Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Koessler v. Borkovic*, 2021 BCCRT 216

B E T W E E N :

LUCAS KOESSLER

APPLICANT

A N D :

JOSEPH BORKOVIC

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about a truck camper and a damaged wood planer. The applicant, Lucas Koessler, says he purchased the camper from the respondent, Joseph Borkovic. Mr. Koessler seeks an order for Mr. Borkovic to give him the camper. Mr.

Koessler also says Mr. Borkovic damaged his planer and seeks $250 as compensation.

2. Mr. Borkovic disagrees and says he "seized" the camper in full settlement of Mr. Koessler's debt of $2,237. Mr. Borkovic did not address the claim for the wood planer.

3. The parties are self-represented.

4. As discussed below, I find Mr. Koessler is entitled to the return of the camper. I also find that Mr. Koessler is entitled to $250 as compensation for damage to the wood planer. My reasons follow.

JURISDICTION AND PROCEDURE

5. 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.

6. 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.

7. 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.

8. Section 118 says the CRT may resolve a claim for the recovery of personal property. I find that the camper is personal property and the CRT has jurisdiction to grant the requested remedy of the camper's return.

9. In the Dispute Response, Mr. Borkovic used language that is sometimes used by followers of the "sovereign citizen" or "freemen on the land" ideologies. For example, Mr. Borkovic referred to himself as "the man, Joseph Borkovic".

10. In *Meads v. Meads,* 2012 ABQB 571, the court explained that followers of these ideologies sometimes split themselves into separate persons in order to be considered outside the jurisdiction of Canadian courts or law. These concepts have been rejected multiple times in courts across Canada and in BC. See, for example, *R. v. Petrie,* 2012 BCSC 2110. To whatever extent Mr. Borkovic relies on such arguments, I reject them. In any event, Mr. Borkovic did not explicitly say that the CRT could not decide this dispute, so I have considered the merits of Mr. Koessler's claims.

ISSUES

11. The issues in this dispute are as follows:

    a. Is Mr. Koessler entitled to the return of the camper?

    b. Did Mr. Borkovic damage the wood planer, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil claim like this one, the applicant Mr. Koessler must prove his claims on a balance of probabilities. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

13. I find from the CRT staff notes that the CRT provided Mr. Borkovic multiple opportunities to submit evidence and submissions in October and November 2020. Mr. Borkovic did not to do so. Mr. Koessler provided the only evidence before me.

The Storage Rental Agreement

14. The background facts are undisputed. In January 2020 Mr. Koessler purchased an Elkhorn truck camper from Mr. Borkovic for $2,000. The parties used a verbal agreement. Mr. Koessler paid for the camper in full and Mr. Borkovic provided him the keys for it.

15. In mid-January 2020 Mr. Koessler wished to store his Dodge truck, boat, parts truck, camper, and tools at Mr. Borkovic's property. The parties agreed on a monthly storage rate of $200 for all the items. Mr. Borkovic says the storage fees are owed to a company called "VW Co.". I disagree as Mr. Borkovic elsewhere acknowledges he was a party to the storage agreement.

16. Mr. Koessler says Mr. Borkovic breached the *Residential Tenancy Act* by subsequently seizing his possessions. I disagree that it applies because Mr. Koessler says he ceased being Mr. Borkovic's tenant at the end of December 2019. I find that the law of bailment applies to this transaction. A bailment is a temporary transfer of property, where the personal property of one person, a "bailor", is handed over to another person, a "bailee". Mr. Borkovic was a voluntary bailee for reward, which is someone who agrees to hold or store the goods for payment.

17. Mr. Koessler did not pay the storage fees on time. On May 5, 2020, Mr. Borkovic texted Mr. Koessler to say that he would take possession of the camper as compensation for 5 months' rent. He also said he would sell the Dodge truck, boat, and parts truck.

18. On May 14, 2020, Mr. Koessler paid $1,000 to ZB for the storage fees owing. ZB is Mr. Borkovic's relative. The transaction is documented in a receipt. Mr. Koessler then texted ZB that he would pick up his Dodge on May 21, 2020.

19. I find it clear that Mr. Borkovic preferred to keep the camper over payment of the storage fees. It is undisputed that when Mr. Koessler arrived, ZB and Mr. Borkovic became embroiled in a dispute. Mr. Borkovic first learned about the $1,000 payment to ZB at the time and objected to it.

20. It is undisputed that Mr. Koessler left with the Dodge truck. Mr. Borkovic then left a phone message with Mr. Koessler saying that he would tell Mr. Koessler when to pick up the tools, boat, and parts truck. It is unclear if ZB returned the $1,000 payment to Mr. Koessler. In any event, Mr. Koessler says he still owes Mr. Borkovic $1,000 in storage fees and is willing to pay it.

The Agreement for Installing New Rims and Used Tires on the Parts Truck

21. From May 23 to 24, 2020, Mr. Koessler returned to pick up his tools, parts truck, and boat. From the text messages I find that the parties agreed that Mr. Borkovic would prepare the parts truck for towing by putting on new rims and used tires. The parties did not agree on a specific price, so I find Mr. Koessler agreed to pay a reasonable amount.

22. On June 1, 2020, Mr. Borkovic texted Mr. Koessler to pay $2,237 if he wished to keep the camper, tires, and rims. He wrote that if this amount was not paid by June 3, 2020, he would consider the camper abandoned. This amount consisted of $1,000 for storage fees and $1,237 for installing rims and tires. Mr. Koessler found the amount charged for the rims and tires unreasonable and filed his application for dispute resolution the next day.

Issue #1. Is Mr. Koessler entitled to the return of the camper?

23. Although Mr. Koessler did not use the term, I find his claim is based in the tort of detinue, which means the continuous wrongful detention of personal property. To show a claim in detinue, Mr. Koessler must show Mr. Borkovic has failed or refused, upon proper demand, to deliver the camper without lawful excuse: *Schaffner v. Insurance Corporation of British Columbia,* 2016 BCSC 1186 at paragraph 11.

24. I find that as of January 2020, Mr. Koessler owned the camper as he fully paid for it. Mr. Borkovic says he was entitled to keep it because of debts owing. I disagree, as a debt by itself does not entitle a creditor to keep the personal possessions of a debtor.

25. I note that under the *Personal Property Security Act* (PPSA), a party may grant another party a security interest in personal property to make sure a loan is paid back. This is known as a security agreement, and the subject personal property is known as collateral. The PPSA contains "seize or sue" provisions that allow a secured party to take the collateral and sell it in satisfaction of the amount owing. However, I do not find the PPSA applicable here. There is no evidence that the parties entered into a security agreement, nor does Mr. Borkovic allege that the parties entered into one. Further, Mr. Borkovic did not file a counterclaim in this dispute.

26. In reaching my conclusion I also considered whether Mr. Borkovic had a lien under the *Warehouse Lien Act* (WLA). Under the WLA a "warehouser" has a lien on goods for charges related to the storage of the goods. However, I am not satisfied on the evidence that Mr. Borkovic is a warehouser, which is someone in the business of storing goods as a bailee for hire. I do not find the parties' agreement is enough to show that storing goods is Mr. Borkovic's business. The submissions indicate Mr. Koessler kept his items at Mr. Borkovic's residence out of convenience because he was Mr. Borkovic's ex-tenant.

27. I also find that Mr. Borkovic does not have a lien at common law. At common law a lien claimant must establish that as a matter of "general usage" a claim of lien is recognized. See *Cox v. Crystal Graphite Corporation et al.*, 2006 BCSC 1646 at paragraph 49. In this dispute there is no evidence of general usage between the parties. The storage arrangement was an isolated incident.

28. Given the above, I am satisfied that Mr. Borkovic has refused to deliver the camper without lawful excuse. I next consider the appropriate remedy. In *P.S. Sidhu Trucking Ltd. v Elima Enterprises Ltd.*, 2020 BCSC 1062, the court considered the remedy for detinue and wrote that it could either order the return of the property or damages. The

court noted that damages are appropriate where the property consists of “ordinary items of commerce”.

29. Mr. Koessler asked for the return of the camper and not damages. As it was purchased used, presumably at a price that reflects that, and given Mr. Koessler’s requested remedy, I find it appropriate to order the return of the camper.

30. As there appears to be some friction between the parties, I find it appropriate to order Mr. Borkovic to return the camper by making it available for pickup by Mr. Koessler or someone he designates in writing, as detailed in my order below.

Issue #2. Did Mr. Borkovic damage the wood planer, and if so, what is the appropriate remedy?

31. It is undisputed that Mr. Borkovic and his employee damaged Mr. Koessler’s wood planer by dropping it. Based on Mr. Koessler’s submissions, I find the damage occurred on May 24, 2020, while Mr. Borkovic and his employee packed it for removal.

32. Mr. Koessler provided a photograph of the damage and says he sold it for $250 less than he could have. On a judgment basis, I find the claimed damages of $250 is appropriate as it is undisputed.

33. Mr. Borkovic did not file a counterclaim, so I considered whether Mr. Koessler’s claims could be set-off against this amount. In *Wilson v. Fotsch,* 2010 BCCA 226, the Court of Appeal wrote that for a defendant to be entitled to equitable set-off, the claim has to be closely or intimately connected with, or directly impeaches the plaintiff’s claim.

34. I do not find a set-off is appropriate in these circumstances. This is because Mr. Koessler owes Mr. Borkovic $1,000 for storage fees and a reasonable amount for new rims and used tires on the parts truck. I do not find these to be intimately connected with the damage caused to the planer. The storage fees are for a diverse array of Mr. Koessler’s goods and the rims and tires are unrelated to the planer.

35. I note that had I awarded Mr. Koessler damages for the camper I still would not have set-off any amounts owing to him. Only a small part of the storage fees ($200 according to submissions) were for the camper and the rims and tires for the parts truck were part of an entirely separate transaction.

36. The *Court Order Interest Act* applies to the CRT. Mr. Koessler is entitled to prejudgment interest on the $250 damages award from the time he sustained a pecuniary or monetary loss to the date of this decision. However, Mr. Koessler did not say when he sold the planer. In the absence of other evidence or submissions, I use the Amended Dispute Notice date of August 13, 2020. The total interest equals $0.60.

37. 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. I find Mr. Koessler is the successful party and he is entitled to reimbursement of his CRT fees of $125. The parties did not claim reimbursement for dispute-related expenses, so I order none.

ORDERS

38. Within 30 days of the date of this order, I order Mr. Borkovic to return the Elkhorn truck camper by making it available for pickup by Mr. Koessler or someone he designates in writing

    a. at Mr. Borkovic's residence or at another location agreed to in writing by the parties, and

    b. at a reasonable time of day on 7 days' written notice from Mr. Koessler, which can be by text message to Mr. Borkovic.

39. Within 14 days of the date of this order, I order Mr. Borkovic to pay Mr. Koessler a total of $375.60, broken down as follows:

a. $250 in damages,

b. $0.60 in pre-judgment interest under the *Court Order Interest Act,* and

c. $125 in CRT fees.

40. Mr. Koessler is entitled to post-judgment interest, as applicable.

41. 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.

42. 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.

David Jiang, Tribunal Member