



# Civil Resolution Tribunal

Date Issued: December 29, 2020

File: SC-2020-005057

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Myra v. Allemeersch*, 2020 BCCRT 1464

**B E T W E E N :**

JUSTIN MYRA

**APPLICANT**

**A N D :**

JAVONA ALLEMEERSCH

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Rama Sood

## INTRODUCTION

1. This dispute is about a cell phone and groceries that the applicant, Justin Myra, says he purchased for the respondent, Javona Allemeersch, to use temporarily during their relationship after she lost hers. He also says he purchased groceries for Ms. Allemeersch's children while she was hospitalized. He seeks \$811.33.

2. Ms. Allemeersch says the cell phone was a gift and that she did not ask Mr. Myra to purchase groceries, which she says were eaten by Mr. Myra in any event.
3. Both parties are 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. Section 42 of the CRTA says 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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether Mr. Myra gifted either the cell phone or groceries to Ms. Allemeersch, and if so, the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. In a civil dispute such as this, the applicant Mr. Myra must prove his claims on a balance of probabilities. I discuss the impact of the law of gifts on the burden of proof below. 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 decision, or to the extent necessary to give context to these reasons.
10. The parties agree that Mr. Myra lived with Ms. Allemeersch but they did not state how long their relationship lasted. Mr. Myra says during their relationship he purchased a cell phone for Ms. Allemeersch to use after she lost her cell phone. The cell phone did not include a service plan. Mr. Myra says that the cell phone was not a gift and that Ms. Allemeersch did not return it once their relationship ended. Mr. Myra seeks \$145 for the cell phone.
11. Ms. Allemeersch says Mr. Myra did not pay for rent, utilities, or food while he lived with her. She says Mr. Myra gifted her the cell phone and gave her the receipt, packaging, and accessories. She says Mr. Myra never stated it was a loan or that she could only use the cell phone while the parties remained in a relationship.
12. Mr. Myra also says he agreed to look after Ms. Allemeersch's 2 children while she was hospitalized during their relationship. Neither party stated how long Ms. Allemeersch was hospitalized. Mr. Myra says there was "next to nothing" in Ms. Allemeersch's apartment so he had to purchase groceries for the children during this time. After deducting  $\frac{1}{4}$  for the amount that he says he consumed, he says Ms. Allemeersch should reimburse him \$666.33 for the groceries he purchased.

13. Ms. Allemeersch says she stocked up enough groceries to last her children for a month before she was hospitalized. As mentioned above, neither party stated how long Ms. Allemeersch was hospitalized. She says that Mr. Myra did not have to purchase groceries and she did not give him permission to do so. She also denies Mr. Myra spent \$666.33 on food and denies that her children ate any of the food Mr. Myra purchased. She says that any groceries Mr. Myra purchased were for himself.

### ***Law of gifts***

14. Under the law of gifts, once an applicant has proved a transfer, the burden shifts to the person receiving the transfer to establish it was a gift (see *Pecore v. Pecore*, 2007 SCC 17. It is also the law that once someone has made a true gift to another person, the gift cannot be revoked (*Bergen v. Bergen*, 2013 BCCA 492).
15. For there to be a legally effective gift, three things are required: an intention to donate, an acceptance, and a sufficient act of delivery. The context of the parties' relationship is relevant, but not determinative. The evidence needs to show that the intention of the items as gifts was inconsistent with any other intention (see *Lundy v. Lundy*, 2010 BCSC 1004).
16. I will first consider whether the cell phone was a gift. It is undisputed that Mr. Myra purchased the cell phone and Ms. Allemeersch has been using it exclusively. Based on this, I find Mr. Myra has proved a transfer. The burden now shifts to Ms. Allemeersch to establish that a gift was made, rather than a loan.
17. Mr. Myra says that after the relationship ended, Ms. Allemeersch agreed to return the cell phone. Ms. Allemeersch says she only did so because Mr. Myra was persistently texting her to return it. I have reviewed text messages the parties exchanged after their relationship ended. I find they are consistent with Ms. Allemeersch's explanation and that she has maintained her position that the cell phone was a gift.
18. I find the weight of the evidence shows Mr. Myra intended to gift the cell phone to Ms. Allemeersch. There is no evidence that Mr. Myra told Ms. Allemeersch when he gave her the cell phone that she must return it once the relationship ended. I also find that

Ms. Allemeersch accepted the cell phone from Mr. Myra. Finally, I find that Mr. Myra delivered the cell phone to Ms. Allemeersch since he gave her the receipt, box, and accessories.

19. As for the groceries, the bank statement Mr. Myra submitted shows he spent \$340.37 from May 28, 2020 to June 10, 2020 at Save-On-Foods. He did not provide any receipts for his purchases. Ms. Allemeersch says that the bank statement does not prove that Mr. Myra purchased groceries for her household or that either she or her children ate the food. She says even if Mr. Myra purchased groceries, he did so out of kindness and his own free will with no expectation that she would have to reimburse him.
20. I accept that Mr. Myra purchased \$340.37 of groceries while Ms. Allemeersch was in the hospital. However, I find there is an evidentiary tie about why he did so. Mr. Myra says Ms. Allemeersch did not have groceries and he had to purchase them while he was looking after her children, which Ms. Allemeersch denies. I find there is no persuasive evidence either way. Faced with conflicting evidence from the parties, I am unable to determine whether groceries were purchased for the children. As noted above, the burden is on Mr. Myra to prove, on a balance of probabilities, that he purchased groceries for the children. I find he has not done so. As a result, I dismiss Mr. Myra's claim for \$666.33.
21. Based on my reasons above, I dismiss Mr. Myra's claims and this dispute.
22. 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. Since Mr. Myra's claims were unsuccessful, I dismiss his claim for CRT fees. Ms. Allemeersch did not seek dispute-related expenses.

## **ORDER**

23. I dismiss Mr. Myra's claims and this dispute.

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Rama Sood, Tribunal Member