



Civil Resolution Tribunal

Date Issued: December 11, 2018

File: SC-2018-003845

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lasher v. Marasigan*, 2018 BCCRT 830

B E T W E E N :

Jessica Lasher

APPLICANT

A N D :

Arnold Marasigan

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Jessica Lasher, claims that the respondent, Arnold Marasigan, stole her cat. The respondent denies the claim. The parties are each self-represented.
2. The applicant seeks several orders. She seeks an order that the respondent either return the cat or tell the applicant what happened to the cat. She claims that she

has suffered emotional distress and seeks \$2,000 in compensation. She also seeks \$3,000 in legal fees she says she spent to try to have her cat returned.

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. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
5. 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.

6. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. Did the respondent steal the applicant's cat?
 - b. If so, what compensation should he pay to the applicant?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant must prove her case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
9. The applicant lives in Vancouver. The applicant's father has a house in Whistler. The respondent was a housecleaner for the applicant's father.
10. On May 10, 2017, the applicant visited Los Angeles and left her cat in her father's care. On May 14, 2017, the applicant went to the Whistler home but did not stay because the respondent was there cleaning with his family. The applicant says that her cat was there on May 14, 2017. The respondent also says that the cat was still there when they left on May 14, 2017.
11. The applicant returned to her father's house on May 15, 2017, and her cat was not there. The respondent and his family arrived later that day.

12. At the applicant's father's request, the respondent helped to look for the cat and posted a Facebook post asking his contacts to keep a look out. The applicant says that the respondent's efforts to help find the cat were to cover up his theft.
13. The applicant provides a May 17, 2017 text message from the respondent that she says is a veiled extortion threat. The respondent says in the text that he will help look for the cat and that the applicant's father owes him money. I do not agree that this text message is a veiled threat.
14. In her submissions, the applicant states that on May 17, 2017, the respondent told her over the phone that he had taken the cat and would not give the cat back unless the applicant paid him money and spent time alone with him. The respondent denies this conversation.
15. A friend of the applicant provided evidence that they saw the respondent with something that appeared to be a cat kennel on May 18, 2017, in a grocery store parking lot. The respondent denies having a cat kennel.
16. The applicant reported the cat as stolen to the RCMP in Whistler and accused the respondent. The RCMP interviewed the respondent, but there is no evidence before me that the RCMP has taken any other action.
17. The applicant's friend also says that in late May 2017, they spoke to a person who saw a Facebook conversation between the respondent and the respondent's co-worker about the cat. The applicant's friend says that the Facebook conversation was about the respondent trying to sell the cat on a Facebook buy and sell page. Nobody who saw the Facebook conversation gave evidence. The photo of the private Facebook group shows that it has over 36,000 members, but there is no evidence from anyone who saw the respondent post an ad to sell a cat. The respondent denies posting such an ad.
18. The respondent says that he invited an RCMP officer to his house to check if there was a cat, which the RCMP officer did. It is not clear when this happened.

19. The only direct evidence that the applicant provides is the alleged May 17, 2017 telephone call. I find that this evidence is not credible.
20. In the Dispute Notice, the applicant lists the evidence that she will use to support her claim. She refers text messages with the respondent on May 17, 2017, but no telephone call. She also does not allege in the Dispute Notice that the respondent admitted to taking the cat. The applicant provided 3 signed statements as evidence and does not state in any of them that the respondent admitted to taking the cat. One of the applicant's signed statements lists the information she gave to the police, which does not include any mention of the telephone call. The applicant's allegation that the respondent admitted to stealing the cat appears for the first time in the applicant's final submissions.
21. If the respondent had admitted to stealing the cat, I find that the applicant would have raised it in one of her signed statements and the Dispute Notice. I therefore do not accept the applicant's evidence that the respondent telephoned her and admitted to stealing the cat.
22. It is well established that when a person alleges fraud in a civil case, they must provide clear and convincing evidence to prove their case. This is because fraud is a very serious allegation that carries a stigma: *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7. I find that this principle applies equally to allegations of theft and extortion.
23. The applicant's remaining evidence is that her friend saw the respondent with something that appeared to be a cat kennel and the indirect evidence about the Facebook ad. I find that this evidence does not establish on a balance of probabilities that the respondent stole the applicant's cat.
24. I dismiss the applicant's claims.
25. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable

dispute-related expenses. I see no reason in this case not to follow that general rule. I decline to order the respondent to reimburse the applicant's tribunal fees.

ORDER

26. I order that the applicant's claims, and this dispute, are dismissed.

Eric Regehr, Tribunal Member