



# Civil Resolution Tribunal

Date Issued: March 16, 2021

File: SC-2020-008094

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jones v. Gillis*, 2021 BCCRT 288

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

CORY JONES and EARL JONES as executor of the estate of  
VILLY JOHNSON, deceased

**APPLICANTS**

**A N D :**

JAMES T GILLIS and VERNER JOHNSON

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. This is a dispute about who owns the contents of the former home of Villy Johnson, who died on April 9, 2019. The applicant, Earl Jones, is the executor of Villy

Johnson's estate. The other applicant, Cory Jones, is Villy Johnson's sole beneficiary.

2. The respondent, James T Gillis, owned a half interest in Villy Johnson's house while Villy Johnson was alive. Cory Jones inherited the other half interest after Villy Johnson died. Mr. Gillis sued the applicants over Villy Johnson's estate. They settled that court case and, as part of that settlement, Mr. Gillis became the house's sole owner
3. In this dispute, the applicants say that the house's contents belong to Villy Johnson's estate. They claim the return of the house's contents or, alternatively, \$5,000, which they say is the value of the house's contents.
4. The respondent, Verner Johnson, is Villy Johnson's brother. The applicants allege that he took some items out of the house that belong to Villy Johnson's estate.
5. The respondents rely on the settlement agreement and mutual release (release) that the applicants and Mr. Gillis signed. They say that the release prevents the applicants from making any claims against the respondents about Villy Johnson's estate.
6. Because they share last names, I will refer to Cory Jones and Earl Jones by their first names. I will do the same with Villy Johnson and Verner Johnson. I do this for clarity and intend no disrespect to any of the parties or the deceased.
7. Earl represents both himself and Cory. Mr. Gillis represents both himself and Verner.

## **JURISDICTION AND PROCEDURE**

8. 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.

9. 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.
10. 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.
11. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.

## **ISSUES**

12. The issues in this dispute are:
  - a. Does the release prevent the applicants from bringing claims against Mr. Gillis or Verner?
  - b. If not, who owns the contents of the house?
  - c. What remedies, if any, are appropriate?

## EVIDENCE AND ANALYSIS

13. In a civil claim such as this, Cory and Earl as the applicants must prove their case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. Before he died, Villy and Mr. Gillis both owned half of Villy's home as tenants in common. Mr. Gillis was Villy's stepson. As mentioned above, Cory is Villy's sole beneficiary under Villy's will. This means that when Villy died on April 8, 2019, Cory inherited Villy's half of the home.
15. Earl's spouse, FJ, says that shortly after Villy died, FJ removed "a whole bunch of stuff" for the estate to distribute. The parties agree that no one else removed anything from the house until the summer of 2020. During this time, nobody lived there. The parties also agree that in July or August 2020, Verner entered the home and took some items. Verner says he took expired medication and photos of Verner and Villy's mother. The applicants have no evidence to the contrary, so I accept that this is all Verner took. Mr. Gillis said he gave Verner permission to enter the house to remove these items as the house's part owner.
16. Mr. Gillis started a BC Supreme Court action against Cory and Earl about Villy's estate. Only the sixth page of the Notice of Civil Claim is before me and so I do not know the details of Mr. Gillis's claims. Ultimately, the parties settled the court action and signed the release on September 3, 2020.
17. After settling the court case, the parties had a confrontation at the house in early October 2020. The parties do not agree on the details of this confrontation. However, given my conclusion below, I find that I do not need to address this incident.
18. As mentioned above, the applicants want the respondents to give them the house's contents or \$5,000. The applicants say that they agreed to give Mr. Gillis the house, but the contents of the house belong to Villy's estate. The applicants say that they did not take anything from the house until the court case settled because Mr. Gillis

had claimed an injunction. The applicants also say that Mr. Gillis refused to provide access to the house or the house's contents, which Mr. Gillis denies.

19. Mr. Gillis says that the applicants had full access to the home from Villy's death until September 3, 2020, because the Jones family had the keys. So, he says that Earl could have taken anything that he wanted as executor of Villy's estate but chose not to. Now, Mr. Gillis says that it is too late and relies on the release.
20. According to the release, the court action was about both Cory's interest in the home and "various assets that had belonged to [Villy]". It does not specify what these other assets were. Despite the reference to "various assets", the only asset that the release deals with is the house, which Cory agreed to give to Mr. Gillis. The release does not say anything about the house's contents.
21. As part of the release, the applicants agreed not to make any claims or demands of any kind against Mr. Gillis "arising or resulting from any cause, matter, or anything whatsoever existing up to the date of this Mutual Release, including, but not limited to, all claims related to the estate of Villy Johnson, raised in the [court action], or that might reasonably be made by amendment, counterclaim, third party proceeding, or otherwise be raised, in the [court action]".
22. I find that Mr. Gillis is correct about the effect of the release. The release is clear that both applicants gave up any right to demand or claim anything from Mr. Gillis that was in any way related to Villy's estate. I find that the house's contents were assets related to Villy's estate. So, I find that this dispute over the house's contents falls squarely within the terms of the release. By agreeing not to make any demands or claims against Mr. Gillis, I find that the applicants, by implication, gave up their right to the house's contents. I find that it does not matter whether Mr. Gillis prevented the applicants from accessing the house.
23. Verner is not a party to the release. However, in the release the applicants also agreed not to bring any claims against a non-party about any matters related to the release if it could result in a claim against Mr. Gillis. Because Verner entered the

house and removed some items on Mr. Gillis's instructions, I find that Verner is covered by this clause. In other words, I find that the applicants released any claim that they may have had against Verner for the house's contents.

24. Can Verner rely on the release even though he was not a party to it? Generally speaking, a contract can only give rights to people who are parties to it. This legal concept is known as "privity of contract". However, this is not an absolute rule and there are exceptions to privity. In certain circumstances, people who are not a party to a contract can claim the contract's benefits if it was intended to benefit them. See *Fraser River Pile & Dredge v. Can-Dive Services Ltd.*, 1999 CanLII 654 (SCC). This principle can apply to settlements. See *Daum v. Borsuk*, 2020 BCSC 2013.
25. I find that Verner can rely on the release because the parties intended to extend the release to non-parties. I find that the parties intended the agreement to be a final settlement of all claims about Villy's estate.
26. For these reasons, I find that the release prevents the applicants from making any claims against the respondents about anything related to Villy's estate. It follows that their claims must be dismissed.
27. I note that Earl alleges that there was food in a freezer at the house that belonged to him. He asks for \$1,000 for this food. I dismiss this claim for 2 reasons. First, Earl started this dispute as Villy's executor. I therefore find that he does not have standing to make any claims on his own behalf. Second, I find that Earl has not proven this claim, as there is no evidence to support his assertion that there was \$1,000 of food in a freezer at the house that belonged to him.
28. 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. The applicants were unsuccessful and so I dismiss their claim for CRT fees and dispute-related expenses. The respondents did not claim any dispute-related expenses or pay any CRT fees.

## **ORDER**

29. I dismiss the applicants' claims, and this dispute.

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Eric Regehr, Tribunal Member