



# Civil Resolution Tribunal

Date Issued: May 6, 2021

File: SC-2020-005874

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Andres v. Stevens*, 2021 BCCRT 478

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

WILMAR ANDRES

**APPLICANT**

**A N D :**

CINDE STEVENS

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Nav Shukla

## **INTRODUCTION**

1. This dispute is about a carpet listed for sale on consignment.

2. The applicant, Wilmar Andres, says he gave the carpet to the respondent, Cinde Stevens, for consignment, who he says sold the carpet but did not pay him 50% of the proceeds as agreed. Mr. Andres seeks the carpet's return or \$1,250.00.
3. Ms. Stevens says that Mr. Andres' contract was with her business, The Carriage House, and she is not personally liable. She also says that Mr. Andres is owed nothing because The Carriage House became the carpet's owner when Mr. Andres failed to pick it up after the agreement's term expired in May 2018.
4. Both parties are self-represented.

## **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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.

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.
9. Though not specifically argued by the parties, I have considered whether Mr. Andres' claim is out of time under the *Limitation Act*. The *Limitation Act* applies to disputes before the CRT. It sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed.
10. Section 6 of the *Limitation Act* says that the basic limitation period is 2 years and a claim may not be started more than 2 years after the day on which it is discovered. A claim is "discovered" when the applicant knew or reasonably should have known they had a claim against the respondent and that a court or tribunal proceeding was an appropriate remedy. Although Ms. Stevens submits that the agreement between The Carriage House and Mr. Andres expired 2 years prior to this dispute, I find the relevant date for determining the applicable limitation period is the date the carpet was sold, not the date the agreement allegedly expired.
11. Ms. Stevens says the carpet was sent to auction on August 2, 2018. It is not clear whether the carpet was sold that day or a later date. However, based on the evidence and Ms. Stevens' submissions, I find that the carpet was sold no earlier than August 2, 2018. Therefore, I find August 2, 2018 was the earliest Mr. Andres' claim was discoverable. This means that the earliest the limitation period could have expired is August 2, 2020. Mr. Andres filed his CRT application on July 30, 2020. So, I find that Mr. Andres' claim is not out of time.

## ISSUES

12. The issues in this dispute are:

- a. Is Ms. Stevens a proper respondent in this dispute?
- b. Did Ms. Stevens become the carpet's owner when Mr. Andres failed to pick it up after the agreement's term expired?
- c. If not, what remedy, if any, is Mr. Andres entitled to?

## EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant, Mr. Andres, must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

### ***Is Ms. Stevens a proper respondent in this dispute?***

14. As mentioned above, Ms. Stevens argues that Mr. Andres' contract was with The Carriage House, not her personally. Ms. Stevens is the only respondent named in the Dispute Notice. Mr. Andres says that Ms. Stevens is personally liable and relies on a letter from North Vancouver Chamber saying that they conducted a corporate search for "The Carriage House" and were unable to find the name, meaning the business is likely not incorporated.

15. Ms. Stevens did not produce any evidence that The Carriage House is incorporated. Further, she refers to herself as The Carriage House's owner in her submissions. An unincorporated entity that is also not a registered partnership is not a legal entity. So, in essence, Ms. Stevens is carrying on business as The Carriage House, despite her submissions to the contrary. Therefore, I find that Ms. Stevens is the properly named respondent in this dispute.

***Did Ms. Stevens become the carpet's owner when the agreement expired?***

16. It is undisputed that on January 8, 2018, Mr. Andres listed the carpet for sale on consignment at The Carriage House. However, the parties disagree about the agreement's exact terms. The parties do not dispute that the Inventory of Consignment document (Inventory) in evidence sets out some of the agreement's terms. Based on the Inventory and the parties' submissions, I find that on January 8, 2018, the parties agreed to list the carpet for \$5,000 but that Ms. Stevens could sell it for as low as \$2,500 without Mr. Andres' approval. Further, the agreement had a 120-day term and Ms. Stevens would get a 50% commission if the carpet sold.
17. Ms. Stevens says that the parties' agreement also included The Carriage House's standard handout. This handout states that any goods that do not sell within the 120-day term must be picked up by the consignor within 15 days. Any items not picked up become The Carriage House's property on the 16<sup>th</sup> day.
18. Mr. Andres says that he never received this handout and was not informed of these additional terms. Ms. Stevens has not provided any evidence that the handout was provided to Mr. Andres. I note that the handout contains a different commission rate than what is set out in the Inventory. Given the lack of evidence that the handout was given to Mr. Andres and the inconsistencies between the commission rates, I find that the parties' agreement did not include the handout. So, there was no agreement between the parties that the carpet would become Ms. Stevens' property if Mr. Andres failed to pick it up after the 120-day term expired.
19. Mr. Andres says that before the 120-day term expired, he visited Ms. Stevens and was told that there was interest in the carpet, and he should leave it with her to sell. Mr. Andres says he agreed, and the agreement's term was extended indefinitely. Ms. Stevens says there are no notes in her file about visits from Mr. Andres and denies the 120-day term was extended. Given the parties' conflicting submissions on this point and the lack of documentary evidence, I am unable to find that the parties agreed to extend the agreement's term indefinitely. Therefore, I find that the

agreement expired after 120 days (i.e., May 8, 2018) and Mr. Andres remained the carpet's owner at that time.

***Is Mr. Andres entitled to a remedy against Ms. Stevens?***

20. It is undisputed that the carpet was sent to auction on August 2, 2018 and sold. I must now determine if Mr. Andres is entitled to any remedies against Ms. Stevens for selling the carpet at auction after the agreement expired.
21. I find the applicable law involves what is known as the tort of conversion (wrongfully retaining another person's property and claiming title or ownership to it). The elements of the tort of conversion are set out in *Li v. Li*, 2017 BCSC 1312 at paragraph 214. In order to be successful, Mr. Andres must prove that:
  - a. Ms. Stevens committed a wrongful act involving the carpet,
  - b. The act must involve handling, disposing, or destroying the property, and
  - c. Ms. Stevens' actions must have the effect or intention of interfering with or denying Mr. Andres' right or title to the carpet.
22. I find that when Ms. Stevens sent the carpet to be sold by auction, she handled the carpet in a way that interfered with Mr. Andres' right or title to it. The issue then is whether Ms. Stevens' doing so was a "wrongful act". 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 at paragraph 3). In other words, it does not matter that Ms. Stevens mistakenly believed that the carpet was now hers because Mr. Andres failed to pick it up after May 8, 2018.
23. If Mr. Andres had abandoned the carpet, there would have been no wrongful act in disposing of it. However, there is insufficient evidence before me to conclude Ms. Stevens reasonably believed Mr. Andres had abandoned the carpet at the time it was sent to auction. It is undisputed that she knew Mr. Andres wanted to sell the carpet for no less than \$2,500 and there is no evidence that she made any attempts to

contact Mr. Andres after the agreement expired to tell him the carpet would be sent to auction if he did not pick it up. Therefore, I find Ms. Stevens committed the tort of conversion.

24. Having determined that Ms. Stevens committed the tort of conversion, the next consideration is damages. The normal measure of damages is the item's market value on the date the conversion took place, here August 2018. Mr. Andres claims \$1,250 because he says this is the minimum amount he would have received under the parties' agreement. However, I have already found that the agreement expired on May 8, 2018. Therefore, the \$1,250 minimum no longer applied at the time the carpet was sold. So, I must determine the carpet's market value in August 2018 based on the evidence before me.
25. The evidence includes a \$4,470 USD invoice which Mr. Andres says shows how much he paid for the carpet. The invoice's date is not perfectly legible but from what I can see, I find the carpet was purchased in September 2007. It is not clear from the parties' evidence and submissions how much the carpet sold for. The evidence includes a pay slip from the auction company. This slip lists a carpet as item #10 with a price of \$225. From this I find that the carpet sold for \$225.
26. On a judgment basis, I find Mr. Andres is entitled to \$225 for the carpet. I say this because there is limited reliable evidence before me about the carpet's market value in August 2018. Aside from the price the carpet sold for, the only other possible evidence of value is the \$5,000 maximum and \$2,500 minimum listed on the Inventory and the 2007 invoice. There is no evidence about how the values listed on the Inventory were determined and since I have found that the agreement ended on May 8, 2018, I am not weighing these values in my determination of the carpet's market value. There is also no evidence of how the carpet's value may have changed since it was bought in 2007. Therefore, the only reliable indication of value is the price the carpet sold for.
27. In short, I order Ms. Stevens to pay Mr. Andres \$225 in damages for the carpet. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Andres is entitled to pre-

judgment interest on the \$225 from August 2, 2018 to the date of this decision. This equals \$8.79.

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. I see no reason in this case not to follow that general rule. I find Mr. Andres is entitled to reimbursement of \$150 in CRT fees. I dismiss Mr. Andres' request for reimbursement of \$31 in dispute-related expenses for an affidavit of service, as he has failed to provide evidence in support. As Ms. Stevens was unsuccessful, I dismiss her claim for reimbursement of paid CRT fees.

## **ORDERS**

29. Within 21 days of this decision, I order Ms. Stevens to pay Mr. Andres a total of \$383.79, broken down as follows:
- a. \$225 in damages for the carpet,
  - b. \$8.79 in pre-judgment interest under the *COIA*, and
  - c. \$150 in CRT fees.
30. Mr. Andres is entitled to post-judgment interest, as applicable.
31. 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.

32. 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.

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Nav Shukla, Tribunal Member