Civil Resolution Tribunal

Date Issued: June 21, 2021

File: SC-2020-009791

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Watt v. Yellowlees,* 2021 BCCRT 676

B E T W E E N :

JO-ANNE WATT

APPLICANT

A N D :

ROBERT LOCKIE YELLOWLEES

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Leah Volkers

INTRODUCTION

1. This is a dispute about furniture storage between former spouses. The applicant, Jo-Anne Watt, says the respondent, Robert Lockie Yellowlees, agreed to store four pieces of antique furniture at his home. The applicant says when they went to pick up the furniture, it was not in the respondent's home and the respondent refused to return

the furniture to them. The applicant seeks an order that the respondent return the furniture. The applicant also claims $5,000 for the furniture.

2. The respondent denies that any furniture in his home belongs to the applicant and denies any agreement. The respondent says even if the parties had an agreement, the applicant abandoned the furniture by "allowing so many years to pass with no mention of the furniture".

3. The parties are both self-represented in this dispute.

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. Some of the evidence in this dispute amounts to a "they said, they said" scenario. 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. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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. The recovery of personal property generally falls under the CRT's small claims jurisdiction, as set out in section 118(1)(b) of the *Civil Resolution Tribunal Act* (CRTA). However, the division of family property is governed by Division 4, Part 5 of the *Family Law Act* (FLA). Section 84 of the FLA says "family property" is all real property and personal property owned by at least one spouse on the date the spouses separate.

9. It is undisputed that the parties were married for approximately one year, over forty years ago. The applicant says she inherited the furniture after the parties' marriage ended. While the ownership of the furniture is disputed, the respondent does not allege that either party owned the furniture at the time they were married. So, I find that this dispute is not governed by the FLA and I can hear this dispute under the CRT's small claims jurisdiction.

ISSUE

10. The issue in this dispute is whether the applicant is entitled to either the furniture's return or $5,000 for the furniture's alleged value.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove their 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.

12. The applicant says that they left their furniture with the respondent in 2006 and returned to pick it up in 2019. The applicant says when they went to the respondent's home to pick up the furniture, it was missing, and the respondent refused to return the furniture. The respondent disputes this and says the furniture does not belong to the applicant.

13. In order to be successful in their claim for return of the furniture or, alternatively, compensation for the furniture, the applicant must first prove that they own the furniture.

Who owns the furniture?

14. For the following reasons, I find that it is unclear who owns the furniture, and so I find the applicant's claim must fail.

15. The furniture listed in the applicant's Dispute Notice consists of four items: a hand carved Chinese dragon chair, side table and table, and an antique British chair. It is undisputed that the respondent has a Chinese dragon chair, side table and table in his possession. However, the respondent says these items do not belong to the applicant. The respondent denies any knowledge of an antique British chair.

16. The applicant says they inherited the furniture from their grandmother. The applicant submitted photographs of a chair and a table, which they say were taken inside the respondent's home. The respondent did not specifically address these photographs in his submissions but says that he does not have any of the applicant's furniture. The applicant also submitted a photograph of her daughter beside an antique side table, which they say is now held by the respondent. The respondent disputes this and says the table in the photograph is not in his home. The respondent provided a photograph of a side table in his home, which does not appear to be the same table. I find these photographs do not prove that the applicant owns the furniture.

17. In evidence is a statement from the respondent's partner, RY. RY says that the respondent never indicated that the furniture belonged to anyone other than the respondent. RY also says that the applicant visited the respondent and RY a number

of times but never mentioned the furniture. As RY is the respondent's partner, I find she has an interest in this dispute and is not neutral, so I have given her statement little weight.

18. Also in evidence is a statement which appears to be from the respondent's sister, GY. The statement was copied into the text of the applicant's submissions, but was not submitted in its original format as evidence. GY says that "it is highly unlikely" the furniture belongs to her brother, the respondent. However, as I do not know the original source of this statement, and it was not provided in evidence, I have given it little weight.

19. Neither party provided any further documentary evidence of the furniture at issue, or submissions detailing the furniture at issue.

20. Here, I find I am left with an evidentiary tie. Both the applicant and the respondent allege that they own the furniture and both parties have provided a statement in support. However, I do not give significant weight to either statement, and I find they cancel each other out in any event. As noted above, the burden is on the applicant to prove their claims on a balance of probabilities. Here, on balance, I find the applicant has not provided sufficient evidence or submissions to prove they own the furniture that is currently held by the respondent. So, I find that the applicant's claim must fail.

Was the furniture abandoned?

21. Even if the applicant had proven they owned the furniture, I find the applicant has abandoned it, and so their claim for the furniture's return would fail in any event. My explanation follows.

22. The applicant submits that the parties had a verbal agreement that the respondent would store the applicant's furniture. The applicant did not provide any details of how long the respondent allegedly agreed to store the furniture for, or any other details of the agreement. The respondent denies any agreement and says if there was an agreement, the applicant abandoned the furniture.

23. The applicant relies on statements from the respondent's sister, GY, as noted above. However, GY's statement does not provide any details of the alleged agreement between the parties. The applicant also relies on an email statement from a friend, JP. JP says that they also agreed to store some of the applicant's furniture and other personal belongings while the applicant was living in Costa Rica. JP says that the applicant picked everything up in 2019. While I accept JP's statement, I find it does not assist me in determining the nature of the parties' alleged agreement.

24. Despite referring to email correspondence between the parties in their submissions, the applicant did not submit any further documentary evidence to show any agreement with the respondent or any discussion about leaving the furniture with him for an extended period of time.

25. I turn then to the applicable law. The elements of the tort of conversion, which is essentially the wrongful interference with another person's property, are set out at paragraphs 213 and 214 of *Li v. Li*, 2017 BCSC 1312. In order to be successful, the applicant must prove that:

    a. The respondent committed a wrongful act involving the furniture, inconsistent with the applicant's rights to it,

    b. The act must involve handling, disposing of, or destroying the property, and

    c. The respondent's actions must have the effect or intention of interfering with or denying the applicant's right to the furniture.

26. In this case, I find that if the applicant effectively abandoned the furniture, the respondent is not liable for the tort of conversion (see *Bangle v. Lafreniere*, 2012 BCSC 256). As set out in *Bangle*, if the applicant abandoned the furniture, the respondent's continued possession of it is not conversion because in so doing, the respondent was not interfering with the applicant's right of possession. In other words, if the applicant abandoned the furniture, the respondent does not have to return it to the applicant.

27. ‘Abandonment’ is a legal term which may apply to the applicant’s decision to leave the furniture in the respondent’s care for a prolonged period. In *Bangle*, it was roughly a 2-year period where the applicant was found to have abandoned their property. Significantly, here it was 13 years. While it is undisputed that the parties were in contact occasionally over the 13 years, there is no evidence that the applicant contacted the respondent about the furniture or discussed the furniture at all during that time.

28. On balance, based on the evidence before me, I find the applicant has abandoned the furniture by leaving it with the respondent for over a decade. So, even if the applicant had proven that they owned the furniture when they allegedly left it with the respondent in 2006, the applicant’s claim for the furniture’s return would not succeed in any event.

The applicant’s claim for $5,000

29. Here, I find the applicant has claimed a double remedy by asking for both the furniture’s return and $5,000 in compensation for the furniture’s alleged value. The applicant has not proven their claims, and so the applicant is not entitled to any remedy. However, even if the applicant was entitled to a remedy, ordering the respondent to return the furniture and pay $5,000 for the furniture’s alleged value would result in double recovery. The applicant did not provide sufficient evidence to prove the furniture’s value in any event. For these reasons, I dismiss the applicant’s claim for $5,000.

CRT fees and dispute-related expenses

30. 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. As the applicant was unsuccessful, I dismiss their CRT fee claim. The respondent did not pay any CRT fees or claim any dispute-related expenses, so I award none.

ORDER

31. I dismiss the applicant's claims and this dispute.

Leah Volkers, Tribunal Member