



# Civil Resolution Tribunal

Date Issued: September 3, 2020

File: SC-2019-008318

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Abbott v. Beech*, 2020 BCCRT 986

B E T W E E N :

CHRIS ABBOTT

**APPLICANT**

A N D :

KATHLEEN BEECH and STEVEN TENHALF

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. The applicant Chris Abbott and the respondent Steven Tenhalf made an agreement for storage of Mr. Abbott's boat on family farm property where Mr. Tenhalf resides with his mother, the respondent Kathleen Beech. Mr. Abbott says the agreement

was that he would pay Mr. Tenhalf \$25 per month for storage, but that the respondents sold or disposed of the boat without his consent. Mr. Abbott claims \$3,000, which he says is his boat's value.

2. The respondents say Mr. Abbott left the boat on their property for 1 to 2 years, and never paid anything for its storage. They say they had no means of contacting Mr. Abbott and finally disposed of the abandoned boat, as it was derelict and an eyesore. They say they owe nothing.
3. The parties are each self-represented.

## **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, the parties to this dispute call into question the credibility, or truthfulness, of the other. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
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 CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether Mr. Abbott had abandoned his boat, and if not, to what extent if any is Mr. Abbott entitled to \$3,000 in damages because the respondents disposed of the boat?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, as the applicant Mr. Abbott bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision. I note the respondents did not submit any evidence, despite having the opportunity to do so. Mr. Abbott submitted only an October 2019 screenshot of a photo of his boat that he appears to have posted on Facebook, in which Mr. Abbott said the boat was missing and he sought its return.
10. None of the parties explain how Mr. Abbott and Mr. Tenhalf met or how and why they came to the boat storage agreement. It is undisputed that Mr. Abbott and Mr. Tenhalf made an agreement that Mr. Abbott could store his boat for a period of time on property that Ms. Beech owns. As discussed below, the central issue is whether Mr. Abbott had abandoned the boat.
11. Ms. Beech says that Mr. Abbott first made contact about the boat in June or July 2019, which she says was around 2 years after Mr. Abbott left the boat on her property. Mr. Tenhalf says that the boat had been left abandoned for “well over a year”. Mr. Abbott did not address how long he had left the boat on the respondents’ property. I find Mr. Abbott left the boat for somewhere between 1.5 to 2 years.
12. Mr. Tenhalf says he told Mr. Abbott he could store the boat on the property for a month or two, for \$25 or \$50. However, he says Mr. Abbott never paid anything. In

contrast, Mr. Abbott says the agreement was “\$25 / month, which I paid in cash to [Mr. Tenhalf]”. I infer Mr. Abbott argues he paid \$25, since he does not mention a higher sum for multiple months of storage and since Mr. Abbott also argues “no time limit was ever given”. As noted above, Mr. Abbott did not submit any evidence other than the Facebook screenshot, such as a receipt for the cash he says he paid.

13. On balance, I find Mr. Abbott has not met the burden of proving he paid the respondents anything for boat storage. Even if he did pay \$25, Mr. Abbott does not address at all the fact that he left the boat on the property for 1.5 to 2 years. I find it unlikely the respondents would have ever agreed to indefinite storage of a large boat without a more formal agreement and payment. I find it more likely that the agreement was for the shorter period alleged by the respondents, namely 1 to 2 months.
14. At this point, I note that Mr. Abbott’s central argument is that the respondents breached the *Warehouse Lien Act* (WLA) by disposing of his boat without giving him the required notice. I find the WLA does not apply, because there is no evidence before me that either respondent is engaged in the business of storing goods as a bailee for hire, which is the definition of “warehouser” in the WLA. The fact that Mr. Tenhalf made an agreement to store Mr. Abbott’s boat for \$25 a month for 1 to 2 months does not mean he is in the business of storing goods. There is no evidence to suggest Ms. Beech is in the business of storing goods.
15. So, did the respondents wrongfully dispose of Mr. Abbott’s boat?
16. I turn first to the applicable law. The tort of conversion applies to circumstances where there is a positive wrongful act of dealing with goods in a manner 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 at paragraph 104, *Ast v. Mikolas*, 2010 BCSC 127 at paragraph 128, *Drucker, Inc. v. Gui*, 2009 BCSC 542 at paragraph 58, and *Dhothar v. Atwal*, 2009 BCSC 1203 at paragraph 15.

17. The elements of the tort of conversion are set out at paragraph 214 of *Li*. In order to be successful, Mr. Abbott must prove that:
- a. The respondents committed a wrongful act involving his property,
  - b. The act must involve handling, disposing or destroying the property, and
  - c. The respondents' actions must have the effect or intention of interfering with or denying Mr. Abbott's right or title to the goods.
18. I accept that the respondents handled the boat when they gave it away, which had the effect of interfering with Mr. Abbott's right or title to it. The tort of conversion is a strict liability tort, which means it is not a defence if the wrongful act was done innocently (see *Teva Canada Ltd. v. TD Canada Trust*, 2017 SCC 51). In other words, it would not matter if the respondents mistakenly believed that Mr. Abbott had abandoned the boat. However, as discussed below I find the respondents did not commit a wrongful act by disposing of the derelict boat.
19. In particular, I find that if Mr. Abbott abandoned the boat, the respondents are not liable for the tort of conversion (see *Bangle v. Lafreniere*, 2012 BCSC 256). In other words, if Mr. Abbott abandoned the boat, the respondents' disposal of it is not conversion because in so doing, the respondents were not interfering with Mr. Abbott's right of possession.
20. As noted, the respondents admit they considered the boat was abandoned after about 1.5 to 2 years of no contact from Mr. Abbott, and I accept the boat became an eyesore during that time period. I also note there is no suggestion the respondents were responsible for caring for the boat. Mr. Abbott alleges only a "storage" agreement. I find Mr. Abbott left the boat on the respondents' property for an unreasonable length of time without contact or payment for the storage as agreed. I find this length of time and lack of payment significant, and I find it supports the conclusion Mr. Abbott had abandoned the boat. The fact that around 2 years later Mr. Abbott decided he then wanted the boat back does not mean he had not earlier abandoned it.

21. Further, Mr. Tenhalf says he had no contact information for Mr. Abbott, including no Facebook contact, and says Mr. Abbott was never his friend. In contrast, Mr. Abbott says Mr. Tenhalf is his Facebook friend and had his phone number and former address. However, Mr. Abbott provided no supporting evidence, such as a Facebook screenshot showing their “friend” status on Facebook. Mr. Abbott says he tried to phone Mr. Tenhalf but provided no phone records.
22. On balance, I prefer Mr. Tenhalf’s evidence. It would have been easier for the respondents to contact Mr. Abbott about his picking up the boat than leaving it on Ms. Beech’s property becoming an eyesore. I find this supports a conclusion the respondents did not have Mr. Abbott’s contact information. In turn, this supports a conclusion that the respondents reasonably disposed of the boat as an abandoned item. So, I find the respondents did not wrongfully dispose of the boat, and so are not liable for conversion.
23. I note Mr. Abbott claims \$3,000 for the boat, but provided no evidence of its make, model, or year, or its value at the time of purchase or now. Both respondents dispute the claimed \$3,000 value for the boat and as noted Mr. Tenhalf says it had become derelict and that he gave it away in exchange for a case of beer.
24. The undated photo in evidence is sepia in tone and shows a speedboat on a trailer. Given the significant period of time the boat was on the respondents’ property, I accept that it had become an eyesore and of little value as alleged by the respondents. So, even if I had found the respondents improperly disposed of the boat, I would not have allowed the \$3,000, as I find that value is unproven.
25. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to the recovery of their CRT fees. As Mr. Abbott was unsuccessful, I find he is not entitled to reimbursement of his paid CRT fees. The respondents were successful and so I order Mr. Abbott to pay each of them \$25 for their CRT fees to file their Dispute Responses. No dispute-related expenses were claimed.

## ORDERS

26. I order Mr. Abbott's claims dismissed. Within 21 days of this decision, I order Mr. Abbott to pay \$25 to Mr. Tenhalf and \$25 to Ms. Beech, for their respective paid CRT fees.
27. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
28. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Shelley Lopez, Vice Chair