



Civil Resolution Tribunal

Date Issued: July 22, 2021

File: SC-2020-007448

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Munn v. Musseau*, 2021 BCCRT 801

BETWEEN:

KELLI MUNN

APPLICANT

AND:

MICHAEL MUSSEAU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This is a dispute about personal property. The applicant, Kelli Munn, says she lived with the respondent, Michael Musseau, during a brief romantic relationship. Ms. Munn says that she purchased an iPhone 11 for Mr. Musseau and Mr. Musseau agreed he would return the iPhone to Ms. Munn if their relationship ended. Ms. Munn says Mr. Musseau has not returned the iPhone and she continues to pay for it. Ms. Munn asks

for an order that Mr. Musseau repay her \$1,300 for the phone bills and also repay her for the iPhone's cost.

2. Mr. Musseau does not dispute that he has the iPhone. He says it was a "forced gift", but he insisted he pay for it. He says he paid Ms. Munn \$250 for the "free upgrade". Mr. Musseau alleges Ms. Munn has "robbed and stolen" from him already and says the claim should be dismissed.
3. Both parties are 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. 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. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in 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. It is undisputed that the parties were formerly in a romantic relationship that lasted approximately two months. Even if they did live together (which Mr. Musseau disputes), it is undisputed that they did so for less than two years. As such, the parties do not meet the definition of spouses in the *Family Law Act* (FLA). So, I find that the FLA does not apply to this dispute, and the CRT has jurisdiction to decide the parties' debt and damages claim.

ISSUE

9. The issue in this dispute is whether Mr. Musseau is required to reimburse Ms. Munn for the iPhone and the cell phone bills, and if so, what is the appropriate amount?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Ms. Munn must prove her claims on a balance of probabilities. Mr. Musseau did not provide any evidence in this dispute, despite being provided the opportunity to do so. I have reviewed Ms. Munn's evidence and read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. While the parties did not explicitly say when their relationship ended, I infer from the Dispute Notice that it was August 28, 2020 at the latest, which is the date Ms. Munn indicated she became aware of this claim. Ms. Munn says that Mr. Musseau agreed to return the iPhone to her, but never did.
12. In the Dispute Notice, Ms. Munn asked for an order that Mr. Musseau return the iPhone and repay her \$1,300 for the phone bills she paid. In her submissions, rather

than asking for the iPhone to be returned, Ms. Munn asks for an order that Mr. Musseau repay her \$1,300 for the phone bills and also repay her for the iPhone's cost.

13. Ms. Munn submitted the August 4, 2020 Telus mobility contract that was for a 24 month term. The Telus contract lists the iPhone's price at \$1,003, which was then discounted to \$670 for signing a 24 month contract. Ms. Munn is the party listed on the Telus contract. Ms. Munn also submitted the cell phone bills for 4 months from August to November 2020, also in her name. The cell phone bills collectively totaled \$1,415.76. Mr. Musseau does not dispute that the mobility contract and phone bills apply to the iPhone in his possession.
14. As noted above, Mr. Musseau says that the iPhone was a "forced gift", but also says that he paid Ms. Munn \$250 for the iPhone. Mr. Musseau says that he provided "the receipt of \$80 for My phone. I also provided the bank statements showing unpaid for My phone" (reproduced as written). He says he has "34 phones; and work the pipeline I have no need or desire to rob a person" (reproduced as written). He also says that he has texts from Ms. Munn acknowledging the iPhone is his, and that the iPhone is "with my other spare phones in my suitcase". Yet, as noted, Mr. Musseau submitted no evidence to support his position.
15. Here, I find that Mr. Musseau's submissions are unclear and contradictory. He alleges that Ms. Munn gave him the iPhone as a forced gift. He says he insisted on paying for the iPhone, and that he paid \$250 for the "free upgrade". He does not explain what he means by the free upgrade. In his submissions, he says he paid \$80 for the iPhone. However, this evidence does not match the available documentary evidence of the iPhone's cost. The Telus contract in evidence, discussed above, indicates that Ms. Munn paid well over \$250 for the iPhone.
16. As the party alleging the iPhone was a "forced gift", I find Mr. Musseau must prove that Ms. Munn intended the iPhone as a gift. This is because the law presumes bargains rather than gifts and, to presume otherwise would result in Mr. Musseau's unjust enrichment in receiving an iPhone and having given Ms. Munn nothing of value

in return (see *Proznik and Smith v. Proznik*, 2011 BCPC 0300, citing *Pecore v. Pecore*, 2007 SCC 17). At law, once someone has made a true gift to another person, the gift cannot be revoked (*Bergen v. Bergen*, 2013 BCCA 492). Again, Mr. Musseau has not provided any evidence to support his submissions and has not addressed Ms. Munn's claim for repayment of the phone bills at all. Given this, I have placed little weight on Mr. Musseau's submissions, and I find Mr. Musseau has not proven that the iPhone was intended as a gift.

17. Mr. Musseau also alleges that Ms. Munn "destroyed my personal things, took my food, my passport and more". Mr. Musseau has not filed a counterclaim, or provided any details of these allegations, so I will not address them further and in particular decline to award any set-off.
18. In evidence are text messages between the parties from September 2020, including a text message from Mr. Musseau to Ms. Munn that said "...for the dozen time I'm getting u the same phone u gave me and keeping the SIM card with my personal information" (reproduced as written). Mr. Musseau does not address this evidence in his submissions. Based on this text message and the balance of the evidence, I find Mr. Musseau agreed to replace Ms. Munn's iPhone in September 2020, but failed to do so.
19. Mr. Musseau undisputedly has the iPhone. I have already found that he agreed to replace it, and failed to do so. So, I find he is required to reimburse Ms. Munn for the cost of the iPhone he kept after the parties' relationship ended. I also find that Mr. Musseau must reimburse Ms. Munn for the phone bills he incurred between August and November 2020, prior to Ms. Munn cancelling the mobility contract. Ms. Munn did not provide any evidence any additional cost incurred when she cancelled the mobility contract. I find Mr. Musseau must reimburse Ms. Munn \$2,085.76 for the iPhone (\$670) and phone bills (\$1,415.76). In total, this equals \$2,085.76.
20. The *Court Order Interest Act* applies to the CRT. Ms. Munn is entitled to pre-judgment interest on the iPhone and phone bills from November 30, 2020, the date of the last

phone bill submitted in evidence, to the date of this decision, which I find is reasonable in the circumstances. This equals \$6.03.

21. 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 Ms. Munn is entitled to reimbursement of \$150 in CRT fees. Ms. Munn did not claim any dispute-related expenses and so I award none.

ORDERS

22. Within 30 days of the date of this order, I order Mr. Musseau to pay Ms. Munn a total of \$2,241.79, broken down as follows:
 - a. \$2,085.76 as reimbursement for the iPhone and phone bills,
 - b. \$6.03 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$150 in CRT fees.
23. Ms. Munn is entitled to post-judgment interest, as applicable.
24. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

25. 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.

Leah Volkens, Tribunal Member