Civil Resolution Tribunal

Date Issued: August 3, 2021

File: SC-2021-002948

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Heys v. Courtney*, 2021 BCCRT 845

B E T W E E N :

GORDON HEYS

APPLICANT

A N D :

DAVID GORDON COURTNEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This is a dispute about a forklift and an oxygen tank. The applicant, Gordon Heys, sold his interest in an airplane hangar to the respondent, David Gordon Courtney. Mr. Heys says that Mr. Courtney changed the hangar's lock on the possession date before Mr. Heys was able to remove a forklift and oxygen tank from the hangar. Mr. Heys claims $1,500 for the forklift and tank that Mr. Courtney undisputedly prevented

him from retrieving after changing the hangar lock, and $30 for a padlock that Mr. Courtney cut off the hangar.

2. Mr. Courtney says that Mr. Heys abandoned the forklift and oxygen tank, so Mr. Heys gave up any rights in those items. Mr. Courtney also says that he cut off the lock because it prevented him from entering the hangar after he obtained possession of it. Mr. Courtney says he owes nothing.

3. Each party is 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. 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.

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.

ISSUES

8. The issues in this dispute are:

    a. Is Mr. Courtney responsible for the cost of a replacement padlock?

    b. Did Mr. Heys abandon the forklift and oxygen tank, and if not, does Mr. Courtney owe him $1,500 or another amount?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Heys must prove his claims on a balance of probabilities. I have read all the parties' submitted material but refer only to the relevant evidence and arguments needed to explain my decision.

10. Mr. Heys argues, in part, that Mr. Courtney agreed to purchase his forklift. In a February 25, 2021 email, Mr. Courtney offered to purchase Mr. Heys' interest in an airplane hangar. In a paragraph labelled "P.S." at the end of the email, Mr. Courtney wrote that if a third party, L, did not have first rights to a forklift, Mr. Courtney would like to purchase it. No forklift price or other terms were provided. Mr. Heys admits that he discussed selling the forklift to Mr. Courtney, but at the time of this email he had already promised to sell the forklift to L. Mr. Heys says that when the sale to L later fell through, the February 25, 2021 email meant Mr. Courtney agreed to purchase the forklift, despite the forklift being unavailable on February 25, 2021. The forklift was located in Mr. Heys' airplane hangar.

11. In a February 26, 2021 bill of sale signed by both parties, Mr. Heys agreed to sell Mr. Courtney 100 shares of Wild Cat Hangers Ltd. It is undisputed that this sale effectively transferred Mr. Heys' interest in an airplane hangar in a Wild Cat Hangers Ltd. building to Mr. Courtney. The bill of sale said the final balance owed for the purchase

was to be paid at the time of possession of the hangar on March 31, 2021. The bill of sale did not provide a specific time of possession, and did not mention a forklift, oxygen tank, or other moveable goods.

12. I find that none of the evidence before me shows that Mr. Courtney agreed to purchase the forklift. I find that the parties did not agree on a price or any other terms. I find that the February 25, 2021 email only contained Mr. Courtney's invitation to enter negotiations about the forklift's sale. I find this was what is known in law as an "invitation to treat", and was not a binding offer or contract (see *Roback v. U.B.C.*, 2007 BCSC 334 at paragraph 24, citing *Carlill v. Carbolic Smoke Ball Co.*, [1893] 1 Q.B. 256 (C.A.)).

13. Further, although the hangar sale discussed in the February 25, 2021 email was later formalized in a signed bill of sale, the forklift sale was not. Mr. Heys emailed Mr. Courtney on March 22, 2021 that he wanted $500 for the forklift. In a March 23, 2021 reply, Mr. Courtney confirmed that he was no longer interested in purchasing the forklift, for reasons he had given the night before. I find that Mr. Courtney never agreed to purchase the forklift, and that it remained Mr. Heys' property.

Is Mr. Courtney responsible for the cost of a replacement padlock?

14. As noted, the bill of sale was silent as to what time of day on March 31, 2021 the hangar's possession would transfer. The bill of sale only said that the remaining purchase price balance would be paid "at time of possession of the hanger on March 31, 2021" (quote reproduced as written). I interpret this to mean that payment of the full purchase price needed to occur before possession was transferred on that date. I find Mr. Hey was not required to give possession of the hangar to Mr. Courtney by any specific time on March 31, 2021. *Cornerview Farms Ltd. v Friesen*, 2018 BCSC 2060 at paragraph 213 explains that, absent an agreement as to a specific time of day, a seller may deliver vacant possession of property at any time before that day actually expires. I find this principle applies to this dispute, and that Mr. Hey was permitted to transfer possession to Mr. Courtney at any time before the end of March 31, 2021.

15. At approximately 11:00 a.m. on March 31, 2021, Mr. Heys emailed Mr. Courtney that he would transfer the hangar to Mr. Courtney at 6:30 p.m. and remove his lock from the hangar. At approximately 12:30 p.m., Mr. Courtney replied that the purchase funds had been transferred, that he was not willing to wait any longer to gain access to the hangar, and he would be cutting off Mr. Heys' padlock. In an April 17, 2021 email, the lawyer handling the hangar transaction confirmed that Mr. Heys "picked up the sale proceeds" at approximately 1:00 p.m. on Mar 31, 2021. Mr. Courtney says he cut off the lock and replaced it with his own at approximately 2:30 p.m. Mr. Heys emailed Mr. Courtney at approximately 3:00 p.m. that Mr. Courtney would be trespassing, breaking and entering, and damaging Mr. Heys' property, if he tried to gain entry to the hangar before midnight that night.

16. I find Mr. Courtney was not entitled to remove Mr. Heys' lock at 2:30 p.m. because Mr. Heys had not yet transferred possession of the hangar to Mr. Courtney. I find Mr. Heys was entitled to transfer possession at any time before the end of May 31, 2021, and had indicated that he would do so at 6:30 p.m. Mr. Courtney says he could not be present at 6:30 p.m., but I find nothing turns on that. So, I find Mr. Courtney is responsible for the replacement cost of Mr. Heys' padlock. Mr. Heys claims $30 for the padlock, but provided no evidence proving the padlock's price or replacement cost. In May 31, 2021 email correspondence, Mr. Courtney said, "It's a $10 lock". On a judgment basis, I find Mr. Courtney must reimburse Mr. Heys $20 for the cost of a replacement padlock.

Did Mr. Heys abandon the forklift and oxygen tank?

17. Mr. Heys says that because Mr. Courtney changed the hangar lock before 6:30 p.m. on March 31, 2021, he was unable to remove the oxygen tank and forklift from the hangar. It is undisputed that the forklift was in poor condition and was not easily moveable on its own. Mr. Courtney possesses the tank and the forklift, and says that because Mr. Heys allegedly abandoned them, they belong to Mr. Courtney.

18. In correspondence before March 31, 2021, Mr. Courtney indicated that he wanted Mr. Heys' possessions removed from the hangar. However, I find that Mr. Courtney did

not demand that Mr. Heys remove the forklift or tank after Mr. Courtney changed the hangar lock, and did not give a deadline for removing those items or say what would happen if they were not removed. I find that in an April 1, 2021 email, the day after taking possession of the hangar and with no prior notice, Mr. Courtney unilaterally claimed Mr. Heys had abandoned the forklift. I find this very short period of time is insufficient to show abandonment. I find Mr. Heys did not abandon the forklift or the oxygen tank.

19. I turn to the applicable law. The tort of conversion applies in circumstances where there is a positive wrongful act of dealing with goods in a manner that is inconsistent with the owner's rights (see *Li v. Li*, 2017 BCSC 1312). According to *Li* at paragraph 214, to demonstrate that Mr. Courtney is liable under the tort of conversion, Mr. Heys must prove that:

    a. Mr. Courtney committed a wrongful act involving Mr. Heys' property,

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

    c. Mr. Courtney's actions had the effect or intention of interfering with or denying Mr. Heys' right or title to the property.

20. It is undisputed that Mr. Courtney has not allowed Mr. Heys to access the hangar or anything in it since changing the lock on March 31, 2021. Mr. Courtney has claimed ownership of the forklift, attempted to sell it, and has not offered to return it. I find Mr. Courtney has handled the forklift by keeping it inaccessible in the hangar and attempting to sell it, and that these were wrongful acts because the forklift belonged to Mr. Heys, not Mr. Courtney. I find that these acts interfered with and denied Mr. Heys' right or title to the forklift. Given my finding that Mr. Heys did not abandon the forklift, I find that Mr. Courtney is liable in conversion.

21. The question remains, what is the forklift's value? A forklift dealer sales representative emailed Mr. Heys that he expected the forklift would sell for $3,500 to $4,500. However, it is undisputed that the sales representative never inspected the forklift, and I find the evidence does not show that he possessed sufficient knowledge of the

forklift's condition and history to accurately estimate its likely sale price. So, I place little weight on the sales representative's price estimate. It is undisputed that the forklift is not in perfect condition. Mr. Heys says the combined value the forklift and the claimed oxygen tank is $1,500, without evidence supporting that value and without further breakdown.

22. Mr. Heys says that although he offered to sell the forklift to Mr. Courtney for $500, that was a price discussion "between friends and/or part of good will in the sale of the hangar that had nothing to do with actual value." I find the evidence does not support that Mr. Heys offered to sell the forklift below market value because of friendship or as part of the hangar sale. I find that the forklift's most likely market value is $500, the price Mr. Heys originally offered to Mr. Courtney. I find Mr. Courtney owes $500 in damages for the forklift's value, and I allow Mr. Hey's claim for that amount.

23. Mr. Courtney does not directly deny keeping an oxygen tank that Mr. Heys left at the hangar. For the same reasons that Mr. Courtney is responsible for the forklift's value, I find Mr. Courtney is also liable in conversion for the oxygen tank's value. However, the evidence contains little detail about the oxygen tank or its value, apart from Mr. Heys' unsupported claim that the forklift and tank together are worth $1,500. On a judgment basis, I find Mr. Heys is entitled to nominal damages of $50 for the value of the oxygen tank. Mr. Heys' damages for the padlock, forklift, and oxygen tank total $570.

CRT FEES, EXPENSES, AND INTEREST

24. Under the *Court Order Interest Act*, Mr. Heys is entitled to pre-judgment interest on the $570 owing. I find pre-judgment interest is calculated from March 31, 2021, the date Mr. Courtney cut off the lock and prevented Mr. Heys from accessing the forklift and oxygen tank, until the date of this decision. This equals $0.89.

25. 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 not to follow that general rule. I find Mr.

Heys was largely successful in his claims, so he is entitled to reimbursement of the $125 he paid in CRT fees. Neither party claimed CRT dispute-related expenses.

ORDERS

26. Within 15 days of the date of this order, I order Mr. Courtney to pay Mr. Heys a total of $695.89, broken down as follows:

    a. $570 in damages,

    b. $0.89 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $125 in CRT fees.

27. Mr. Heys is entitled to post-judgment interest, as applicable.

28. 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.

29. 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.

Chad McCarthy, Tribunal Member