Civil Resolution Tribunal

Date Issued: September 13, 2019

File: SC-2019-003948

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Smith v. Ruud et al,* 2019 BCCRT 1084

B E T W E E N :

KEVIN SMITH

APPLICANT

A N D :

BRIAN RUUD and E Y PROPERTIES LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a truck canopy the applicant, Kevin Smith, says he had stored on municipal property directly beside his house. He says the respondents improperly disposed of the canopy without asking him, and claims $1,499 plus tax

for it. He abandoned his claim for similarly disposed-of kitty litter as he acknowledges that belonged to his tenant, not him.

2. The respondent Brian Ruud says he was employed by the respondent E Y Properties Ltd. (EY) to clean up the landscaping in the fire lane between EY's two properties, and in doing so removed "the abandoned canopy" that was overgrown with weeds and disposed of it. EY says the canopy had been abandoned there for at least 6 years. I note EY did not file a Dispute Response as required, but it did participate in the proceeding by filing evidence and submissions.

3. The applicant and Mr. Ruud are each self-represented. EY is represented by an employee or principal.

JURISDICTION AND PROCEDURE

4. 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.

5. 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.

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 do one or more of the following where permitted under section 118 of the CRTA: 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.

8. I note Mr. Ruud says he asks for $5,000 compensation due to the applicant's "frivolous and bogus action". As he did not file a counterclaim, I would not have granted that award in any event even if I had not reached the conclusion below that the applicant has proved his claims.

ISSUE

9. The issue in this dispute is whether the respondents unlawfully disposed of the applicant's truck canopy, and if so what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the burden of proof is on the applicant to prove his claims on a balance of probabilities. However, as discussed below, the burden is on the respondents to prove the applicant abandoned his canopy. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.

11. As discussed below, the issues in this dispute turn on whether the canopy had been stored on EY's property or municipal property, and, whether the applicant had in fact abandoned the canopy, which he denies.

12. While it appears the respondents may have initially questioned the applicant's ownership of the canopy, they did not particularly pursue that argument. In any

event, I find the applicant was the canopy's owner, based on his photos of it stored beside his truck and then on his truck, his friend's Affidavit who gifted it to him with the truck, and the insurance registration documents.

13. The applicant says he stored his truck canopy in the area in question for 9 years, since 2010. He says he did so for convenience, and that the canopy was within a foot of his home's fence and within several feet of his parked truck. The applicant says the municipality, which is not a party to this dispute, never complained about his canopy's storage. I accept all this evidence, which is undisputed.

14. It is also undisputed that EY hired Mr. Ruud to clear the fire lane and in doing so he took the canopy to the dump.

Location of canopy's storage

15. The respondent EY owns a building adjacent to the applicant's property. Between the two properties, there is a fire lane that EY says it owns. However, EY provided no proof of this. In any event, the parties agree the canopy was on the boulevard beside the fire lane, and the photos show this. The boulevard was right next to the applicant's fence (as opposed to being on the other side of the fire lane, next to EY's building). The applicant says the boulevard was municipal property, but EY appears to say it owned the boulevard as well as the fire lane. However, again, EY provided no proof of this despite it knowing at the outset this was a central issue in this dispute.

16. On balance, I find the weight of the evidence, including a city map, shows the canopy was stored on municipal property, and not on property owned or controlled by the respondents. Based on the applicant's photos, the canopy was stored essentially beside his truck, and right next to his fence's exterior.

17. If the canopy had been left on EY's property, then there would have been an analysis in law known as bailment. Briefly, bailment deals with a party's obligations to care for property left with it. Because I find the canopy was stored on municipal

property, not EY's, I must consider whether the respondents were nonetheless entitled to dispose of the canopy. They say they were, because it was abandoned. The applicant denies that he ever abandoned the canopy, although he freely acknowledges he only used it about once a year.

Evidence of abandonment

18. The burden of proof is on the respondents to prove the canopy was abandoned, and I find they have not done so. My reasons follow.

19. The applicant submits that the canopy was used "annual or more" and was last used in September 2018. He says nothing turns on the fact that weeds and bramble had overgrown around the canopy, because they regrow in several months.

20. The respondents rely on several witness statements who all say the canopy was abandoned, because it was always in the spot on the boulevard covered with bramble. I accept the respondents' evidence that the canopy was an eyesore in its location, usually covered in bramble and weeds, which I find is apparent from the photos. However, the applicant's frequency in using the canopy is largely irrelevant. What matters is that I find the applicant owned the canopy, which was stored on municipal property not owned or controlled by the respondents. It is undisputed that the applicant never told anyone he had abandoned the canopy.

21. Further, there is no evidence the respondents ever asked the applicant, whose house was directly adjacent to where the canopy was stored, if he owned the canopy or knew who owned it. Arguably, this goes to the question of whether the respondents' belief the canopy was abandoned was a reasonable one.

22. In any event, as submitted by the applicant, I find the respondents committed what is known in law as the "tort of conversion" (see *Halltom v. Berry*, 2019 BCCRT 798, and *Li v. Li*, 2017 BCSC 1312). In particular, to establish the tort of conversion the applicant must prove:

    a. A wrongful act by the respondents involving the applicant's personal property,

b. The act must involve handling, disposing, or destroying the goods, and

c. The respondents' actions must have either the effect or intention of interfering with or denying the applicant's right or title to the goods.

23. Here, it is undisputed Mr. Ruud, at EY's general direction, disposed of the canopy by taking it to the dump and denied the applicant's right to the goods. Thus, the central question is whether their doing so was a "wrongful act". As noted, the applicant denies he ever abandoned the canopy, and admits he only used it occasionally. Mr. Ruud made a hearsay submission that someone from the municipality verbally told them they just take abandoned property to the dump. Even if that were true, there is no evidence before me that the municipality who owned the property authorized the respondents to clear their property and dispose of the canopy.

24. I have found the applicant never abandoned the canopy. Does it matter if the respondents believed the applicant had abandoned it? I find the answer is no.

25. The tort of conversion is a "strict liability" tort (see *Teva Canada Ltd. v. TD Canada Trust*, 2017 SCC 51). In other words, it is no defence that the wrongful act was done innocently. This means that it is irrelevant if the respondents were mistaken in their belief the canopy had been abandoned. So, I find the applicant has proved conversion and the respondents are jointly and severally liable.

26. The next question then is what are the applicant's damages? For the canopy, the applicant has increased his original $1,099 claim to $1,499 plus GST. This is based on a quote he received from Coast Mountain Canopies for a used canopy in good condition. The applicant also provided several classified ads for used canopies, and says the most similar to his was valued at $1,681.

27. In the May 15, 2019 police report, the applicant admits he said his canopy was worth $500. In his submissions, he said that was a guess. The applicant also admits the canopy was gifted to him with the 1997 Toyota Tacoma truck in 2010.

28. The applicant says even though his canopy was surrounded by ivy most of the year, it was easily washable and had no damage or permanent marks on it. The difficulty for the applicant is that he has not provided any supporting documentation, other than a photo from a distance, of the type of canopy he had. The $1,499 quote is for a Toyota Tacoma 2004 to 2007 year truck. The applicant said he could not find a canopy for a 1997 truck like his. He says his truck was worth $7,000 together with the canopy, but provided no proof of that value. While the applicant described his canopy as having special features, he provided no proof. Given the applicant provided his friend's Affidavit who said he gifted the truck and canopy to the applicant, I find the applicant could have proved the canopy's type and value.

29. On a judgment basis, I find the applicant is entitled to $500 for the canopy. I say this because I find the best evidence about the applicant's own canopy was his estimate to the police at the time of the loss. I find that it is unlikely the applicant would have left a more valuable canopy covered in bramble on municipal property for years.

30. The applicant is entitled to pre-judgment interest on the $500 under the *Court Order Interest Act* (COIA), from May 15, 2019. This equals $3.26.

31. Under the CRTA and the tribunal's rules, the successful applicant is generally entitled to reimbursement of their tribunal fees and reasonable dispute-related expenses. The applicant was partially successful and so I find he is entitled to reimbursement of $62.50, half the $125 paid for tribunal fees. I dismiss the applicant's claim for $105 in notary fees (which he may have amended to $40, based on the receipt he provided) because under the tribunal's rules of evidence I find it was unnecessary for him to obtain evidence in affidavit form.

ORDERS

32. Within 14 days of this decision, I find the respondents must pay the applicant a total of $565.76, broken down as follows:

    a. $500 in damages,

b. $3.26 in pre-judgment interest under the COIA, and

c. $62.50 in dispute-related expenses.

33. The applicant is entitled to post-judgment interest, as applicable. The applicant's remaining claims are dismissed.

34. 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.

35. 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.

Shelley Lopez, Vice Chair