



Civil Resolution Tribunal

Date Issued: February 12, 2019

File: SC-2018-004890

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hungerschafer v. Hungerschafer*, 2019 BCCRT 168

B E T W E E N :

Robert Hungerschafer

APPLICANT

A N D :

Ruby Hungerschafer

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about intercepted mail. The applicant, Robert Hungerschafer, says the respondent, Ruby Hungerschafer, intentionally intercepted his mail, causing default judgment to be entered against him in provincial small claims court. The applicant wants the respondent to pay him \$611.60, which he says is the amount he spent to have the default judgment cancelled and the small claims matter against

him dismissed. The respondent says she does not owe the applicant anything because she accidentally accepted mail addressed to him, and she took reasonable steps to deliver it to the applicant once she realized the mistake.

2. Both 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 118 of the *Civil Resolution Tribunal 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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. 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.
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 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.
7. This dispute is not part of the Provincial Court's small claims default process. I find the tribunal has jurisdiction to resolve this dispute as it is a debt claim falling under section 118 of the Act.

ISSUES

8. The issue in this dispute is whether the respondent is required to pay the applicant \$611.60.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.
11. It is undisputed that the parties were previously married but divorced in 2006. From July 2009 to February 2017 the respondent lived at a property in White Rock that she owned. The applicant never lived there. It is undisputed that in July 2016 the respondent received mail that was addressed to the applicant at the respondent's address, and that the mail contained notice of a small claims action brought against the applicant in Provincial Court. The applicant says the respondent intentionally intercepted this mail, which he did not receive until November 1, 2016, by which time a default judgment had been entered against him in the small claims action for

his failure to respond by the stipulated deadline. The applicant wants the respondent to reimburse him \$611.60 for the costs he incurred to have the default judgment cancelled and have the small claims action against him dismissed.

12. The respondent says that on July 20, 2016 she received a delivery notice card from Canada Post at her home in White Rock addressed to "R. Hungerschafer." The notice card in question is not in evidence. The respondent says she did not keep it because she did not expect it to lead to a legal dispute, which I accept. Although the applicant never saw the notice card he claims it had his full first name on it, not just his first initial. In support of this claim he submitted an example of a different delivery notice card from Canada Post with his full name. The respondent says Canada Post does not have a consistent naming practice for its notice cards and submitted a different Canada Post notice card filled in by hand, which names the recipient by first initial and surname. The applicant says the respondent could have requested the notice card in question from Canada Post, however it is the applicant's responsibility to prove his claim, not the respondent's. Given the inconsistency in how Canada Post names mail recipients on its notice cards, and the fact that the applicant never saw the notice card in question, I prefer the respondent's evidence on this point and I find the notice card said "R. Hungerschafer."
13. The respondent says on July 23, 2016 she brought the notice card to the local Canada Post office and showed it to the Canada Post representative, along with identification. The respondent says she was instructed to sign for the mail, which she did. She says after she received the mail she realized it was addressed to the applicant, not her. She says she explained the situation to the Canada Post representative, but they refused to take the mail back.
14. The applicant submitted an affidavit from M.A.K., the Canada Post representative who gave the respondent the mail that day. The affidavit is consistent with the respondent's version of events with one exception. M.A.K. said that after the respondent presented her identification and notice card, but before receiving the

mail, she told M.A.K. that the mail was for her ex-husband who had never lived at the White Rock address. M.A.K. said they gave the respondent the mail despite her comment. The Canada Post tracking history attached to the affidavit shows the respondent's signature as "RH," but the signatory name is stated as "Robert Hungerschafer." The affidavit does not explain the discrepancy between the signature and the signatory name.

15. The applicant says the respondent did not have authorization to sign for his mail, and she breached Canada Post's policies for accepting mail on behalf of someone else. However, I find that regardless of which version of events is the correct one, there is no evidence the respondent did anything wrong by accepting the mail. In the respondent's version she did not realize the mail was addressed to the applicant until after she signed for it and Canada Post refused to take it back. If, as M.A.K. said, the respondent told M.A.K. that the mail was not addressed to her before signing for it, this shows the respondent was forthcoming that the mail was not for her, and it was M.A.K.'s responsibility to ensure the respondent had proper authorization to accept the mail, which, based on M.A.K.'s version of events, they did not do. There is no evidence the respondent purported to have authorization to receive mail on behalf of the applicant or that she in any way deceived M.A.K. The respondent says that at some point after learning about this dispute she phoned Canada Post's customer service number to explain what had happened, and she was told she had done nothing wrong.
16. The respondent says she did not open the mail when she received it, and she had no idea what it was or who it was from. She says she asked one of the parties' adult children, who was living with her at the time, to give the mail to the applicant. She says her son confirmed that he delivered the mail to the applicant within a few days. There is no statement from the son in evidence, however I am mindful that this is dispute between the son's parents. The respondent says the mail was out of her possession and forwarded to the applicant within a few days of her receiving it.

17. The applicant says his son did not deliver the mail to him, and that he did not receive the mail until November 1, 2016 when he visited White Rock and found the mail amongst other papers. It is unclear from the applicant's evidence where in White Rock he found the mail or who he received it from.
18. On balance, I prefer the respondent's evidence on this point. While the applicant denies that his son delivered the mail, his evidence about how he received the mail is vague and it does not establish that the respondent acted negligently. The applicant says the respondent failed to follow Canada Post's procedures for what to do when someone receives mail addressed to someone else. However, the Canada Post procedures the applicant submitted do not require the recipient to take any particular action, they simply suggest options including contacting the sender, or crossing out the address and writing "moved" or "unknown" and depositing the item in a mailbox. In the circumstances, I find it was reasonable for the respondent to ask her adult son to deliver the mail to the applicant, and reasonable for her to rely on his confirmation that he had delivered it.
19. The applicant says the respondent stole his mail and obstructed justice, in breach of sections 356. (1) (a) and 139 of the *Criminal Code of Canada*, however the tribunal does not have jurisdiction over criminal matters. On the evidence before me I find the respondent's receipt of the applicant's mail was nothing more than an innocent misunderstanding. There is no evidence the respondent did anything wrong or acted negligently. I find there is no legal basis for the respondent to pay the applicant the amount he is claiming, or any amount.
20. 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. The respondent is the successful party, but she did not incur tribunal fees or claim dispute-related expenses.

ORDER

21. I dismiss the applicant's claims and this dispute.

Sarah Orr, Tribunal Member