



Civil Resolution Tribunal

Date Issued: January 17, 2020

File: SC-2019-005607

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cook v. Gold, Silver Guy*, 2020 BCCRT 65

B E T W E E N :

NICHOLA COOK

APPLICANT

A N D :

GOLD, SILVER GUY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for jewellery. The applicant, Nichola Cook, says the respondent, Gold, Silver Guy, promised to sell her 3 jewellery items on consignment

at an agreed price. The applicant says the combined value of the items was \$2,075. As the items were not selling, she asked for the jewellery back, but the respondent admittedly could not find it. The applicant says they promised to pay her, but only paid \$1,100. The applicant claims \$560 which she says was the agreed final payment that the respondent never paid.

2. The respondent says it never agreed to “pay in full on the nominal value”. It admits the items were stolen by a staff member, but says that the final value is “up for negotiation” given the items were placed on consignment for sale and so their sale price was likely to have been lower than the appraisal. The respondent offers to pay an additional \$300, for a total of \$1,400.
3. The applicant is self-represented. The respondent is represented by Jeff Ross, who I infer is 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.
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. Where permitted by section 118 of the CRTA, 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.

ISSUE

8. The issue in this dispute is to what extent, if any, must the respondent pay the applicant more compensation for her jewellery that its staff admittedly stole?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove her claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. The parties' April 22, 2014 consignment contract for the jewellery, a 1-page largely handwritten "receipt for purchase" (contract), describes the jewellery as follows:
 - a. Diamond in sterling earrings - \$180
 - b. Solitaire engagement ring, in yellow gold - \$1,550
 - c. Men's yellow gold ruby ring - \$345
11. The contract further states, "items to be sold on consignment, please appraise for retail value and call customer with quote". The respondent wrote that its "cut is 20%".
12. I find the \$180, \$1,550, and \$345 figures were the appraised values for each piece, as the figures were apparently added by the appraiser in a box beside each item. This does not appear to be particularly disputed.

13. The respondent provided a copy of the contract, with additional handwritten, undated, notations showing 2 “partial payments” of \$600 and \$500, for a total of \$1,100. This version of the contract shows the appraised values totaling \$2,075, and a calculation showing $\$2,075 - \$1,100 = \$975$ “still owing to me”. In context, I infer it was the applicant who made that handwritten notation.
14. The applicant claims \$560 in this dispute. This is based on the \$2,075 total, less \$415 for the respondent’s 20% “cut” or commission and less the \$1,100 payments, leaving a \$560 balance.
15. The central issue in this dispute is the value of the applicant’s claim. The respondent says because the items were left on consignment, it should not have to pay the full appraised value because items often sell for less. There is nothing in the applicant’s contract that says she agreed to a sale price less than the stated appraised value. As noted, the contract says, “please appraise for retail value”. I find it more likely that the \$180, \$1,550, and \$345 were the agreed consignment sale prices. I find the weight of the evidence does not support the respondent’s position. The fact that its staff admittedly stole the applicant’s jewellery supports the conclusion that the respondent must pay her the value it appraised for those items.
16. The respondent submits that it should not be held responsible for a “blatant theft by previous staff”. I disagree. Under the law of bailment, the respondent must show it took reasonable care of the applicant’s goods in all the circumstances. The respondent was running a business and accepted the applicant’s jewellery on consignment. I find there is no reasonable basis that the respondent should not be held liable for its own staff theft. There is no suggestion the staff in question did not have the respondent’s apparent authority to handle the applicant’s jewellery. While the respondent submits, “for all I know this could be a scam between the employee and customer”, I find that submission speculative and I reject it.
17. I find the respondent must pay the applicant the claimed \$560.

18. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicant says she asked for her jewellery back in 2017, but was not more specific. The parties do not say when the respondent made the two payments totaling \$1,100. Given the lack of information and bearing in mind the tribunal's mandate that includes proportionality, I find the respondent must pay pre-judgment interest under the COIA on the \$560 from December 31, 2017. I use this date because the applicant's only evidence about when she asked for the jewellery back and discovered it had been stolen was that it was in "2017". This equals \$18.87.
19. Under the CRTA and the tribunal's rules, as the applicant was successful, I find she is entitled to reimbursement of the \$125 paid in tribunal fees. There were no dispute-related expenses claimed.

ORDERS

20. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$703.87, broken down as follows:
 - a. \$560 in debt,
 - b. \$18.87 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
21. The applicant is entitled to post-judgment interest as applicable.
22. 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.
23. 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