



# Civil Resolution Tribunal

Date Issued: December 13, 2018

File: SC-2018-002241

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chamberlain v. Hasselbach*, 2018 BCCRT 849

BETWEEN:

Lynn Chamberlain

**APPLICANT**

AND:

Terri-Lynn Hasselbach

**RESPONDENT**

AND:

Lynn Chamberlain

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. The applicant Lynn Chamberlain wants the respondent, Terri-Lynn Hasselbach, to return her 3 mannequins and clothing, which Ms. Chamberlain values at \$640. Ms. Chamberlain says these belongings were left at Ms. Hasselbach's home because the parties were going to start a home-based business together and Ms. Hasselbach had available space. The parties had a motor vehicle accident. Shortly afterwards, their friendship and business relationship broke down.
2. In her counterclaim, the respondent Terri-Lynn Hasselbach seeks \$3,241, made up of \$50 for 2 dresses she says she bought for Ms. Chamberlain's mother and alleged expenses related to the failed business venture.
3. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, she said" scenario. 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly 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 issues in this dispute are: a) to what extent, if any, must Ms. Hasselbach return mannequins and clothing belonging to Ms. Chamberlain, and b) to what extent, if any, must Ms. Chamberlain pay Ms. Hasselbach for dresses and business-related expenses.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. This means Ms. Chamberlain must prove her claims about the mannequins and the clothing and Ms. Hasselbach must prove her counterclaims about the dresses and the business expenses.
10. It is undisputed that the parties' business venture ended, along with their 26 or 27-year friendship. The parties' lengthy submissions each contain personal

accusations that are largely irrelevant to this dispute. I have only addressed the evidence and submissions below as necessary to explain my decision.

11. The nature of the parties' business venture is not entirely clear, but it appears to have been a used clothing resale business. In any event, I find that the detail is not necessary to resolve this dispute. As the parties each admit, as business partners they agreed to split everything "50/50".
12. The issue in this dispute is to what extent has each party proved the expenses they claim, particularly given Ms. Chamberlain says she does not have receipts to prove her contributions, both in terms of her claim and to offset Ms. Hasselbach's claim. As such, to some extent my assessment turns on whose evidence I find to be the most reliable on a particular issue and overall.

***Ms. Chamberlain's claim – mannequins and clothing***

13. Ms. Chamberlain says she paid for 3 mannequins on her Visa credit card. Ms. Chamberlain says they were left in Ms. Hasselbach's possession for safe-keeping, "as were all of the supplies for our business". I find this is undisputed, save for 2 lawn chairs worth \$8 in Ms. Chamberlain's possession. Ms. Chamberlain's receipt for the mannequins totals \$189.
14. Ms. Chamberlain's claim also refers to "clothing" in addition to the mannequins. Ms. Chamberlain says she wants the 3 mannequins "and clothing" returned, or \$640 for their value if Ms. Hasselbach is unable to return them.
15. Ms. Chamberlain provided several clothing receipts that I find total \$62.06. I accept that Ms. Hasselbach bought the items reflected in 2 receipts. Together with the \$189 for the mannequins, this equals \$251.06.
16. In her final reply submission, Ms. Chamberlain submits she salvaged a "couple more receipts" from her car that is in the salvage yard after the motor vehicle accident. She says these total \$566.11 for business-related purchases as well as \$146.39 for gas for the parties' trip to Calgary. I do not have those receipts in

evidence as the claim for them only arose in the final reply. In these circumstances, I find it is inappropriate to add these amounts to Ms. Chamberlain's claim as I find she had a reasonable opportunity to gather her evidence and submit it as evidence, before the final reply.

17. Subject to any set-off, I find the most appropriate result would be that Ms. Hasselbach pay Ms. Chamberlain \$251.06, rather than ordering the return of particular items. Specific performance is only appropriate where monetary compensation will not suffice. Based on the evidence before me, there is nothing particularly unique about the used mannequins or clothing, and there is no specificity about the clothing items or whether they still are in Ms. Hasselbach's possession.
18. I find that Ms. Hasselbach had provided a number of receipts and statements that reflect a number of business-related expenses, which the parties should share 50/50. Not including the items claimed by Ms. Hasselbach in her counterclaim, Ms. Chamberlain's half-share of these business-related expenses far exceeds the \$251.06 figure I find Ms. Chamberlain has proved, and exceeds \$700 if I include the Calgary expenses Ms. Chamberlain referred to in her evidence. I note Ms. Chamberlain's acknowledgement that Ms. Hasselbach "has more receipts". Ms. Chamberlain says Ms. Hasselbach paid for items using a debit or credit card and has receipts, but that because she paid cash for her half share, she cannot prove the cash payment.
19. I acknowledge Ms. Chamberlain's submission that given the parties' historical friendship, she did not expect she would need to maintain receipts. However, as noted above, Ms. Chamberlain bears the burden of proof in her dispute. I also find that Ms. Chamberlain ought to have known maintaining records, such as receipts, could be important for their business venture. I find Ms. Hasselbach has proved a set-off that exceeds the \$251.06 claimed.
20. In summary, I find that with the applicable set-off that I find Ms. Hasselbach has proved, Ms. Chamberlain has not proved she is owed any money. I therefore

dismiss Ms. Chamberlain's claims and her dispute. Ms. Hasselbach did not counterclaim for all of the receipts she provided and which I have included in the set-off. I have addressed Ms. Hasselbach's counterclaim below, which again, I did not include in the set-off referenced above.

***Ms. Hasselbach's counterclaim – dresses and business expenses***

21. In the counterclaim Dispute Notice, Ms. Hasselbach claimed only \$50, for 2 dresses she said she bought for Ms. Chamberlain's mother. However, Ms. Hasselbach significantly expanded her claims during the tribunal's facilitation process. In the tribunal submissions before me for decision, she counterclaims for a total of \$3,241:
  - a. \$50 for the dresses bought for Ms. Chamberlain's mother,
  - b. \$61 for half the cost of an Airdrie hotel bill on February 14, 2018,
  - c. \$40 for half the cost of 2 lawn chairs,
  - d. \$3,000 for the cost of a cell phone and phone usage,
  - e. \$52.50 for half the cost of "dress forms", and
  - f. \$37.50 for half the cost of a clothing rack.
22. I will address the \$50 dress claim first. Ms. Hasselbach says Ms. Chamberlain's mother paid Ms. Chamberlain for the dresses, but Ms. Chamberlain never turned the money over to Ms. Hasselbach. Ms. Chamberlain says this was a gift and had nothing to do with any payment that took place. Ms. Hasselbach says she is close with Ms. Chamberlain's mother, but did not provide a statement from her in support. I dismiss this claim as Ms. Hasselbach has not proved that Ms. Chamberlain is responsible for the debt.
23. Ms. Chamberlain admits to owing the \$61 for the Airdrie hotel bill and agrees to pay it, and I so order.

24. As for the \$40 for lawn chairs, Ms. Chamberlain says she has them and will pay for them, but says they were bought for \$4 each second hand. I accept this evidence, as I find Ms. Hasselbach has not proved they cost \$40. I order Ms. Chamberlain to pay a total of \$8 for the 2 lawn chairs.
25. As for the dress forms, Ms. Chamberlain admits Ms. Hasselbach has them and paid for them entirely. The dress forms were a business-related expense. While Ms. Chamberlain suggests she and Ms. Hasselbach trade the dress forms and mannequins, as noted above I find specific performance is not appropriate. I order Ms. Chamberlain to pay \$52.50 for the dress forms.
26. While Ms. Chamberlain objects to the purchase of the clothing rack, I find on balance it was business related and reasonably purchased. I find Ms. Chamberlain must pay Ms. Hasselbach \$37.50 for it.
27. I turn then to the significant \$3,000 cell phone claim. It is undisputed that Ms. Hasselbach obtained 2 cell phones for the parties' respective use for the business. Ms. Hasselbach says this was done with Ms. Chamberlain's knowledge and consent. Ms. Chamberlain experienced difficulties using the phone, which Ms. Hasselbach obtained through a trade-in, because of problems with a charging cord. Ms. Chamberlain denies consenting to the phone's purchase.
28. On balance, I prefer Ms. Hasselbach's evidence about the phone and that she reasonably had authority to buy it as a business expense. There is nothing in the parties' text messaging that lead to the conclusion Ms. Chamberlain objected to the phone's purchase. Rather, she was struggling with how to use it. Therefore, I find that Ms. Chamberlain is responsible for the cost of the phone.
29. Thus, the issue is the cost of the phone and its usage. Ms. Hasselbach claims \$3,000 but provided no detailed submissions as to how she arrived at this figure. I accept Ms. Hasselbach's explanation that she traded in their original Google pixel phone bought on December 8, 2017, and chose an iPhone as she knew how to use it and teach Ms. Chamberlain to use it, which I find is undisputed.

30. The relevant cell phone contract is dated December 22, 2017 for the Apple iPhone. It is for 24 months. I find Ms. Hasselbach's claim therefore most reasonably relates to the iPhone's trade-in value of \$949.99 and usage contract. The total monthly charge under the iPhone contract is \$80, which is \$1,920 for 24 months. I find the combined value of the trade-in and the usage contract equals \$2,870.
31. Ms. Chamberlain says she only had the phone "for a couple weeks" and that Ms. Hasselbach has since given it to her son. Ms. Hasselbach says whether her son uses it or it sits in a drawer, Ms. Hasselbach has still had to pay for it under the cell phone contract. Ms. Hasselbach says that Ms. Chamberlain should pay for it, given it was the 2<sup>nd</sup> business phone bought for her use. For the most part I agree with Ms. Hasselbach, in the circumstances. However, on a judgment basis, I find it is appropriate to deduct 6 months of usage, or \$480, from the \$2,870, given that Ms. Hasselbach had the benefit of the phone by giving it to her son to use.
32. Ms. Chamberlain has made it clear she does not want the phone, but I find she must pay \$2,390 for it. As such, she is entitled to its return, although I acknowledge she does not want to pay for the phone and does not ask for its return. However, I find it would unfair to order Ms. Chamberlain to pay the \$2,390 and not get the phone.
33. I find Ms. Hasselbach is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA), on the \$151 total for the non-phone claims above, from April 1, 2018. I choose this date as the most reasonable, given the evidence indicates that is roughly when the parties' business relationship had broken down and no demand for payment for the phone had been made. I do not order pre-judgment interest on the phone expense, given Ms. Hasselbach's continued use of it to date, as described above.



### ***Tribunal fees and expenses***

34. Ms. Chamberlain was not successful in her claims. In accordance with the Act and rules, I find she is therefore not entitled to reimbursement of tribunal fees or dispute-related expenses. For this reason, I find I do not need to address the parties' detailed arguments about those expenses related to service on Ms. Hasselbach.
35. Ms. Hasselbach was substantially successful in her counterclaim. I find she is entitled to reimbursement of \$125 in tribunal fees.

### **ORDERS**

36. Ms. Chamberlain's claims and her dispute are dismissed.
37. Within 30 days of this decision, I order Ms. Chamberlain to pay Ms. Hasselbach a total of \$2,667.45, broken down as follows:
  - a. \$2,541 in debt,
  - b. \$1.45 in pre-judgment interest under the COIA, and
  - c. \$125 in tribunal fees.
38. Within 5 days of receiving payment from Ms. Chamberlain as set out above, I order Ms. Hasselbach to send Ms. Chamberlain, by insured registered mail, the Apple iPhone 8 at issue and in substantially the same condition as when last used by Ms. Chamberlain, unless the parties mutually agree in writing to other delivery or pick-up terms for the phone.
39. Ms. Hasselbach is entitled to post-judgment interest on the above, as applicable. Ms. Hasselbach's remaining claims are dismissed.
40. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The

time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

41. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Shelley Lopez, Vice Chair