



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Du Monet v. Green*, 2019 BCCRT 1051

B E T W E E N :

COUNTESS DU MONET

APPLICANT

A N D :

LESLEY GREEN

RESPONDENT

A N D :

COUNTESS DU MONET

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a dispute over ownership of two dogs.
2. The applicant Countess Du Monet says the respondent Lesley Green wrongly kept her male miniature show poodle, Royal Court's Crown Prince (Princey), instead of returning him. Ms. Du Monet¹ seeks an order that Ms. Green return Princey, who she says is worth \$2,500.
3. Ms. Du Monet also says Ms. Green failed to pay in full after buying a female Pomeranian named Royal Court's Crown Jewel (Jewel). Ms. Du Monet claims \$2,130.00 she says Ms. Green owes for Jewel.
4. On her counterclaim, Ms. Green says that Jewel has lived with her since December 2015. At that time, she says Ms. Du Monet asked her to take care of Jewel, because Ms. Du Monet was having behavioural issues with her. Ms. Green says Jewel was malnourished and anxious at the time. Ms. Green says that the applicant gifted Jewel to her and her husband in December 2016.
5. In 2018, Ms. Green says she started taking care of Princey for a few weeks, but that Ms. Du Monet then would not take him back. Ms. Green says Princey was malnourished and had medical problems. Ms. Du Monet rejects this characterization of her care. Ms. Du Monet say her dogs have always had "the very finest of treatment, training and living conditions & care in every aspect of their lives." Ms. Green says Ms. Du Monet abandoned Princey.
6. Ms. Green seeks an order that she is the sole owner of Jewel and Princey. Ms. Green asks that the tribunal order Ms. Du Monet to formally change the ownership for Jewel and Princey accordingly.
7. Ms. Green also claims \$4,500 for the care and board of Princey and Jewel but says she would waive this claim if she succeeds in her ownership claims.

¹ There was no evidence proving that Ms. Du Monet was conferred the title Countess, as distinct from changing her name herself. I therefore refer to her as Ms. Du Monet in these reasons.

8. The parties are each self-represented.

JURISDICTION AND PROCEDURE

9. 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.
10. 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 "she said, she said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
11. 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 decided to hear this dispute through written submissions.
12. 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.

13. The tribunal does not have jurisdiction to grant declaratory or injunctive relief (see *Canaccede International Management Ltd. v. Suttles*, 2012 BCPC 243 at paragraph 31). I find I do not have jurisdiction to grant the order sought by Ms. Green to “formally change” ownership and possession of the dogs. For this reason, I refuse to resolve this specific claim.
14. However, I consider that Ms. Green is seeking an order that she is entitled to retain ownership and possession of Jewel and Princey. I find that this claim falls within the tribunal’s jurisdiction over personal property.
15. 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.

ISSUES

16. The main issues in this dispute are:
 - a. whether Ms. Du Monet or Ms. Green owns Jewel, and
 - b. whether Ms. Du Monet or Ms. Green owns Princey.

EVIDENCE AND ANALYSIS

17. In a civil claim such as this, the applicant Ms. Du Monet bears the burden of proof on a balance of probabilities. Ms. Green bears this burden on her counterclaim.
18. Under the law, pets are considered personal property: *Brown v. Larochelle*, 2017 BCPC 115. The ownership of a dog generally falls within the tribunal’s personal property jurisdiction under section 118 of the Act.

19. In *Gardiner-Simpson v. Cross*, 2018 NSSM 78, the Nova Scotia court wrote that while it may be distasteful to decide between two loving pet owners, the court must determine which party has the better property claim, and award ownership of the pet to that party. While this dispute over pet ownership arises between former friends rather than romantic partners, I find the sentiment applicable (see also *Johnston v. Arnott*, 2019 BCCRT 748).

Jewel

20. Ms. Green says that Ms. Du Monet gifted Jewel to her in December 2016. Ms. Du Monet says she sold Jewel to Ms. Green, for \$1,600, on December 24, 2015.

21. In her Dispute Notice, Ms. Du Monet said that Ms. Green owed a balance of \$2,130 on this purchase. As I understand it, Ms. Du Monet arrived at the claimed \$2,130 by combining the alleged purchase price (\$1,600), with \$880 she says was owed under separate agreement for grooming services, and then subtracting payments of \$350 that she says Ms. Green made.

22. Once someone has made a true gift to another person, the gift cannot be revoked (*Bergen v. Bergen*, 2013 BCCA 492). The law of gifts says that the person alleging the gift, here Ms. Green, bears the burden of proof to establish that a gift was made.

23. Ms. Green and Ms. Du Monet live in the same apartment complex. They were friends, up until an unrelated issue arose between them in October 2017.

24. Ms. Du Monet filed a handwritten document dated December 24, 2015 (December 2015 document) which she says proves Ms. Green's agreement to buy Jewel for \$1,600, payable "over the next 3 years in sums manageable to the buyer", with Ms. Du Monet agreeing that Jewel could live with Ms. Green while making payments.

25. The December 2015 document also says that, while Ms. Green must feed, care for and provide veterinary services for Jewel, Ms. Du Monet will groom Jewel monthly for \$40.00 per grooming.

26. Ms. Green denies entering into a verbal or written contract with Ms. Du Monet to buy Jewel. She says the contract is a fabrication and denies signing the December 2015 document.
27. In considering whether the December 2015 document is an authentic written agreement between Ms. Green and Ms. Du Monet, I have carefully considered Ms. Green's alleged signature on it and the surrounding circumstances.
28. First, there is the alleged purchase price for Jewel. Ms. Green provided a statement from her long-time friend KY, who heard, through Ms. Green, that Ms. Du Monet was offering Jewel for sale for \$500, in 2015. Because this evidence comes second-hand from a close friend of Ms. Green, I place limited weight on it.
29. However, there is direct evidence that the purchase price offered for Jewel was lower than \$1,600. Ms. Green's friend SKP recalled Ms. Du Monet offering Jewel for sale for \$500. Ms. Green's acquaintance, JM, said Ms. Du Monet directly offered to sell her Jewel for \$1,000.
30. As well, Ms. Du Monet filed a statement from her own acquaintance, EP, saying Ms. Du Monet offered to sell them Jewel for \$1,500. I find it unlikely that Ms. Du Monet would have charged Ms. Green, then her friend, a higher price of \$1,600 to buy Jewel. My conclusion calls into question the authenticity of the December 2015 document.
31. I will now consider Ms. Green's signature as it allegedly appears on the December 2015 document. Ms. Green filed several government forms bearing her signature, to show that they do not match the signature on the December 24, 2015 document. By contrast, Ms. Du Monet points to greeting cards she says were signed by Ms. Green, with her first name, Lesley. The handwriting is inconsistent between the greeting cards. Due to their informality and the inconsistent handwriting, I find the greeting cards are not a reliable record of Ms. Green's signature.

32. The signature on the December 24, 2015 document reads only “Lesley”. However, the document appears very formal. I find it unlikely that Ms. Green would have signed it with her first name only.
33. Comparing the signature on the December 24, 2015 document to that on the government forms, where the signatures are consistent, the signatures do not match. I find that Ms. Green’s formal signature includes her surname. I find that her signature does not appear on the December 24, 2015 document.
34. Ms. Du Monet also filed a balance sheet, which she says showed notes of payments made by Ms. Green against an overall balance owing of \$2,480. Because Ms. Green filed no independent evidence of receiving payments, such as e-transfer records, bank deposit records, or receipts given for cash payments, I find that the balance sheet was also fabricated.
35. I find Ms. Du Monet to be less credible than Ms. Green in terms of her evidence about what happened between the parties. I say this because Ms. Du Monet submitted the December 24, 2105 document, which I find was fabricated.
36. Turning to the purported agreement that Ms. Du Monet would groom Jewel monthly, it strikes me as inconsistent with the December 24, 2015 document otherwise requiring that all aspects of Jewel’s care would fall to Ms. Green.
37. Ms. Du Monet also filed a handwritten document showing dates from January 17, 2016 to April 9, 2016 with periodic grooming charges of \$40 for Jewel, which are listed as “not paid”, and total \$880. Only Ms. Du Monet’s handwriting appears on this document.
38. Ms. Green says this document is also fabricated. She points out that she was attending to other commitments on many of the dates, meaning she could not have picked up and dropped off Jewel for grooming.
39. Given my credibility findings regarding the December 2015 document, and the fact that Ms. Du Monet filed no independent evidence of having received payments

toward the purchase of Jewel, I accept Ms. Green's evidence and find that there was no grooming agreement.

40. I find there was no agreement that Ms. Green would purchase Jewel from Ms. Du Monet in December 2015.

41. I make this finding in part due to evidence that Ms. Du Monet gifted Jewel to Ms. Green a year later, on December 25, 2016. This evidence includes:

a. a social media post written by Ms. Green on December 25, 2016, with the quote reproduced as written: "What beautiful Christmas gift from the countess. Jewel is our puppy now ☐. She has her forever home. Welcome home jewel". Given that it was composed well before this proceeding, and includes comments from other people at the time, I find it is some evidence that a gift was made.

b. As well, there is further evidence including a statement from LO, Ms. Green's common law husband, confirming that Jewel was gifted to Ms. Green by Ms. Du Monet on December 25, 2016,

c. a health record book for Jewel, showing Ms. Du Monet as Jewel's former owner and Ms. Green as her current owner, and

d. documents showing that, in 2017, 2018 and 2019, Ms. Green purchased Jewel's City of Victoria dog licenses.

42. Based on all of the evidence, I find that Ms. Du Monet made a gift of Jewel to Ms. Green on December 25, 2016.

43. I dismiss Ms. Du Monet's claim for \$2,130 for the purchase of Jewel. On her counterclaim, I find Ms. Green is entitled to retain ownership and possession of Jewel.

Princey

44. Ms. Du Monet says that Princey went to stay with Ms. Green in May 2018 for two weeks, after which Ms. Green refused to return him.
45. Ms. Green agrees Princey came to stay with her in May 2018. However, Ms. Green says Ms. Du Monet did not ask for him to be returned until December 2018, seven months later, by having the police attend to try to take him.
46. Ms. Du Monet filed a Canadian Kennel Club Purebred Certificate of Registration for Princey, issued June 16, 2018, showing her as Princey's owner.
47. It is uncontested, and I find, that Ms. Du Monet owned Princey prior to May 2018. The question is whether, at some point after Ms. Du Monet asked Ms. Green to take care of Princey, ownership transferred to Ms. Green. This turns on whether Mr. Green reasonably understood Ms. Du Monet abandoned Princey.
48. Bailment is about the obligations on one party to safeguard the possessions of another party. The bailor is the person who gives the goods or possessions and the bailee is the person who holds or stores them. In this case, Ms. Green is what is known as a "gratuitous bailee", as Ms. Du Monet did not compensate her for keeping Princey.
49. Gratuitous bailees have traditionally only been liable for "gross negligence," however the courts are moving away from a strict classification between bailment for reward and gratuitous bailments, and instead there is a preference to determine liability based on whether or not the bailee has exercised reasonable care in all of the circumstances (see: *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273).
50. If I analyzed this as a bailment situation, I would have found that the two-week fixed term for keeping Princey was far exceeded, leading to a reasonable conclusion that Ms. Du Monet had abandoned Princey to Ms. Green.
51. Ms. Du Monet's claim against Ms. Green is arguably also one of conversion, although she did not expressly rely on bailment or conversion (see *Halltom v. Berry*,

2019 BCCRT 798). The tort of conversion involves wrongfully holding on to another person's property and claiming title or ownership of that property. Detinue refers to continuous wrongful detention of personal property, with the general remedy being the return of the asset or market value damages.

52. The tort of conversion and detinue 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.

53. The law is clear that Ms. Du Monet 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.

54. In this case, the focus is on whether Ms. Green's action in refusing to return Princey, on the basis that Ms. Du Monet abandoned him, was wrongful. I find that if Ms. Du Monet effectively abandoned the personal property, Ms. Green is not liable for the tort of conversion (see *Bangle v. Lafreniere*, 2012 BCSC 256 at paragraph 30). As set out in *Bangle*, if the applicant abandoned the personal property, the respondent's continued possession is not conversion because in so doing the respondent was not interfering with the applicant's right of possession. In other words, if Ms. Du Monet abandoned Princey, Ms. Green does not have to return him to Ms. Du Monet. As indicated below, I find Ms. Du Monet abandoned Princey by leaving him in Ms. Green's care between May and December 2018. I find that Ms. Du Monet has not proved her claim in either bailment or conversion.

55. Ms. Green says she went to Ms. Du Monet's apartment and phoned, asking if Ms. Du Monet would take Princey back. However, Ms. Green says her efforts were met with "indifference bordering on a negative response" about taking Princey back. I prefer Ms. Green's evidence and find that, until December 2018, Ms. Du Monet did not agree to take Princey back despite Ms. Green's efforts.
56. As well, Ms. Du Monet produced no records of having asked for Princey back, such as letters, emails, notes or records of phone calls requesting his return. By contrast, Ms. Green produced evidence that she is a reliable pet sitter who has returned other pets to their owners on agreed schedules.
57. I accept that Ms. Green paid for Princey's dog license in each of 2018 and 2019, showing that she incurred costs to have him live with her beyond May 2018.
58. I find that Ms. Du Monet's failure to retrieve Princey between May and December 2018 was unreasonable. Having put Ms. Green in the position caring for Princey for far longer than the initial two-week period, in a situation involving a living creature, I find that Ms. Du Monet abandoned Princey to her. I say this in part because Ms. Green was incurring costs for Princey's care, and Ms. Du Monet shows no record of having contributed to those or otherwise compensating Ms. Green for the 7-month period.
59. I find that Ms. Green is now Princey's owner. Because I have concluded that both dogs are Ms. Green's property, I dismiss Ms. Green's alternative claim for the costs of boarding and caring for them. Ms. Green agreed to waive her claim for those expenses if I found her to be the rightful owner.
60. Ms. Green based her counterclaim largely on allegations that Ms. Du Monet was mistreating Princey and Jewel. I find that the evidence here did not prove that Ms. Du Monet mistreated the dogs, on a balance of probabilities. As a result, I have determined the ownership of Princey and Jewel under the law of gifts, bailment and conversion, not based on the animal cruelty allegations. The British Columbia

Society for the Prevention of Cruelty to Animals (BCSPCA) is the provincial agency with authority to enforce specific laws related to animal cruelty.

61. I have found that Ms. Green is entitled to retain possession and ownership of Princey and Jewel.
62. 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. I see no reason in this case not to follow that general rule. Ms. Green succeeded in her request to retain ownership and possession of the dogs. She paid \$125 in tribunal fees, which I order Ms. Du Monet to pay. Ms. Green did not claim dispute-related expenses.

ORDERS

63. I order that Ms. Green is entitled to retain ownership and possession of Princey and Jewel.
64. Within 15 days of the date of this order, I order Ms. Du Monet to pay Ms. Green a total of \$125, being Ms. Green's tribunal fees.
65. 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.

66. 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 passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Julie K. Gibson, Tribunal Member