



# Civil Resolution Tribunal

Date Issued: September 4, 2019

File: SC-2019-003139

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Storch et al v. Legood*, 2019 BCCRT 1044

**B E T W E E N :**

COLLEEN STORCH and RICHARD DOUGLAS SAVORY

**APPLICANTS**

**A N D :**

ANGELA LEGOOD

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kathleen Mell

### **INTRODUCTION**

1. This dispute is about a chain linked animal enclosure (pen). The applicants, Colleen Storch and Richard Douglas Savory, say they lent the pen to the respondent, Angela Legood. Mr. Savory owned the pen but gave his permission to Ms. Storch to loan it to Ms. Legood. The applicants say that Ms. Legood sold the pen without their

consent. The applicants request \$1,000.00 in compensation for the pen. Ms. Storch represents the applicants.

2. Ms. Legood says that she offered the pen back to Ms. Storch on several occasions over a two-month period but she never came and got it, so it was sold. There is a dispute over whether Ms. Legood or her son, who is not a party to this dispute, sold the pen. Ms. Storch also argues that Mr. Savory should be suing Ms. Storch as he lent the pen to her who then lent it to Ms. Legood. Ms. Legood also argues that the applicants should be suing her son as he got the money from the sale. She also says that the pen was not worth \$1,000.00. Ms. Legood represents herself.

## **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* (CRTA). 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. In her submission, the respondent says she wants to sue the applicants for defamation and slander. I note that there is no counterclaim in this dispute. Also, slander and defamation are outside the tribunal's jurisdiction. Therefore, I will not consider this matter in my decision.
5. 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 "they said, she said" scenario with both sides calling into question the credibility of the other. 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.

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, where permitted under section 118 of the CRTA: 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 Ms. Legood unlawfully sold or disposed of the pen and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. In a civil dispute such as this, the applicants must prove their claim. They bear the burden of proof on a balance of probabilities.
10. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
11. Ms. Storch's daughter and Ms. Legood's son were in a long-term relationship and shared ownership of a pitbull. In June 2018, they decided to move to Toronto and left the dog with Ms. Storch. In October 2018, the dog got out of Ms. Storch's yard and attacked another dog. At that point Ms. Storch felt that she could not take care of the dog so Ms. Legood took it. Ms. Legood did not have a fenced yard. Ms.

Storch told this to Mr. Savory who agreed to lend Ms. Legood the pen. All of this is undisputed.

12. In January 2019, Mr. Savory wanted the pen back. The applicants say they made arrangements with Ms. Legood to pick up the pen in the week of February 4, 2019. Because of bad weather conditions and an accident involving their work truck the applicants were unable to pick up the pen. The applicants did not immediately contact Ms. Legood to explain they would not be able to pick up the pen. When Ms. Storch contacted Ms. Legood on February 28, 2019 she said that her son sold the pen. The applicants say that they found out that Ms. Legood had posted the pen for sale on Facebook on February 7, 2019.
13. Ms. Legood says that she made multiple offers to Ms. Storch to come and pick up the pen over the course of two months and although Ms. Storch said she would pick it up, she never came and got it. Ms. Legood says that her last offer to Ms. Storch was on February 4, 2017 when she texted her that she was wondering when she would come and pick up the pen. Ms. Legood says she listed the pen for sale in early February “in anticipation” of Ms. Storch not showing up again. She states that she thought that Ms. Storch had no intention of picking up the pen and was just “leading her on” again. However, Ms. Legood provided no texts or emails to show she had been asking Ms. Storch to pick up the pen for two months. The evidence suggests that the parties typically communicated by text.
14. Ms. Legood also defends selling the pen and the money going to her son on the basis that Ms. Storch’s daughter owed her son money.
15. Ms. Legood provided a letter from a witness, R, who states that he was present during a phone conversation between Ms. Legood and Ms. Storch at the end of January 2019. He says he heard Ms. Legood tell Ms. Storch that she was going to sell the pen that was abandoned on her property. Ms. Storch denies that this conversation ever took place. I will discuss R’s evidence in further detail below.

16. Based on a review of the text messages between the parties, I prefer the evidence of Mr. Savory and Ms. Storch over that of Ms. Legood. Although Ms. Legood says that she had been telling Ms. Storch to come get the pen for months, the context of a January 28, 2019 text suggests that the topic was brought up for the first time at that point. Ms. Storch wrote to Ms. Legood that her friend (Mr. Savory) needed his pen back. Ms. Legood wrote back that she was just about to message Ms. Storch and ask her if she wanted it back. I find that it was Ms. Storch who requested the pen back and that Ms. Legood had not previously been asking her to come and get it.
17. In the January 28, 2019 text message, Ms. Legood also said that the dog had not been using the pen. I find this further shows this was the first time the parties had spoken about the pen's return. I say this because if Ms. Legood had previously told Ms. Storch to pick up the pen this information would have already been shared.
18. I reject R's evidence as it does not make sense that Ms. Legood would be on the phone at the end of January telling Ms. Storch to come and get the pen allegedly abandoned on her property at the same time that they were texting each other about it for the first time in a friendly tone.
19. On February 4, 2019, Ms. Legood texted Ms. Storch and said that she was "just wondering" when she would be coming to pick up the pen. Again, the tone of this text is friendly and there is no suggestion that Ms. Legood is frustrated with how long it is taking to pick up the pen or that she is going to consider it abandoned and sell it.
20. Ms. Storch wrote back to Ms. Legood that she would come one night that week after work and would get back to her to let her know when. Ms. Legood said that was "perfect." Ms. Storch wrote to Ms. Legood on February 28, 2019 explaining that she had not picked up the pen because the flat deck truck she was planning on using was involved in an accident. At that point Ms. Legood told Ms. Storch that her son had sold the pen.

21. Although Ms. Legood said that her son sold the pen, the advertisement indicates that she was the one who put it up for sale. Also, she submits that the money “went to her son” which I infer means she gave the money to her son. Based on this, I find that Ms. Legood sold the pen. The fact that there may have been a debt between Ms. Legood’s son and Ms. Storch’s daughter is irrelevant to this dispute and I make no finding about it.
22. In the series of texts in evidence, Ms. Legood never said that she had been trying to get Ms. Storch to pick up the pen for months or even that she had tried to get her to pick it up before the end of January. There was also no warning that Ms. Legood was going to sell it.
23. The pen was loaned to Ms. Legood. The pen was there for a short time after the applicants said they wanted it returned and Ms. Legood never told them that she considered that the applicants abandoned it. The applicants made it clear they wanted it back on February 4, 2019 and Ms. Legood put it up for sale on February 7, 2019. There was bad weather in mid-February and a motor vehicle accident which prevented the applicants from picking up the pen as planned.
24. I find the delay of a few weeks does not support Ms. Legood’s claim that she thought the pen was abandoned, especially when she put it up for sale a mere three days after the applicants said they would be by to pick it up. At that point there is insufficient evidence to support Ms. Legood’s claim that the pen was abandoned. Further, a delay of a few weeks also does not support Ms. Legood’s claim that she thought the pen was abandoned. Mr. Savory argues that Ms. Legood’s actions are theft by conversion.
25. The tort of conversion involves wrongfully holding on to another person’s property and claiming title or ownership of that property.
26. The tort of conversion is proved when someone purposely does something to deal with goods in a wrongful way that is inconsistent with the owner’s rights: see *Li v. Li*, 2017 BCSC 1312, citing *Royal Canadian Legion, Branch No. 15 v. Burkitt*, 2005

BCSC 1752 (CanLII) at para. 104; *Ast v. Mikolas*, 2010 BCSC 127 (CanLII) at para 128; *Drucker, Inc. v. Gui*, 2009 BCSC 542 (CanLII) at para. 58, *Dhothar v. Atwal*, 2009 BCSC 1203 (CanLII) at para 15.

27. The law is clear that the applicant must prove:

- a. A wrongful act by the respondent involving the applicant's personal property;
- b. The act must involve handling, disposing, or destroying the goods; and
- c. The respondent's actions must have either the effect or intention of interfering with (or denying) the applicant's right or title to the goods.

28. Based on the facts, I find that the applicants have proved that Ms. Legood performed a wrongful act when she sold the pen which was Mr. Savory's personal property. Ms. Legood interfered with Mr. Savory's ownership of the pen by claiming it was hers to sell and then doing so. Therefore, I find that the applicants have proved the tort of conversion.

### ***The Value of the Pen***

29. The question then becomes how much the pen was worth. Ms. Legood argues that the pen is worth less than \$500.00 and provided postings of pens for sale which are all under that price. Mr. Savory argues that the pen was one of a kind because it was made up of pieces from other pens. He also argues because he lent Ms. Legood mismatched pieces it effectively left him with two incomplete pens. However, Mr. Savory provided no proof as to the pen's value.

30. The sale price listed on Ms. Legood's advertisement was \$500.00 but Ms. Legood's son indicated in a text message that it sold for \$400.00. Based on the evidence of other pens for sale, the fact that the pen sold for \$400.00, and Mr. Savory did not provide any proof it was worth more than that, I find the pen was worth \$400.00. Because Mr. Savory owned the pen, he is entitled to that amount.

31. The *Court Order Interest Act* (COIA) applies to the tribunal. Mr. Savory is also entitled to pre-judgement interest on the amount owing from the day Ms. Legood unlawfully took ownership of the pen and put it up for sale on February 7, 2019 to the date of this decision. This equals \$4.49.
32. Under section 49 of the CRTA, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the applicants were successful in their claim they are entitled to have their \$125.00 tribunal fees reimbursed.

## **ORDERS**

33. Within 30 days of this decision, I order Ms. Legood to pay Mr. Savory a total of \$529.49, broken down as follows:
  - a. \$400.00 in damages for the pen,
  - b. \$4.49 in pre-judgement interest under the *Court Order Interest Act* (COIA),  
and
  - c. \$125.00 in tribunal fees.
34. Mr. Savory is also entitled to post-judgement interest under the COIA, as applicable.
35. Under section 48 of the CRTA, 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.
36. Under section 58.1 of the CRTA, 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 passes. 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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Kathleen Mell, Tribunal Member