



Civil Resolution Tribunal

Date Issued: March 30, 2021

File: SC-2020-007185

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nielsen v. Grow Local Society - Tricities*, 2021 BCCRT 350

BETWEEN:

MARIE NIELSEN

APPLICANT

AND:

GROW LOCAL SOCIETY - TRICITIES

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a garden bed in a community garden.

2. The respondent Grow Local Society - Tricities (GLS) manages the Port Moody Police Department Community Garden (community garden). GLS allowed the applicant Marie Nielsen to create and manage a garden bed under the community garden welcome sign (sign bed). More than a year later, after a falling out, GLS refused to allow Ms. Nielsen to continue to maintain the sign bed.
3. Ms. Nielsen seeks several orders generally allowing her to maintain the sign bed as she sees fit and prohibiting others from gardening in the sign bed.
4. Ms. Nielsen also says if no “amicable agreement” with GLS can be made, she seeks compensation of \$5,000 for supplies, products and labour put into the sign bed.
5. GLS disputes Ms. Nielsen’s claims. It says she was not a GLS member and was allowed to create and manage the sign bed as a volunteer, at her request. It says all costs incurred were at her own discretion and without GLS’s agreement or request.
6. Ms. Nielsen represents herself. GLS is represented by a principal. For the reasons that follow, I dismiss Ms. Nielsen’s claims.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.

9. 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.
10. 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

11. The issues in this dispute are:
 - a. Did the parties have a binding agreement about the sign bed, and if so, is Ms. Nielsen entitled to specific performance of its terms?
 - b. Is Ms. Nielsen entitled to compensation for the value of the sign bed?

EVIDENCE AND ANALYSIS

12. As the applicant in this civil dispute, Ms. Nielsen must prove her claims on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
13. It is undisputed that since 2012, GLS has managed the community garden in partnership with the City of Port Moody and the Port Moody Police Department. A volunteer Garden Coordinator, LG, manages the garden with the help of a small group of volunteer members acting as the Garden Committee.
14. The community garden features 62 garden plots that GLS leases to community members who pay an annual fee to grow produce or flowers. GLS has a waiting list

for community members wanting a garden plot. In May 2019, Ms. Nielsen requested a garden plot and was placed on the waiting list.

15. In the meantime, Ms. Nielsen requested, and GLS granted, approval to place “some pots” around the community garden welcome sign. Ms. Nielsen was not asked to pay the annual fee or sign the written agreement that GLS says all members sign. Ms. Nielsen did not dispute, and I find, that she did not become GLS member because she did not pay the annual fee or sign any agreement.
16. What began as a few pots blossomed into the sign bed. Ms. Nielsen’s evidence includes extensive photos documenting each stage of her work. The photos show that before Ms. Nielsen began there was only lawn and 2 potted plants beneath the large welcome sign. Ms. Nielsen installed a kidney bean-shaped garden bed enclosing the sign and extending beyond its borders. She bordered the bed using vertical wooden posts of different heights. She planted various flowers. It is undisputed that Ms. Nielsen improved the area around the welcome sign by making it more attractive.
17. In 2020, a number of incidents fractured the parties’ relationship. The parties disagree about the facts surrounding those incidents. Given my conclusions below, I find I do not need to detail what happened or make any findings about the incidents.

Was there a binding agreement, and if so, is Ms. Nielsen entitled to specific performance of its terms?

18. As mentioned above, the CRT’s small claims jurisdiction is set out in section 118 of the CRTA. Ms. Nielsen seeks several orders that would require GLS to allow her to continue to garden the sign bed. Ordering someone to do something is known as “injunctive relief”. Injunctive relief is outside the CRT’s small claims jurisdiction, except where allowed under section 118. Section 118 allows the CRT to order “specific performance” of an agreement relating to personal property or services. “Specific performance” means an order that a party fulfill the terms of an agreement.

19. Thus, the question is whether GLS and Ms. Nielsen had an enforceable agreement relating to personal property or services. If so, the next question is whether the terms of that agreement are consistent with the orders Ms. Nielsen requests.
20. GLS says it had no binding agreement with Ms. Nielsen. It says it accepted Ms. Nielsen's offer to beautify the community garden welcome sign as an act of kindness. GLS also says it allowed Ms. Nielsen to do the work for her benefit given she expressed a need for the positive impacts gardening offers while waiting for a designated plot in the garden.
21. Ms. Nielsen says she had a verbal agreement with LG. I infer that she means LG had authority to bind GLS, because LG is not a party to this dispute. For the purposes of this dispute I accept that LG had authority to bind GLS, which GLS did not dispute.
22. A basic principle of contract law is that both parties must intend to create binding contractual relations. The test is objective, so what matters is not the individual understandings or beliefs of Ms. Nielsen and LG. What matters is what a reasonable person in the situation of those parties would have believed and understood (*Shaw Production Way Holdings Inc. v Sunvault Energy, Inc.*, 2018 BCSC 926).
23. On the evidence, I am satisfied that a reasonable person in either party's position would not have understood that they were entering into a contract. I rely in part on LG's written statement. LG said she merely gave Ms. Nielsen permission to put some pots around the welcome sign. LG said Ms. Nielsen continued to add to the area, often without prior consent or communication. I accept LG's evidence because it is consistent with the parties' emails in evidence.
24. Ms. Nielsen argues that GLS intentionally omitted important emails, including LG's replies to Ms. Nielsen's emails, to paint the picture that she was "running amok" at the garden without discussion and planning. Ms. Nielsen says GLS was aware that she had deleted her emails and built its case around this. I find that unlikely, but I also find nothing turns on this. The issue is not whether GLS was aware of what Ms.

Nielsen was doing or gave her permission, it is whether there is objective evidence of a binding contract.

25. Ms. Nielsen does not provide any detail about her conversation or conversations with LG that led to the alleged verbal contract. I find that Ms. Nielsen wanted to garden in the community garden and was put on the waiting list but did not want to wait. Her solution, which she came up with independently, was to create the sign bed. GLS did not ask her to do this, but allowed her to. At best, I find Ms. Nielsen was granted permission to garden on a volunteer basis. I find that GLS could revoke that permission at any time.
26. Ms. Nielsen's letter to the Port Moody Police Department makes it clear that she created the garden bed to show her appreciation for its work. In her letter to GLS, she also said she created the garden for the benefit of "all the gardeners" to have something beautiful to look at and for the general public and the City of Port Moody. There was no commercial element to this transaction. The parties understood Ms. Nielsen to be volunteering her time and materials – there was no discussion of compensation and no real exchange of promises. This further supports the conclusion that a reasonable person in the parties' respective positions would not have understood that they were creating a binding contract.
27. In addition, I find there is no enforceable contract because there was no certainty as to the alleged contract's terms, and in particular those terms Ms. Nielsen now seeks to enforce. GLS says if Ms. Nielsen assumed she could garden at the entrance in perpetuity, that assumption was incorrect. I agree. There is no evidence that the parties discussed or agreed that Ms. Nielsen would be allowed to garden in the sign bed as long as she wanted, or for any particular period. There is also no evidence that the parties discussed that Ms. Nielsen would have exclusive access or control over the sign bed.
28. In summary, none of the orders Ms. Nielsen seeks in this dispute correspond to terms the parties can be said to have agreed to. So, I decline to grant the requested injunctive relief relating to the sign bed.

Is Ms. Nielsen entitled to compensation for the value of the sign bed?

29. Ms. Nielsen said in her Dispute Notice that if no “amicable agreement” with GLS can be made, she seeks \$5,000 as compensation for the work and materials she put into the sign bed. If she is asking the CRT to order the parties to reach an agreement about the sign bed, I decline to make that order because an order to agree is outside the CRT’s jurisdiction under CRTA section 118 and in any event is likely unenforceable. However, I will consider her claim for compensation.
30. Ms. Nielsen has not put forward a “cause of action” or legal reason she is entitled to compensation. However, I have considered the common law principle of unjust enrichment.
31. The legal test for unjust enrichment is that Ms. Nielsen must show: a) that GLS was enriched, b) that she suffered a corresponding deprivation or loss, and c) that there is no valid basis for the enrichment: *Kerr v. Baranow*, 2011 SCC 10. There are established categories of valid reasons for the enrichment. One of those categories is donative intent, or the intention to make a gift.
32. Did Ms. Nielsen intend to provide the sign bed as a gift, without compensation? The relevant time to consider donative intent is at the time of the transfer: *Park v. Canada Korea Foundation*, 2014 BCSC 1382.
33. I find Ms. Nielsen did not expect any compensation for the sign bed. Her intention, expressed in letters to the Port Moody Police Department and GLS, was to show her appreciation for the Port Moody Police Department, and for the benefit of the broader community. I find Ms. Nielsen volunteered to create the sign bed.
34. While Ms. Nielsen may have wished to make her donation conditional upon being allowed to maintain the sign bed as long as she wished or for a reasonable period of time, I find she did not attach that condition to her donation.
35. When an enrichment or benefit is provided by a volunteer on the volunteer’s own initiative, with no request from the enriched party, courts are hesitant to award

damages. This is because it is not unjust for a party to retain the value of a good or service that it reasonably believed was offered gratuitously: *Eastern Shore Holistic Acupuncture v. Teal*, 2015 NSSM 9. I decline to award compensation for the sign bed.

Other arguments

36. Ms. Nielsen says GLS ended their relationship for false and unjust reasons. As noted above, GLS says it ended the relationship due to several incidents. Ms. Nielsen disputes the facts surrounding these alleged incidents.
37. I find it is not necessary to determine who was at fault for the incidents or whether GLS's decision to end Ms. Nielsen's involvement in the community garden was procedurally fair. This is because the decision did not have to be fair. The BC Supreme Court in *Roberts v. Vernon Pickleball Association*, 2018 BCSC 1834, stated that there is no freestanding right to procedural fairness with respect to decisions taken by voluntary associations.
38. Although the *Societies Act* offers remedies for unfairly prejudicial conduct, it is undisputed that Ms. Nielsen was not a member of GLS. Even if she were, the CRT does not have jurisdiction to grant those remedies.
39. Ms. Nielsen also said in her Dispute Notice that her arrangement with GLS was in the nature of a trust arrangement. She did not elaborate on this in her submissions. I infer that she argues she accrued beneficial ownership rights to the sign bed in the community garden. The facts as I find them, including Ms. Nielsen's intention to gift the sign bed, do not support a trust between the parties.

Conclusion

40. In summary, Ms. Nielsen has not established that GLS agreed that she would be able to maintain the sign bed. I find she intended to donate the sign bed and GLS was not unjustly enriched, so she is not entitled to any remedy.

41. Under section 49 of the CRTA and CRT rules, as Ms. Nielsen was unsuccessful, I dismiss her claim for CRT fees and dispute-related expenses. GLS did not pay any CRT fees or claim any expenses.

ORDER

42. I dismiss Ms. Nielsen's claims and this dispute.

Micah Carmody, Tribunal Member