



Civil Resolution Tribunal

Date Issued: May 16, 2019

File: SC-2018-008124

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shannon v. Taylor*, 2019 BCCRT 597

B E T W E E N :

Christopher Shannon

APPLICANT

A N D :

Chris Taylor

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about “new double (DDBL) Kick drum pedals” (pedals), which the applicant, Christopher Shannon, says he loaned to the respondent, Chris Taylor, who has failed to return them. The applicant claims \$370, which is what he paid for the pedals.

2. The respondent denies liability and says while the applicant loaned him the pedals to try, the respondent returned the pedals after about a month. The respondent also says the applicant's claim is out of time, as the pedals were loaned to him 11.5 years ago. 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* (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 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 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.
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 9.3(2), 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.

ISSUES

7. The issues are whether a) the applicant's claims are out of time, and b) the respondent returned the applicant's pedals, and c) whether the applicant is entitled to the damages claimed.

EVIDENCE AND ANALYSIS

8. 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.

Limitation defence

9. For the reasons that follow, I find the applicant's claim is out of time. The applicant does not specify in his argument when he loaned the respondent the pedals. However, the respondent says it was in June 2007. The applicant's witness statement from PP states that the applicant has complained to him of the situation "over several years".
10. The applicant does not explain why he has waited 11 years to pursue the respondent for the pedals' return. The applicant says he has asked the respondent many times for the pedals back, without success. However, the respondent says he has not seen or spoken to the applicant in over 11 years, until October 2018 at which time the applicant made repeated contact. The applicant does not specifically deny this. In particular, the applicant has not stated out how or when he made his requests for the pedals back, and there are no emails or texts or letters in evidence.
11. Despite the respondent raising the limitation issue in his Dispute Response at the outset of this proceeding, the applicant chose not to address it other than saying that in October 2018 he "just became aware that I could never get them back". The applicant does not explain why he let 11 years pass.

12. Section 13 of the Act states that the *Limitation Act* (LA) applies to the tribunal as if it were a court. It also says reference to a claim in the LA is deemed to include a claim under the Act. The LA defines a "claim" as "a claim to remedy an injury, loss or damage that occurred as a result of an act or omission". The limitation period only applies to claims, as defined.
13. Section 6 of the LA says of the basic limitation period is 2 years, and that a claim may not be commenced more than 2 years after it is discovered. However, in this case I find the version of the LA that was in force before June 1, 2013 applies, because the loan of the pedals took place in 2007. Section 3(5) and 3(6)(c) of the older version of the LA provides that in a case like the one before me, the limitation period is 6 years.
14. Here, the tribunal issued the Dispute Notice on November 8, 2018, which is what stopped the running of time. This means that if the applicant's claim arose before November 6, 2012, it was out of time.
15. Considering the factors set out above under section 8 of the LA, I find the applicant's claim for the pedals' return from the respondent arose long before November 6, 2012. I say this because the applicant's own evidence was that he only loaned the pedals to the respondent to try them out, which he did in June 2007. I find that the applicant reasonably knew he had a claim against the respondent within a couple of years of the loan, if not sooner, and certainly by 2012.

Liability for the pedals

16. Even if the applicant's claim for the pedals was not out of time, I find his claims must be dismissed because the weight of the evidence supports a conclusion the respondent returned the pedals to the applicant. My reasons follow.
17. There was no written contract, but the respondent admits the applicant loaned him the pedals, in June 2007. I accept this is when the loan was made, noting the applicant did not provide a date and did not dispute it was June 2007.

18. Contrary to the applicant's central submission, the respondent denies loaning the pedals to his stepfather GT. PP's witness statement does not prove the respondent did so: at most, PP says, "I understand that [the respondent] had given them to his step father" and that the stepfather refused to return them when the respondent asked for them. More on the stepfather's involvement with the pedals below, but PP's statement does not set out any personal knowledge of what happened with the pedals.
19. The respondent says he returned the pedals a month after the applicant loaned them to him, at a paint counter in a Rona store where the respondent apparently worked. The respondent provided a December 18, 2018 witness statement from TD, a co-worker, who says he witnessed the respondent return the pedals to the applicant in "mid June 2007".
20. The applicant says another co-worker, JG, knows it "it is not true" that the respondent returned the pedals. However, there is no statement from JG in evidence. I prefer the respondent's evidence which is corroborated by TD, over the hearsay evidence of JG which I also find is too vague in any event.
21. The respondent provided a February 15, 2019 statement from his stepfather, GT. GT says he became friends with the applicant in about 2004, as they were both musicians. GT says that in November 2007, the applicant and another person were at GT's front door, with the applicant holding the pedals. GT says the applicant wanted to trade the pedals for the "radio/CD/tape player" that GT had lent the applicant about 2 weeks prior but keep the radio. GT says he agreed to the trade and the applicant left with the radio/CD. GT says over the following months he attended many parties at the applicant's home and at no time did he indicate he was unhappy with the trade. GT says he was never aware that the applicant had loaned the pedals to the respondent before he traded them with GT. GT says he only learned of that prior loan until "quite some time later".
22. The applicant denies he made this trade with GT, saying it is ridiculous and that if the tribunal called a music store they would say the value of the trade would not

make sense. Yet, the applicant did not provide any evidence from the music store about the pedals' value.

23. The applicant has provided no explanation for why he waited until 2018 to pursue the respondent for the pedals, when the loan was made 11 years prior in June 2007. I find this supports a conclusion that the pedals were returned by the respondent.
24. Finally, while the applicant claims \$370 or \$470 (the amount varies in his materials), the applicant provided no proof of the value of the pedals, such as a receipt, quote or invoice, or even a screenshot from a website selling the same brand.
25. On balance, I find the weight of the evidence shows the respondent is not responsible for the pedals, as he returned them to the applicant before they came into GT's possession. The applicant has also not proved the value of the pedals. I make no findings about GT's evidence about the trade, as that issue is not before me. I dismiss the applicant's claims.
26. The applicant was unsuccessful. In accordance with the Act and the tribunal's rules, I find the applicant is not entitled to reimbursement of tribunal fees.

ORDER

27. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair