



Civil Resolution Tribunal

Date Issued: May 28, 2021

File: SC-2020-009507

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tichopad v. Auger*, 2021 BCCRT 583

BETWEEN:

JIRI TICHOPAD

APPLICANT

AND:

AMELIE AUGER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about the division of personal property after a relationship breakdown. The applicant, Jiri Tichopad, says he bought a ring and ski equipment for the respondent, Amelie Auger, during their relationship. Mr. Tichopad says the ring was a conditional gift, and he purchased the ski equipment for Ms. Auger as a loan. Mr.

Tichopad seeks a total of \$2,990, which is made up of \$1,990 for the ring and \$1,000 for the ski equipment.

2. Ms. Auger says that both the ring and the ski equipment were gifts, and she does not owe Mr. Tichopad anything.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

6. 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.
7. 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.
8. I note that the parties were in a romantic relationship and the evidence suggests they lived together for approximately 6 months. Neither party suggested their dispute would fall under the *Family Law Act* (FLA), which addresses division of property between 2 people who lived together continuously in a marriage-like relationship for at least 2 years. I find that the FLA does not apply to this dispute. I am satisfied that this dispute falls within the CRT's small claims jurisdiction for debt, damages, and recovery of personal property as set out in section 118 of the CRTA.

ISSUE

9. The issue in this dispute is whether Ms. Auger must reimburse Mr. Tichopad for the cost of the ring and the ski equipment.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the burden of proof is on the applicant Mr. Tichopad to prove his claims on a balance of probabilities. However, this general burden is subject to the law of gifts, discussed below. I have read all the parties' evidence and submissions, but I refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. The parties were in a romantic relationship for about 8 months, which ended in approximately April 2020. The parties disagree about how and why their relationship

broke down, but I find it is unnecessary for the purposes of this decision to make any findings about the circumstances of the relationship breakdown.

12. Mr. Tichopad says that during their relationship, he gifted Ms. Auger many things such as clothing, concert tickets, travel, housing, the use of his cars and recreational vehicles, and “an almost endless stream of personal and financial assistance”. However, he says that he purchased a ring as a conditional gift and ski equipment for Ms. Auger that was a loan. He seeks compensation for these items.
13. In contrast, Ms. Auger argues that the ring and ski equipment were gifts, and there was never any discussion that she would have to pay Mr. Tichopad back.

The Ring

14. It is undisputed that the ring in issue is a diamond ring Mr. Tichopad bought for Ms. Auger while they were out of town together in December 2020. In the Dispute Notice, Mr. Tichopad said the ring was a loan for Ms. Auger to use while they lived together, and there was no sentimental or ceremonial reason such as an engagement for her to retain it. However, Mr. Tichopad now says he gave Ms. Auger the ring conditionally “in contemplation of a lasting mutual commitment to each other”. Mr. Tichopad submits that once the condition of a romantic relationship ended, Ms. Auger was obligated to return the ring or compensate him for its value.
15. Mr. Tichopad refers to the decision in *P.S. v. H.R.*, 2016 BCSC 2071, which sets out the law in British Columbia relating to engagement rings, including the leading case of *Hitchcox v. Harper*, 1996 CanLII 2031 (BCSC). In *Hitchcox*, the court found that an engagement ring gift was conditional upon marriage. Therefore, the ring had to be returned to its donor when the marriage failed to occur. While many cases have followed this ruling, I note that it is still subject to evidence of a contrary intention on the donor’s part that the ring was given unconditionally. In fact, the court in *P.S. v. H.R.* was satisfied that the donor gave the engagement ring to his fiancé as an absolute gift, so it did not have to be returned when the relationship ended.

16. Here, the parties both submit that Mr. Tichopad bought the ring as a “promise ring” for Ms. Auger. Neither party described the ring as an engagement ring and there is no evidence before me that would suggest it was meant to be an engagement ring. I find there is not the same condition attached to a promise ring as to an engagement ring. An engagement presumes both the donor and the recipient of the ring agree on the condition of marriage in the future. I find that a promise ring can be given as a unilateral expression of commitment to a relationship, but it is not necessarily conditional on an eventual engagement or marriage. I find the law on engagement rings does not apply here.
17. So, was the ring was an absolute gift? Under the law of gifts, once an applicant (Mr. Tichopad) has proved a transfer, the burden shifts to the person receiving the transfer (Ms. Auger) to establish it was a gift: see *Pecore v. Pecore*, 2017 SCC 17.
18. Three things are required for a legally effective gift: an intention to donate, an acceptance, and a sufficient act of delivery: see *Pecore* and *Lundy v. Lundy*, 2010 BCSC 1004. The evidence should also show that the intention of gift was inconsistent with any other intention or purpose: *Lundy* at paragraph 20. Further, once someone has made a gift to another person, that gift cannot be revoked: see *Bergen v. Bergen*, 2013 BCCA 492.
19. Here, Ms. Auger alleges that the night before Mr. Tichopad purchased the ring, they had argued, and he wanted to make up for it with a gift. Mr. Tichopad does not particularly deny this allegation. However, he says that Ms. Auger asked him to buy her the ring. He also says she agreed the ring was gifted to her conditionally, for her use only so long as their relationship lasted, which Ms. Auger specifically denies.
20. I find Mr. Tichopad’s explanation of the ring’s purchase is inconsistent with his description of the ring as a promise ring. I also find Mr. Tichopad’s evidence is less credible, given he initially claimed the ring was a loan with no sentiment attached, which I find was misleading, but later argued the ring was a conditional gift. Further, I find Ms. Auger’s evidence is more consistent with Mr. Tichopad’s undisputed pattern of gift-giving throughout the relationship. On balance, I find the ring was likely a

spontaneous purchase made near the beginning of the parties' relationship and given as a gift to demonstrate Mr. Tichopad's own commitment. I accept Ms. Auger's evidence that there was never any discussion that the ring was a loan or given conditionally until Mr. Tichopad asked for the ring back after they separated.

21. Mr. Tichopad submits that Ms. Auger acknowledged in writing that he was entitled to the ring's return. I disagree. In a text message screenshot, which Mr. Tichopad says was sent July 11, 2020, Ms. Auger stated she would give Mr. Tichopad the ring back if it would bring peace. I find that the text message does not prove Ms. Auger believed the ring rightfully belonged to Mr. Tichopad. I also accept that Ms. Auger later reasonably determined that giving the ring back would not bring "peace" between the parties. Given this matter proceeded, I find Ms. Auger's offer to return the ring is not binding on her.
22. I find Ms. Auger has met her burden to prove Mr. Tichopad gifted her the ring, which she accepted. Therefore, I find the ring belongs to Ms. Auger and Mr. Tichopad is not entitled to any compensation for its value.

Ski equipment

23. It is undisputed that Ms. Auger accompanied Mr. Tichopad on a ski trip in Europe with his children and their mother. I find from the parties' submissions that Ms. Auger was initially going to use ski equipment that Mr. Tichopad already had, but that shortly before their departure, Mr. Tichopad agreed to purchase new ski equipment for Ms. Auger.
24. Mr. Tichopad submits that he purchased the ski equipment as a loan because Ms. Auger was financially unable to pay for both the equipment and her portion of the trip. He says they agreed the money to buy the ski equipment was a loan, repayable after Ms. Auger had paid off her portion of the trip. Mr. Tichopad makes no claim about the cost of the trip, only the ski equipment.
25. Ms. Auger denies any agreement that she would repay Mr. Tichopad for the ski equipment. She argues that when they separated, Mr. Tichopad put the ski equipment

together with her personal belongings in storage until she could retrieve them. Ms. Auger provided a witness statement from CB, who was present when Ms. Auger later moved her belongings out of storage. CB stated that Mr. Tichopad was also present, and he did not mention wanting the ski equipment back or that Ms. Auger owed him anything for it. Mr. Tichopad does not dispute this aspect of CB's statement, so I accept it.

26. As noted above, Ms. Auger bears the burden of proving the ski equipment was a gift. I find the evidence establishes that Mr. Tichopad intended to donate the ski equipment to Ms. Auger. There is no evidence other than Mr. Tichopad's own submissions that there was any discussion that the money he paid for the equipment was a loan. Again, I find it is inconsistent with the evidence that Mr. Tichopad gifted Ms. Auger numerous items, yet he says the ski equipment was a loan to give Ms. Auger "a sense of ownership and a feeling of contribution".
27. Further, it is undisputed that the ski equipment was in Mr. Tichopad's possession when the parties separated. Had Mr. Tichopad considered the ski equipment an unpaid loan, I find it is unlikely he would have willingly provided it to her with her other belongings but not raise the issue of the loan with her until later. On balance, I find that the ski equipment was a gift to Ms. Auger, and she does not have to pay Mr. Tichopad for its value.
28. Given Mr. Tichopad has not proven he is entitled to compensation for either the ring or the ski equipment, I dismiss his claims.
29. 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. Mr. Tichopad was unsuccessful and so I dismiss his claim for CRT fees. Ms. Auger did not pay any fees or claim any dispute-related expenses, so I make no order.

ORDER

30. I dismiss Mr. Tichopad's claims and this dispute.

Kristin Gardner, Tribunal Member