Civil Resolution Tribunal

Date Issued: March 23, 2021

File: SC-2020-007834

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hauzer v. Miller dba Blueberry Meadows*, 2021 BCCRT 326

B E T W E E N :

FRANK HAUZER

APPLICANT

A N D :

SHAUN MILLER (Doing Business As BLUEBERRY MEADOWS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Lynn Scrivener

INTRODUCTION

1. This dispute is about a 2014 furniture purchase. The applicant, Frank Hauzer, bought some furniture from the respondent, Shaun Miller doing business as Blueberry Meadows, in October of 2014. Mr. Hauzer says that the sale was conditional upon

the furniture being stored until he purchased a new home. When he was ready for his furniture in the summer of 2019, Mr. Hauzer's furniture could not be located. Mr. Hauzer asks for an order that Mr. Miller refund him the $1,695 purchase price. Mr. Miller denies that he agreed to store Mr. Hauzer's furniture for approximately 5 years, or that he is responsible for Mr. Hauzer's claims.

2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.

4. 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.

5. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. In particular, the CRT may make such an order on its own initiative, on request by a party, or on recommendation by a CRT case manager (also known as a CRT facilitator).

6. On December 11, 2020, another CRT tribunal member issued a preliminary decision that considered whether Mr. Hauzer's claims, which he commenced with the CRT in

October of 2020, were brought within 2 years of discovery as required by the *Limitation Act*. The tribunal member found that Mr. Hauzer did not discover his claim until he learned that the furniture was missing in the summer of 2019, and therefore he brought his claim within the 2-year limitation period. Although this decision is not binding on me, I agree with the tribunal member's reasoning and find that Mr. Hauzer's claims are not statute-barred.

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. 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

9. The issues in this dispute are:

    a. Whether Mr. Miller unlawfully disposed of Mr. Hauzer's property, and

    b. Whether Mr. Miller owes Mr. Hauzer $1,695 in damages.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this, applicants must prove their claims on a balance of probabilities. I have read all the parties' evidence and submissions but will to refer only what I find relevant to provide context for my decision.

11. According to an October 13, 2014 purchase order, Mr. Hauzer paid Mr. Miller the full $1,695 cost of some furniture. Because he had a home purchase pending, Mr. Hauzer did not take delivery of the furniture right away. The purchase order contains the statement "[w]e will be storing furniture for several months due to customers moving".

There is no mention of any storage fees. Mr. Hauzer's home purchase fell through and he was not able to take possession of the furniture as expected.

12. When Mr. Hauzer purchased a home in 2019, he contacted Mr. Miller to arrange for delivery and discovered that his furniture could not be located.

13. Mr. Hauzer says that storage was a condition of his purchase and he told the sales clerk that he "had no time frame" for delivery. He says that he would not have made the purchase if storage was not available to him.

14. Mr. Miller says that, as items are picked up at his warehouse without signatures, Mr. Hauzer's order could have been picked up already. Mr. Miller says that he cleared out the inventory in his warehouse in 2017 before he relocated. According to Mr. Miller, warehouse space is very expensive, and he would not have agreed to store an order for 5 years without charging a storage fee.

15. Although Mr. Miller suggests that Mr. Hauzer could have picked up his furniture from the warehouse, he admits that he has no records to document this. I find that it is more likely than not that the goods were not picked up, and that Mr. Miller sold or otherwise disposed of the furniture. Based on the evidence before me, the timing of this event is not clear, but I find that it likely occurred some time before Mr. Miller's warehouse move in 2017.

16. While Mr. Hauzer may have felt that his purchase was conditional upon the furniture being stored until he bought a house, I find that this did not form part of the parties' contract. Based on the notation on the purchase order, I find that Mr. Miller agreed to store the furniture only for "several months". Mr. Hauzer said in an October 4, 2019 email that he spoke to a sales clerk "2/3 years ago to ask for extension in storage". The sales clerk stopped working for Mr. Miller in 2015 and there is no statement from her in evidence. Even if this conversation occurred, I find that there was no agreement that Mr. Miller would store the furniture indefinitely at no charge.

17. I have considered the applicable law of the torts of conversion (wrongfully holding on to another person's property and claiming title or ownership of that property) and

detinue (wrongful detention of personal property). Conversion and detinue are proven when someone purposely does something to deal with goods in a wrongful way that is inconsistent with the owner's rights (see, for example, *Li v. Li*, 2017 BCSC 1312 at paragraph 213, citing *Royal Canadian Legion, Branch No. 15 v. Burkitt*, 2005 BCSC 1752 at paragraph 104).)

18. The tort of conversion is a strict liability tort, which means that it does not matter if a party innocently or mistakenly acts to interfere with an owner's right or title to property (see *Teva Canada Ltd. v. TD Canada Trust*, 2017 SCC 51). The general remedy is the return of the asset or market value damages.

19. I accept that Mr. Miller handled the furniture when he sold or otherwise disposed of it and, in doing so, could have interfered with Mr. Hauzer's rights to it. However, if Mr. Hauzer abandoned the furniture, Mr. Miller's disposal of it would not be conversion as he would not have been interfering with Mr. Hauzer's right of possession (see *Bangle v. Lafreniere*, 2012 BCSC 256 at paragraph 30).

20. The factors to consider when determining if an owner has abandoned personal property include the passage of time, the nature of the transaction, the owner's conduct, and the nature and value of the property (see *Jackson v. Honey*, 2007 BCSC 1869 at paragraph 30).

21. As noted, the parties had an agreement for short-term storage of the furniture. When Mr. Hauzer's circumstances changed, the parties did not form an agreement to store the furniture for a longer period or indefinitely. I find that it was unreasonable for Mr. Hauzer to expect Mr. Miller to store his furniture at no cost for several years longer than the storage period anticipated in their agreement.

22. The fact that a person is not paying for the storage of their belongings does not mean that they do not want them or intend to abandon their interest in them (see *MacAulay v. Meise*, 2020 BCPC at paragraph 72). However, I find that Mr. Hauzer's conduct was not consistent with someone who intended to retain his interest in property. While Mr. Hauzer may have checked in with the sales clerk on a single occasion, he did not

take any further steps over the course of several years to ensure that his interest in the furniture was protected. In the circumstances, I find that Mr. Hauzer abandoned the furniture.

23. The fact that Mr. Hauzer subsequently wished to retrieve his furniture does not alter my conclusion. A CRT Vice Chair concluded in *Abbott v. Beech*, 2020 BCCRT 986 that the fact that an owner wanted his property back after several years did not mean that he had not abandoned it earlier (see paragraph 20). Although this decision is not binding upon me, I agree with the Vice Chair's reasoning.

24. Given that Mr. Hauzer had abandoned the furniture, I find that Mr. Miller did not wrongfully dispose of the furniture. Therefore, he is not liable for conversion or Mr. Hauzer's claimed damages.

25. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. Hauzer was not successful, I dismiss his claim for reimbursement of CRT fees.

ORDER

26. I dismiss Mr. Hauzer's claims and this dispute.

Lynn Scrivener, Tribunal Member