saddling me with all of the costs of Chanel, **Chanel would become my cat ...**” [bold emphasis added]

13. I find the above bolded statement in the Dispute Response is further persuasive evidence that at the time of the parties’ break-up the respondent understood Chanel was the applicant’s cat. The respondent’s position is that he became Chanel’s owner due to the passage of time it spent in the respondent’s care without inquiry from the applicant.
14. The applicant provided a witness statement from M, which he says proves Chanel is his cat. M’s statement simply sets out his name and that the respondent “personally told me that Chanel” was the applicant’s cat. The respondent says M was his housekeeper for a time. I accept that M was in a position to have some understanding as to who owned Chanel, although as noted above, there is other evidence before me upon which I can conclude the applicant was Chanel’s owner at the time the parties ended their relationship.
15. Based on the evidence summarized above, I find at the time of the parties’ break-up in around July 2015, the cat Chanel belonged to the applicant.
16. I turn to the law that applies to this dispute. The applicant’s claim against the respondent is the tort of conversion. The tort of conversion involves wrongfully holding on to another person’s property and claiming title or ownership of that property. Here, the respondent refuses to return Chanel, claiming he now owns the cat due to the applicant having abandoned it.
17. The tort of conversion is proved when someone purposely does something to deal with goods in a wrongful way that is inconsistent with the owner’s rights: see *Li v. Li*, 2017 BCSC 1312, citing *Royal Canadian Legion, Branch No. 15 v. Burkitt*, 2005 BCSC 1752 (CanLII) at para. 104; *Ast v. Mikolas*, 2010 BCSC 127 (CanLII) at

para. 128; *Drucker, Inc. v. Gui*, 2009 BCSC 542 (CanLII) at para. 58; *Dhothar v. Atwal*, 2009 BCSC 1203 (CanLII) at para. 15.

18. The law is clear that the applicant must prove:
 - a. a wrongful act by the respondent involving the applicant's personal property;
 - b. the act must involve handling, disposing, or destroying the goods; and
 - c. the respondent's actions must have either the effect or intention of interfering with (or denying) the plaintiff's right or title to the goods.

19. In this case, the focus is on whether the respondent's action in refusing to return Chanel, on the basis the applicant abandoned the cat, was wrongful. I find that if the applicant effectively abandoned Chanel, the respondent is not liable for the tort of conversion (see *Bangle v. Lafreniere*, 2012 BCSC 256). As set out in *Bangle*, if the applicant abandoned Chanel, the respondent's continued possession of Chanel is not conversion because in so doing, the respondent was not interfering with the applicant's right of possession. In other words, if the applicant abandoned Chanel, the respondent does not have to return the cat to the applicant.

20. The question then is whether the applicant's absence, without contact with the respondent, for at least 1.5 years amounts to abandonment such that the respondent became Chanel's owner. This history is undisputed, although I note the applicant's explanations of having personal life issues that prevented his doing so.

21. What is the evidence of abandonment? The respondent denies any agreement to "watch" Chanel as alleged by the applicant, and notes no such agreement was ever documented. I find the applicant has not proved such an agreement. Rather, I find that due to the applicant's personal life issues, he simply left Chanel with the respondent without any commitment or agreement about it. The respondent says for months the applicant did nothing, and then "out of the blue" suggested that Chanel should be the applicant's cat, which is why the respondent in a May 30,

2017 Facebook message exchange said the applicant had abandoned Chanel and “if you want a cat so bad why don’t you just get another kitten?”. In response to that, the next day on June 1, 2017, the applicant sent a “thumbs up” text, which I find reasonably led the respondent to believe the matter was closed on May 30, 2017. The applicant did not start this tribunal proceeding until December 2017.

22. I find the overall evidence, and the May 30, 2017 Facebook exchange in particular, supports the conclusion that the applicant abandoned Chanel. I accept that the applicant did so because of personal life issues rather than a lack of concern about the cat. However, the fact remains the same: the applicant abandoned the cat as he made no effort to look after it. I note in *Bangle* the period was roughly a 2-year period where the applicant had personal life issues and the goods in question were largely found to have been abandoned.
23. The applicant says he has had “proper housing” since January 2018, and that he asked the respondent to return Chanel to him at that time. The applicant says he is fully able to take care of Chanel and wants the cat back. This may be true, but it does not answer the question of whether the applicant had already abandoned the cat. I find that he had, for reasons set out below.
24. I note that prior to the May 30, 2017 chat, the parties had a brief Facebook exchange on February 5, 2017. There, the applicant asked the respondent why he was mad “cuz im doing good”. There was no query about Chanel’s wellbeing or for the cat’s return. In reply, the respondent stated “I’m not mad there’s nothing to talk about”. The next Facebook exchange was the one on May 30, 2017, which the applicant started with “I want my cat back and I will not stop [until] I get her back”. As noted above, the respondent told the applicant he had abandoned Chanel, and the applicant sent the “thumbs up” text in response.
25. In his submissions, the respondent says Chanel is his cat and is registered in his name with the “BC Pet Registry”, managed by the Society for the Prevention of Cruelty to Animals. I place little weight on that fact in terms of original ownership, since the registration is dated March 21, 2018, well after this dispute started. I

make the same finding about the proof Chanel was spayed. However, these things are evidence proving the respondent's responsibility for the cat over the past years. The respondent says he incurred all costs to obtain Chanel on or about July 25, 2015, which total \$288.93 plus additional unspecified costs for cat food, and litter, and the like. Other than in submissions in this dispute, I find the applicant never offered to reimburse the respondent for Chanel's expenses.

26. In summary, on balance, I agree with the applicant that the May 30, 2017 Facebook exchange indicates that Chanel was originally the applicant's cat. I say this because of the respondent's phrases, "Before you demand her back" and other statements that indicate the respondent's understanding that Chanel was original the applicant's cat.
27. However, I accept that the applicant had left the cat with the respondent for a lengthy period of time. I accept that the applicant's May 30, 2017 request for Chanel came out of the blue. I find that due to the passage of time with no contact from the respondent, and the applicant's messages on February 5, 2017 and June 1, 2017, the respondent reasonably understood the applicant had abandoned Chanel. I find the applicant is not entitled to Chanel's return.
28. The applicant was unsuccessful in this dispute. There were no tribunal fees paid and no dispute-related expenses claimed.

ORDER

29. The applicant's claim, and therefore this dispute, is dismissed.

Shelley Lopez, Vice Chair