



# Civil Resolution Tribunal

Date of Original Decision: December 10, 2019<sup>i</sup>

Date of Amended Decision: December 13, 2019

File: SC-2019-002381

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gasson v. Dionne*, 2019 BCCRT 1384

B E T W E E N :

IVO GASSON

**APPLICANT**

A N D :

JOCELYNE DIONNE

**RESPONDENT**

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## **AMENDED REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. This is a dispute between former friends over a mobility scooter.

2. The applicant, Ivo Gasson, says that on August 28, 2018 he gave the respondent, Jocelyne Dionne, a mobility scooter in exchange for the respondent providing him with “occasional” and “indefinite” help and support. The applicant says the respondent withdrew her help on October 31, 2018. The applicant claims \$4,225.50 as reimbursement for the scooter’s full purchased price.
3. The respondent says the applicant’s late wife “LV” had gifted the scooter to her before LV passed away. The respondent says she voluntarily helped the applicant for some time, but denies it was in exchange for the scooter.
4. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.

7. 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.
8. 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. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. 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.
10. After issuing my original decision it came to my attention that the applicant's receipts for his dispute-related expenses were not before me even though he had submitted them to the tribunal. This was due to either an inadvertent error with my access to the tribunal's online system or me inadvertently not accessing the uploaded evidence on expenses.
11. At common law, an administrative tribunal may reopen a proceeding to cure a jurisdictional defect, which is reflected in section 51(3) of the CRTA. In *Fraser Health Authority v. Workers' Compensation Appeal Tribunal*, 2014 BCCA 499, the British Columbia Court of Appeal discussed the scope of the power to reopen a hearing to cure a jurisdictional defect. Among other things, the court found it is a jurisdictional defect for an administrative tribunal to fail to provide the parties with procedural fairness.

12. I find it would be a breach of procedural fairness to make a decision without considering all the parties' evidence. According to the tribunal records, the applicant's receipts were submitted by uploading them to the tribunal's online evidence system during the initial time frame to submit evidence. The tribunal records show that the receipts were available online to both parties. The parties' submission on the dispute-related expense were before me but not the actual receipts for the process server. For these reasons, I decided under section 51(3) of the CRTA to reopen this proceeding to address the applicant's process server receipts for his claimed dispute-related expenses.

## **ISSUES**

13. The issues in this dispute are:

- a. Did the applicant's spouse gift the scooter to the respondent before she passed away?
- b. If no, did the applicant give the scooter to the respondent in exchange for her help?
- c. What is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

14. The applicant's former spouse LV passed away on August 13, 2018. After LV passed away, the applicant gave the respondent a mobility scooter which he purchased on August 28, 2018 for \$4,225.50. It is undisputed that the applicant ordered and paid for the scooter with his credit card.

15. The applicant's position is that the parties entered into a contract for the scooter, which was pre-payment in exchange for the respondent providing the applicant with "occasional" and "indefinite" help. The parties had no written contract over the scooter.

16. The respondent says she occasionally helped the applicant with “small gestures” but denies that it was in exchange for the scooter. The respondent says LV was her friend who knew the respondent had knee problems with no financial ability to purchase a scooter. The respondent says the applicant told that her LV made her a gift of the scooter before she passed away. More on this below. The respondent says the applicant said nothing about the scooter being in exchange for her helping him. The respondent says she stopped helping the applicant in October 2018 when he started to allegedly bully and harass her.

***Did the applicant’s spouse gift the scooter to the respondent before she passed away?***

17. Generally speaking, under the law of gifts the burden of proof is on the person alleging the item is a gift (see *Pecore v. Pecore*, 2017 SCC 17). In this case, the burden of proof is on the respondent. Three things are required for a legally effective gift: an intention to donate, an acceptance, and a sufficient act of delivery. There is no question that the scooter was delivered and accepted. The question is whether there was any intention to donate the scooter to the respondent.

18. The respondent says the applicant was the executor of LV’s estate and in executing her will, he purchased the mobility scooter as an intermediary. The respondent’s position is that the applicant carried out LV’s intention as the executor by purchasing the scooter. However, the will in evidence does not gift the respondent the scooter and nor does it show the respondent is a beneficiary of LV’s estate.

19. The written will sets out a testator’s intention (see for example, *Pearson Estate v. Pearson*, 2012 BCSC 1262). I find the terms of LV’s will are relevant to whether the scooter was a gift. Since the scooter was not gifted in the will, I find the respondent has not established that the scooter was a gift. The respondent does not say that the applicant himself intended to gift the scooter and his evidence is that he did not intend to gift it.

20. I find the evidence does not establish that the scooter was a gift.

***Did the applicant give the scooter to the respondent in exchange for her help?***

21. The tribunal Vice Chair's decision in *Bal v. Suri et al*, 2018 BCCRT 50, nicely sets out the laws on contracts. While her decision is not binding on me, I find it helpful and relevant to this dispute. At paragraph 15 the Vice Chair says the following:

For an agreement or contract to exist, there must be an offer by one party that is accepted by the other. There must be contractual intention, which means the parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. There must also be valuable consideration, which refers to payment of money or something else of value (for a discussion of the basic elements of a contract, see *Babich v. Babich*, 2015 BCPC 0175, and *0930032 B.C. Ltd. v. 3 Oaks Dairy Farms Ltd.*, 2015 BCCA 332). One party's belief that there is a contract is not in itself sufficient. There must be what is known in law as a 'meeting of the minds' about the contract's subject matter.

22. The applicant submitted the parties' emails that he argues supports his position that the parties had a contract. However, the emails contain no discussion showing the parties agree that the scooter was in exchange for the respondent's help. The emails show only that the applicant was away from home in Quebec in September and October 2018 and the applicant watered his plants, collected his mail and purchased milk for his return. Further, I find the "home sitting" is different from what the applicant's described as his needs in enlisting the respondent's help for his convalescing. Specifically, the applicant says because he had no family members to support him, was convalescing from open heart surgery, and desperate for help, he asked the respondent to help support him in exchange for the scooter. There is also no corroborating evidence that the applicant told the respondent he expected her help or any witnesses to the alleged verbal agreement. I also find it unlikely that a person would commit to provide indefinite support to another person for \$4,225.50 as the applicant alleges.

23. Overall, I find there is insufficient evidence that the respondent agreed to take the scooter as pre-payment for her occasional and indefinite help. I find the evidence does not establish that the parties had a meeting of the minds about the respondent's requirement to help. Therefore, I find there was no enforceable contract for the scooter.
24. I have not commented on the respondent's argument that she ended her voluntary help because of the applicant's alleged bullying and harassment. There is no contract for the scooter and the respondent did not make a counterclaim.

***What is the appropriate remedy?***

25. Absent gift or contract, I find the applicant is the scooter's rightful owner, which the applicant undisputedly paid for. As its owner, I find the applicant was at all material times entitled to demand its return. While the applicant describes that she made a few "gestures" of help, she makes no counterclaim and does not request a set-off.
26. The applicant is not asking that the scooter be returned to him. Instead, he claims the full purchase price of the scooter. The respondent says she cannot afford to pay the applicant for the scooter. Though it might seem harsh, a party's inability to pay does not negate their liability. I find the applicant is entitled to reimbursement for the price he paid for the scooter, subject to a reduction for its market value from when he demanded its return or value.
27. Neither party states the date the applicant demanded compensation for the scooter. I also have no evidence on the scooter's market value. The scooter was bought in August 2018 and is presumably in used condition. On a judgment basis, I have applied a 30% depreciation, which results in an estimated market value of \$2,957.89. I find the respondent must pay the applicant \$2,957.89 for the scooter.
28. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$2,957.89. Since the applicant does not say when he demanded compensation for the scooter, I will allow pre-judgment interest on the

award from March 24, 2019, the date of the Dispute Notice, to the date of this decision. This equals \$41.40.

29. 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. As the successful party, I find the applicant is entitled to reimbursement of the \$175.00 he paid in tribunal fees. The applicant also claimed dispute-related expenses of \$160.00 for a process server. The evidence on attempted service shows the applicant had difficulty serving the respondent but was able to serve the respondent by process server. The applicant submitted receipts in the amount of \$160.00, for the process server fees. I find the fees were reasonably incurred and I have allowed them.

## ORDERS

30. Within 30 days of the date of this amended decision, I order the respondent to pay the applicant a total of \$3,334.29, broken down as follows:
- a. \$2,957.89 for the scooter,
  - b. \$41.40 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$335.00, for \$175.00 in tribunal fees and \$160.00 in dispute-related expenses.
31. The applicant is entitled to post-judgment interest, as applicable.
32. 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.



33. 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.

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Trisha Apland, Tribunal Member

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<sup>i</sup> Amendments made to paragraphs 10-12 and 29-30 to cure the jurisdictional defect in failing to address the applicant's evidence for dispute-related expenses.