Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wilson v. George*, 2020 BCCRT 1090

B E T W E E N :

SONYA WILSON and DAVID WILSON

APPLICANTS

A N D :

NELSON GEORGE and TRACEY PIERRE

RESPONDENTS

A N D :

SONYA WILSON and DAVID WILSON

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Trisha Apland

INTRODUCTION

1. This is a dispute over a real property sale.

2. In February 2020, the applicants (and respondents by counterclaim), Sonya Wilson and David Wilson, sold their house to the respondents, Nelson George and Tracey Pierre. The Wilsons say that Mr. George and Ms. Pierre refused to allow them to take their greenhouse from the property after the sale. The Wilsons say the greenhouse was excluded from the sale. The Wilsons seek a total of $1,339.68 including tax to replace and rebuild the original greenhouse. The Wilsons also seek $450 for an additional "temporary" greenhouse.

3. Mr. George and Ms. Pierre say they had no knowledge that the greenhouse was excluded from the sale. They say the Wilsons failed to remove the greenhouse from the property prior to the sale and it now belongs to them. They deny that they are liable for the cost of a replacement or temporary greenhouse.

4. In her counterclaim, Ms. Pierre claims that the Wilsons removed carpets and an armoire that she says were included in the property sale. She counterclaims for $2,080 for new carpets and $1,200 for a new armoire. The Wilsons say these items were not part of the sale. They ask that Ms. Pierre's counterclaims be dismissed. Mr. George is not a party to the counterclaim.

5. The parties are each self-represented.

JURISDICTION AND PROCEDURE

6. 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.

7. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

8. 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.

9. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

10. The issues in this dispute are:

    a. What items were included in the parties' purchase and sale agreement?

    b. Are the Wilsons entitled to the claimed $1,339.68 for a new greenhouse installed and $450 for a replacement greenhouse?

    c. Is Ms. Pierre entitled to the claimed $3,280 for new carpets and $1,200 for a new armoire?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the Wilsons must prove their claims on a balance of probabilities. Ms. Pierre has the same burden on the counterclaim. I have read all the parties' submissions but refer only to the argument and evidence I find relevant to provide context for my decision.

The Property Sale

12. The Wilsons sold their property to Ms. Pierre and Mr. George on February 26, 2020.

13. The parties' signed purchase and sale agreement (contract) in evidence states that the greenhouse in the back yard is excluded from the sale. The contract states that fixtures and "fixed carpeting", plus other items not relevant here, are included in the sale. In the context of a real property sale, "fixtures" are normally items affixed to the land or the building. An item that is attached only by its own weight is not normally a fixture (*Zellstoff Celgar Ltd. v. British Columbia,* 2014 BCCA 279).

14. The Wilsons left a greenhouse in the back yard after transferring possession of the property. The Wilsons removed a master bedroom armoire and carpet in the basement prior to transferring possession. These facts are not disputed. This dispute is over the ownership of these 3 items and their values.

The Greenhouse

15. Ms. Pierre asserts that she and Mr. George did not know the sale excluded the greenhouse when they signed the contract. Ms. Pierre says the greenhouse exclusion was not in an earlier version of the contract. Ms. Pierre asserts that their realtor added the exclusion to the final contract without informing them. I find that any miscommunication with the realtor is an issue between Ms. Pierre, Mr. George and their realtor and not the Wilsons. As discussed below, I also find that Ms. Pierre and Mr. George likely knew about the exclusion when they signed the contract.

16. I find the contract clearly states that it excludes the greenhouse from the sale. Specifically, the contract states: "BUT EXCLUDING: Green House in Back". There

are 4 sets of initials immediately above this exclusion that match the parties' names. Ms. Pierre asserts that the initials on the page with the greenhouse exclusion are not theirs. She says the initials look different than initials elsewhere in the contract. To my eye the initials look similar throughout the contract. However, I am not a handwriting expert. I find that identifying forged initials requires technical knowledge of an expert (*Berger v. Guliker,* 2015 BCCA 283). There is no expert evidence here. There is also no statement from the realtor. Further, Ms. Pierre did not raise forgery in the dispute application and she does not specify who might have forged the initials. The burden to prove forgery is on the party who alleges it. I find that Ms. Pierre has not met that burden here. I find that Ms. Pierre and Ms. George likely initialled the greenhouse exclusion clause.

17. I also note that Ms. Pierre is not attempting to contest the entire contract, just the greenhouse exclusion. Yet the initials acknowledge not only the excluded greenhouse but also the included items and other key contract terms. If the initials were forged, then I find the whole contract would likely fail.

18. Ms. Pierre and Mr. George signed the contract directly under a notice telling them to read the entire contract and that it is "binding on the terms and conditions set forth". I find that in signing the contract, Ms. Pierre and Mr. George agreed the greenhouse was excluded from the sale. I find that ownership of the greenhouse was not transferred to Ms. Pierre and Mr. George with the sale. I find the greenhouse remained the Wilsons' personal property after the sale.

19. According to the parties' contract, Ms. Pierre and Mr. George should have had "vacant possession" of the property as of February 26, 2020. However, the Wilsons say they were unable to disassemble and move the greenhouse because of snow and frozen ground. The property is in northern British Columbia and there is no dispute these were the weather conditions. Prior to the sale, Ms. Wilson had sent Ms. Pierre a February 24, 2020 Facebook message that they would collect the greenhouse "in the spring". The Wilsons say that Ms. Pierre and Mr. George agreed. On April 13, 2020, the Wilsons told Ms. Pierre by Facebook message that

they planned to collect their greenhouse from the property the following week. Ms. Pierre refused and stated: “We are keeping it, Sorry”.

20. In her argument, Ms. Pierre says she never agreed the Wilsons could keep the greenhouse on their property. However, Ms. Pierre did not object to Ms. Wilson’s February 24, 2020 Facebook message that they were collecting it in the spring. Also, Ms. Pierre did not deny in the Dispute Response that she had agreed at some point the greenhouse could stay on the property. Instead she stated: “We told all parties that we were keeping the greenhouse especially after they took the carpet from the basement”. On balance, I find Ms. Pierre and Mr. George likely agreed the Wilsons could leave the greenhouse on the property until the spring. I find Ms. Pierre and Mr. George only decided to keep the greenhouse because of a disagreement after the sale.

21. I find Ms. Pierre and Mr. George voluntarily kept possession of the Wilsons’ greenhouse and this created a “bailment”. The law of bailment is about the obligations on one party to safeguard another party’s possessions (*Lichti v. Landmark Transport Inc. et al,* 2006 BCSC 344). A bailment can exist independently of a contract. I find that Ms. Pierre and Mr. George were bailees and the Wilsons were the bailors.

22. Where a bailee fails to return the bailor’s property on demand, the bailor may sue in something called “detinue”. The legal term “detinue” means the continuous wrongful detention of personal property (*Li v. Li,* 2017 BCSC 1312 at 224).

23. Without reasonable excuse, I find that Ms. Pierre and Mr. George refused to allow the Wilsons to collect the greenhouse after they demanded it back. I find that Ms. Pierre and Mr. George wrongfully kept the greenhouse and are liable to the Wilsons in detinue.

24. I considered whether to order Ms. Pierre and Mr. George to return the greenhouse, which is the normal measure of damages in detinue. However, the greenhouse is not a small item and it requires dismantling on the property. It is also not the

Wilsons' requested remedy. In the circumstances, I find it is not appropriate to order its return. I find the appropriate measure of damages is the greenhouse's market value.

25. Ms. Pierre says the Wilsons are not entitled to the price of a new greenhouse. She says the original greenhouse was 5 years old, which is undisputed. I have no evidence before me on the market price for a used greenhouse or if there is such a market. As for its price new, the Wilsons provided a screenshot from "Canada Greenhouse Kits" (CGK) for a new greenhouse kit that they say is identical to the original. The price shows that it is $1,199 plus tax (or $1,045.00 on sale). However, they claim $1,069 for its replacement cost without explaining the minor price difference. Ms. Pierre and Mr. George submitted a photograph and price from Costco of the same size and similar looking greenhouse kit for $599.99 plus tax.

26. The Wilsons carry the burden of proof on this issue. The Wilsons did not provide their original online purchase receipt to prove the original is the same as the CGK greenhouse and do not explain why not. Alternatively, they have not shown that the CGK model is superior to the Costco greenhouse. The CGK and Costco specifications are not before me to compare models. On balance, I find that the value of a new similar kit greenhouse is about $600.

27. However, the greenhouse is not new. I have insufficient evidence to determine the value of the 5-year-old greenhouse with any precision. On a judgement basis, I find that $450 is a reasonable value. In determining this figure, I considered the original greenhouse required disassembly and there would be some depreciation. Also, I note that the Wilsons say they were able to build a custom greenhouse for $450.

28. I find that Ms. Pierre and Mr. George must pay the Wilsons a total of $450 in damages in detinue for the greenhouse.

29. Next, the Wilsons seek $140 in labour to assemble a new greenhouse. I find the Wilsons would have had to reassemble their original greenhouse had it been returned to them. So, I find they suffered no loss for assembly. I dismiss this claim.

30. The Wilsons claim an additional $450 ($350 in materials and $100 in labour) for a custom “temporary” greenhouse. They argue that gardens are important for their diet and lifestyle. They say they were “forced to build a temporary greenhouse at our new home because we did not have our original greenhouse”. It is unclear why they did not buy a new kit greenhouse instead to replace the original. The Wilsons also do not say when they built the temporary greenhouse and they did not provide receipts. I find the Wilsons have not established that this expense, which is not proven, was reasonably incurred.

31. I have already ordered the respondents to pay $450 in detinue for the original greenhouse. I find the Wilsons have not proven on a balance of probabilities they are entitled to recovery for a second greenhouse. I dismiss the Wilsons’ $450 claim for the temporary greenhouse.

The Armoire

32. I turn now to Ms. Pierre’s counterclaims. Ms. Pierre argues that the armoire was included in the sale. The Wilsons disagree.

33. The sale contract does not specify that it includes an “armoire”, though it does include “fixtures”. Therefore, I find the issue is whether the armoire was a fixture.

34. The Wilsons say the armoire was furniture that was not attached to the bedroom wall. Ms. Pierre says she does not know if the armoire was attached to the wall. The online dictionary, “Merriam-webster.com” defines armoire as a “tall cupboard or wardrobe”. On a photograph of a similar armoire, I find it looks like a free-standing wardrobe.

35. I accept the Wilsons’ undisputed assertion that the armoire was not attached to the wall. I find the armoire was not a fixture. Based on the contract terms, I find that the armoire was not included in the sale. I find the Wilsons were permitted to remove the armoire, as they did, prior to transferring possession of the property. I dismiss Ms. Pierre’s counterclaim for the armoire.

The Carpets

36. Ms. Pierre says the Wilsons removed "wall to wall" carpet in the basement that was attached to the building and part of the sale. Again, the parties' contract in evidence states that the sale included "fixed carpeting". Ms. Pierre provided a photograph of the carpeted room prior to the sale and no photograph of the room after the carpet was removed. I cannot tell from the photograph in evidence that the carpet was ever "fixed" to the subfloor.

37. The Wilsons say the carpet was 2 mismatched "roll ends" floating over new vinyl plank flooring to protect the floors from pets and traffic. They say the roll ends were not attached with carpet tacks, adhesive, or to the baseboards.

38. I am left with two opposing assertions. Ms. Pierre carries the burden to prove that her position is more likely. Without relevant supporting evidence, I find Ms. Pierre has not proven that the carpet was "fixed carpeting" and included in the sale. I dismiss Ms. Pierre's claim for new carpets.

Interest, Fees and Dispute-Related Expenses

39. The *Court Order Interest Act* applies to the CRT. The Wilsons are entitled to pre-judgement interest on the $450 in damages for the greenhouse. I have calculated the interest from April 13, 2020, the date Ms. Pierre and Mr. George refused to return the greenhouse, to the date of this decision. This equals $2.40.

40. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The Wilsons were partially successful in this dispute. I find they are entitled to reimbursement of $62.50, which is half their paid CRT fees. Since Ms. Pierre was unsuccessful on the counterclaim, I dismiss her claim for CRT fees. None of the parties claim dispute-related expenses.

ORDERS

41. Within 30 days of the date of this order, I order Ms. Pierre and Mr. George to pay the Wilsons a total of $514.90, broken down as follows:

    a. $450 in damages for the greenhouse,

    b. $2.40 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $62.50 in CRT fees.

42. The Wilsons are entitled to post-judgment interest, as applicable.

43. I dismiss the Wilsons' remaining claims. I dismiss Ms. Pierre's counterclaims.

44. 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.

45. 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.

Trisha Apland, Tribunal Member