



Civil Resolution Tribunal

Date Issued: May 13, 2019

File: SC-2019-000680

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pedersen v. Hannaberry*, 2019 BCCRT 564

BETWEEN:

GLEN PEDERSEN

APPLICANT

AND:

RACHEL HANNABERRY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is whether the applicant, Glen Pedersen, gifted two down pillows and a cordless Hitachi Magic Wand to the respondent, Rachel Hannaberry while they were dating in the fall of 2018. There is no dispute that the applicant purchased these three items or that they were delivered to the respondent in her home.

2. After the break-up, in about December 2018, the applicant asked for the three items back. The respondent originally agreed to return the items but later refused. She says the items were gifts. The applicant asks for an order that the respondent return the two down pillows and Magic Wand, which he values at \$300 in total. The parties are each 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 "he 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.
5. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found 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 9.3(2), 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.

ISSUE

8. The issue in this dispute is whether the applicant gifted the items to the respondent, and if not, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim, the burden of proof is usually on the applicant. However, under the law of gifts, once the applicant has proved the transfer of the goods, the burden shifts to the person alleging the items were gifts, in this case the respondent (see *Pecore v. Pecore*, 2017 SCC 17).
10. For there to be a legally effective gift, three things are required: an intention to donate, an acceptance, and a sufficient act of delivery. The context of the parties' romantic relationship at the time of the alleged gift is relevant, but not determinative. The evidence needs to show that the intention of the items as gifts was inconsistent with any other intention (see *Lundy v. Lundy*, 2010 BCSC 1004). I have only referenced the evidence and submissions as necessary to give context to my decision.

11. At the time they were dating, the applicant says he stayed at the respondent's home every other weekend. He purchased two down pillows to use at her home because he says he could not use synthetic pillows. He left the pillows at her home with other personal items for convenience. The respondent says she believed the pillows were gifts for her home because the respondent gave her one of the pillows to use on her side of the bed. While the respondent may have believed the pillows were gifted, she provided no evidence showing the applicant had intended to gift them to her.
12. The text and voice message evidence produced by both parties show that after the applicant purchased the Magic Wand, he had it delivered to the respondent's home for their mutual enjoyment. The applicant says the Magic Wand was never meant to be a gift. He provided text message evidence in which both parties referred to the Magic Wand as "his" and where the respondent asked permission from the applicant before using it.
13. The respondent argues that the only reason she had to ask permission to use the Magic Wand was because they were engaged in role play. Based on both parties' text messages, I find this was the case. The applicant meant to maintain control over the Magic Wand, whether or not he had gifted it to her.
14. The respondent argues the parties were originally pretending the Magic Wand was *not* a gift because she felt "weird" about gifts. I find this argument does not support her position. Instead, I find it suggests she may not have accepted the Magic Wand as a gift even though she had possession of it. Again, acceptance is required for a legally effective gift.
15. Intention to gift is also required. The respondent did not provide any direct evidence that the applicant intended to gift her the Magic Wand. Instead, she argues that the Magic Wand is meant for female use and as such, I should find it was gifted to her. The applicant argues the Magic Wand is not gender specific. I agree with the applicant; the evidence does not establish that the Magic Wand is a gender specific item. The respondent also submitted text messages wherein she thanked the applicant for the Magic Wand, which she argues demonstrates it was gifted to her.

While it provides some evidence that she understood the item was a gift, on balance, I find it is not determinative that the applicant intended it as a gift.

16. The onus is on the respondent to prove on a balance of probabilities that the three items, being the two down pillows and the Magic Wand, were gifts. I find the respondent has not met the burden.
17. I considered whether I ought to order the applicant compensation for the items, which as noted, he values at \$300. Generally speaking, specific performance is not ordered where compensation will suffice. However, here I find the appropriate result is that the respondent return the items. I say this because that is what the applicant asked for and there is no indication the respondent would prefer to pay the applicant rather than return the items. In keeping with the tribunal's mandate, I find the respondent must, at her expense, return the two down pillows and the Magic Wand to the applicant by way of registered mail or courier to the address set out in the Dispute Notice for the applicant.
18. In accordance with the tribunal's rules, I find the applicant is also entitled to reimbursement of the \$125 he paid in tribunal fees. The applicant did not claim any dispute-related expenses.

ORDERS

19. Within 30 days of the date of this decision, I order the respondent to
 - a. return to the applicant, at the respondent's expense, the two down pillows and Hitachi Magic Wand by registered mail or courier to the applicant's address as set out in the Dispute Notice, and
 - b. pay the applicant \$125 in tribunal fees.
20. The applicant is also entitled to post-judgment interest as applicable under the COIA.

21. 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.

22. 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.

Trisha Apland, Tribunal Member