



Civil Resolution Tribunal

Date Issued: July 24, 2020

File: SC-2020-000111

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lawrence v. Whyte*, 2020 BCCRT 826

BETWEEN:

CHRIS LAWRENCE

APPLICANT

AND:

CALLISTA WHYTE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. The applicant, Chris Lawrence, says that the respondent, Callista Whyte, refused to return his personal property after they broke up. Mr. Lawrence says that Ms. Whyte

either kept, sold, or discarded his personal property. He also says that because he did not have access to his personal property, he lost wages. He asks for the items' return or that Ms. Whyte pay him the goods' value. He also asks that Ms. Whyte compensate him for lost wages. He says the lost wages and personal property's value amounts to \$5,000.

2. Ms. Whyte says that Mr. Lawrence abandoned his property and that some of it was taken away when the city towed his trailer. She says she returned other items to Mr. Lawrence or to other people she thought owned the items or would return them to Mr. Lawrence. She also says the items are not worth what Mr. Lawrence claims. She says she is not responsible for Mr. Lawrence losing wages. Ms. Whyte also says that Mr. Lawrence kept items of hers and refused to return them. She further states that Mr. Lawrence owes her money. Ms. Whyte did not file a counterclaim.
3. The parties each represent themselves.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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 "he 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 CRT 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 CRT 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, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Whether Ms. Whyte unlawfully kept, sold, or disposed of Mr. Lawrence's personal property, and if so, what is the appropriate remedy?
 - b. Did Mr. Lawrence lose wages because Ms. Whyte interfered with his use of his personal property, and if so, what is the appropriate remedy?
 - c. If Ms. Whyte does owe Mr. Lawrence money for unlawfully dealing with his goods, should the amount owed be offset because Mr. Lawrence has possession of Ms. Whyte's personal possessions or because Mr. Lawrence owes Ms. Whyte money?

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, the applicant, Mr. Lawrence, must prove his case on a balance of probabilities. However, Ms. Whyte has the burden to establish that there should be an offset against any money I find she owes Mr. Lawrence.

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. The parties lived together for a few months and then their relationship ended around October 20, 2019. Mr. Lawrence says that he never abandoned his things. Mr. Lawrence says that Ms. Whyte allowed him to store his things at her home. Texts between the parties show that Mr. Lawrence began to request his things back around October 24, 2019. He says that Ms. Whyte then got angry at him and has kept, sold, or disposed of his goods. On the evidence I find that Mr. Lawrence almost immediately began to ask for his things back after the relationship ended and that he did not abandon them.
12. Mr. Lawrence's claim against Ms. Whyte is arguably one of conversion, although the parties did not expressly rely on conversion. 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.
13. 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. The law is clear that to establish conversion or detinue 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.

14. I will now consider the items Mr. Lawrence says Ms. Whyte did not return.

Did Ms. Whyte take Mr. Lawrence's license plates so that his trailer was impounded leading to Mr. Lawrence losing wages?

15. Ms. Whyte says that Mr. Lawrence removed the trailer plates because they were expired. Mr. Lawrence agrees that he took the plates off the trailer, but he says he left them with Ms. Whyte. Ms. Whyte texted Mr. Lawrence on November 5, 2019 that the vehicle was sitting on the road in the neighbourhood and the city asked her about it and then towed it away. She says that the trailer was not even on her property. Mr. Lawrence does not dispute the trailer's location. I find that as soon as Mr. Lawrence took the plates off and left the trailer on the street, he risked having the vehicle towed.

16. Mr. Lawrence says that through the end of October 2019 everyday he asked for the return of his things. He says that he wanted to ensure the trailer's safety so he could move it but also because he also wanted to use it for a roofing job. He agrees with Ms. Whyte's submission that he had another work truck, but he says that this was broken down and filled with Ms. Whyte's friend's possessions. However, Mr. Lawrence at other points in his submissions and texts indicated that he was planning on using his work truck and not the trailer. He says he could not do the job he was offered to haul old shingles away, so Ms. Whyte is responsible for paying him the \$700 he was offered. Mr. Lawrence provided an estimate from B who offered him the job.

17. I find that Mr. Lawrence has not proved that Ms. Whyte was responsible for the trailer's impoundment. It was Mr. Lawrence who took the plates off the vehicle and he has not provided proof that Ms. Whyte had the license plates and would not return them. Further, Mr. Lawrence admits that he was planning on using his broken-down truck for the work. He did not explain why he did not fix the truck or why he did not remove the items from the back. I find that Mr. Lawrence has not proved that Ms. Lawrence was responsible for Mr. Lawrence losing work and she is not liable to reimburse him for lost wages.

Did Ms. Whyte sell Mr. Lawrence's circular saw and compressor online?

18. The texts indicate that on November 8, 2019 Mr. Lawrence told Ms. Whyte that he just saw his saw for sale. I infer this to mean online. Ms. Whyte responded that Mr. Lawrence forfeited everything when he left. On November 26, 2019, Ms. Whyte texted that she sold Mr. Lawrence's remaining items to S1. Mr. Lawrence again asked for the saw and compressor back on November 27, 2019. He said they were worth \$400. However, in the Dispute Notice Mr. Lawrence says the items are worth \$600.
19. I find the evidence shows that Ms. Whyte either kept, sold, or discarded Mr. Lawrence's saw and compressor. However, Mr. Lawrence has provided no evidence to support his claim that these items are worth \$600. Ms. Whyte says the saw was broken and the compressor was old. Mr. Lawrence did not address this and did not indicate the age or the state of the items. I have no evidence about how much Ms. Whyte listed or sold these items for. However, I find they must have been worth something if Ms. Whyte listed and managed to sell them. I find on a judgement basis that the items are worth half of the original \$400 estimate. Therefore, Mr. Lawrence is entitled to \$200 for these items.

Did Ms. Whyte keep Mr. Lawrence's 3d projector and 2 pairs of 3d glasses?

20. Mr. Lawrence says that Ms. Whyte did give him back the 3d glasses on October 23, 2019, so I will not consider these items. Ms. Whyte says that Mr. Lawrence left her the projector for payment on a loan. Mr. Lawrence says that there was no loan, but that Ms. Whyte made an investment that was to be paid back on the sale of a mobile home. Mr. Lawrence says that the alleged loan has nothing to do with this claim and that Ms. Whyte should take him to court separately. Based on the evidence, I find that Ms. Whyte did keep Mr. Lawrence's projector.
21. Mr. Lawrence has provided a picture of a new 3d projector selling for close to \$1500. However, in the Dispute Notice Mr. Lawrence says the glasses and the projector were worth \$550. Ms. Whyte says it was just an old projector and not 3d.

Ms. Whyte says the projector is only worth \$100. Again, Mr. Lawrence has not provided evidence of the age or the state of the projector. He also has not proved that it was 3d. I find Ms. Whyte's \$100 estimate more realistic and award Mr. Lawrence this amount.

Did Ms. Whyte keep Mr. Lawrence's coin collection, transformer/toy collection and hockey and magic cards?

22. The evidence shows Mr. Lawrence told Ms. Whyte the coin and card collection belonged to someone else, S2, and Ms. Whyte returned them to S2. Mr. Lawrence has not provided evidence that she did not do so. In these circumstances, there is no basis for a conclusion that Ms. Whyte improperly dealt with those items. I decline to award Mr. Lawrence anything for the coin and card collection as he has not proved that Ms. Whyte either kept it or did not return it to S2 as he instructed.

23. Mr. Lawrence did not make specific submissions about the transformers and other toys. He did not itemize them or indicate what he alleges Ms. Whyte did with them. At one point in the texts Ms. Whyte says that the transformers are "on the market" but Ms. Whyte submits that she returned the transformers to a family member with whom Mr. Lawrence was communicating. I dismiss the claims for the transformers and other toys.

24. Also, even if I had found that Ms. Whyte improperly dealt with these goods, I would not make an award as Mr. Lawrence has not indicated the value of these specific items. He said that all these items together are worth \$1,500. Mr. Lawrence did not provide evidence as to how he arrived at this figure. I decline to award Mr. Lawrence \$1,500 for the coin collection, transformer/toy collection, hockey and magic cards.

Did Ms. Whyte keep Mr. Lawrence's clothing which included jeans and a hoodie?

25. Mr. Lawrence claims \$300 for these items. Ms. Whyte does not specify what happened to these items but says that Mr. Lawrence obtained them from a

dumpster and they were not worth \$300. She says that she gave things back to Mr. Lawrence as she found them and threw out things that were worthless. Mr. Lawrence did not provide any evidence as to the worth of these items. He also did not respond to Ms. Whyte's argument that they were not worth \$300. I find that Mr. Lawrence has not proved that Ms. Whyte did not return these items or their worth. I decline to order \$300 for these items.

Did Ms. Whyte keep Mr. Lawrence's corded hammer and drill?

26. Mr. Lawrence says that he got the drill from his grandfather's estate. He does not indicate the drill's age or the condition. Mr. Lawrence has provided a picture of a new drill that sells for \$189. However, in the Dispute Notice he requests \$200. Ms. Whyte admits that she sold the drill for \$50 and kept the money as partial payment of Mr. Lawrence's outstanding loan. I find that Ms. Whyte did commit the tort of conversion when she sold the drill. She did not have lawful ownership and was not entitled to sell the property. Again, I do not have evidence on the drill's age or condition. On a judgement basis I find the value falls in between the \$50 and \$189 cost and award \$84.75. I will consider whether Ms. Whyte was entitled to keep this amount as a set-off against money owing below.

Did Ms. Whyte keep Mr. Lawrence's d-link network boosters, network range boost lightbulb, and wifi cameras?

27. Ms. Whyte says that she left all these items for Mr. Lawrence to pick up and she has not seen them since. On November 11, 2019 Ms. Whyte texted that she would put Mr. Lawrence's possessions at the curb to be picked up. Mr. Lawrence has not proved that Ms. Whyte kept these items, sold them or discarded them. I decline to make an award for these items.

Did Ms. Whyte keep Mr. Lawrence's diamond wedding band?

28. Ms. Whyte says that she is holding on to the wedding band because Mr. Lawrence has her engagement ring and has put it up for sale on Facebook. I find that the evidence shows that Ms. Whyte kept Mr. Lawrence's ring. Mr. Lawrence says that

the ring is worth \$100. Ms. Whyte does not dispute this. I find that Ms. Whyte owes Mr. Lawrence \$100 for this ring. I will consider Ms. Whyte's ring when I discuss below whether Ms. Whyte was entitled to keep Mr. Lawrence's ring as a set-off.

Did Ms. Whyte keep Mr. Lawrence's 14 karat chain and a 14 karat white gold chain loop ring.

29. Ms. Whyte said she did not know that Mr. Lawrence had a gold ring that he wore on the white gold chain. Mr. Lawrence provided a picture of him wearing the chain and ring with Ms. Whyte in the picture. I find that evidence shows that Ms. Whyte did know about the white gold chain and the ring he wore on it. In Ms. Whyte's submissions she says that she returned the remaining items including rings to Mr. Lawrence's mother. Mr. Lawrence does not dispute that this happened, and he did not provide a statement from his mother. The texts also indicate that Ms. Whyte returned items on November 30, 2019. Mr. Lawrence texted that the ring was gone in the evening that day. I infer Mr. Lawrence meant the ring was not returned. I find on the evidence that Mr. Lawrence indicated in the text one ring was missing. I have already found that Ms. Whyte kept the diamond ring. Based on the evidence, I find that Mr. Lawrence has not proved that any other jewelry was not returned and decline to make an award for these other items.

30. Based on the evidence I find that Ms. Whyte owes Mr. Lawrence \$200 for the saw and compressor, \$100 for the projector, \$84.75 for the drill and \$100 for the diamond ring. This totals \$484.75.

Offset

31. Ms. Whyte says that Mr. Lawrence stole her van, that he purchased a car with her money, and that the text messages support that this was a loan and not an investment. She also says that Mr. Lawrence owes her \$500 for the sale of a trailblazer.

32. Therefore Ms. Whyte says she should not have to pay Mr. Lawrence because he owes her money for other things. Since Ms. Whyte made no counterclaim, I infer

she is seeking an equitable or legal set-off. If Ms. Whyte can prove that Mr. Lawrence owes her money that is reasonably connected to the debt, she can deduct it from the amount she owes him. For a legal set-off to apply, both obligations must be debts, and both debts must be mutual cross obligations. Ms. Whyte has the burden to prove that she is entitled to a set-off on a balance of probabilities (see for example *Wilson v. Fotsch*, 2010 BCCA 226 (*Wilson*) and *Dhothar v. Atwal*, 2009 BCSC 1203).

33. The text messages show that Mr. Lawrence acknowledges that he owes Ms. Whyte money. He said on October 29, 2019 that if Ms. Whyte did not get his things together that the money he had would only benefit him. I infer this means that Mr. Lawrence would not pay back the loan if Ms. Whyte did not return Mr. Lawrence's possessions. In a text later that day Ms. Whyte told Mr. Lawrence that he owed her \$4,200. Mr. Lawrence does not specifically deny at this point in the texts that he owes the money. He said that if Ms. Whyte returned his things, he would return hers. Ms. Whyte again texted on October 30, 2019 that Mr. Lawrence owed her money. On November 9, 2019, Ms. Whyte stated Mr. Lawrence owed her for the loan. On November 10, 2019, Mr. Lawrence texted that if Ms. Whyte had returned his things he would have signed "on what" he owed.
34. On November 11, 2019, Mr. Lawrence said he would sign an agreement stating that when he sold the trailer he would repay the money he borrowed if he got his possessions back. Mr. Lawrence also admitted in the texts that he has Ms. Whyte's ring and that he would sell it unless she wants to buy it. On November 26, 2019, Mr. Lawrence said if he got his possessions back, he would return Ms. Whyte's ring and van. He also said he had Ms. Whyte's drill which he would return.
35. On November 30, 2019, Ms. Whyte texted Mr. Lawrence that he owed her \$5,000. Mr. Lawrence says that she should prove it and that she has nothing on paper. On December 9, 2019, Mr. Lawrence again threatened Ms. Whyte that he would sell the van.

36. Mr. Lawrence claims that he does not owe Ms. Whyte anything or that it should be the subject of a different dispute. As noted, he also says that there was no loan, but that Ms. Whyte made an investment that was to be paid back on the sale of a mobile home. Mr. Lawrence provided no evidence about the investment on the purchase of a mobile home and the texts do not mention it.
37. I find the evidence shows that Mr. Lawrence kept Ms. Whyte's ring, drill, and van. He also owes her at least \$500. Therefore, the value of the goods Mr. Lawrence kept and the loan more than offsets the \$484.75 that I find Ms. Whyte owes Mr. Lawrence. Since Mr. Lawrence owes Ms. Whyte at least as much as he owes her, I find that the \$484.75 is offset and I make no order for payment.
38. Under section 49 of the CRTA and the CRT's rules, the CRT will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Although Mr. Lawrence was partially successful in this dispute, I have found that he owes Ms. Whyte at least the amount he was awarded. Therefore, I find that Mr. Lawrence is not entitled to reimbursement of his tribunal fees.

ORDER

39. Since the amount owed to Mr. Lawrence is offset by what he owes to Ms. Whyte I make no order for payment.

Kathleen Mell, Tribunal Member