



Civil Resolution Tribunal

Date Issued: August 17, 2021

File: SC-2021-002952

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marshall v. Malekzad*, 2021 BCCRT 904

BETWEEN:

CHRIS MARSHALL

APPLICANT

AND:

KIAN MALEKZAD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about ownership of a dog named Bentley. The applicant, Chris Marshall, says the respondent, Kian Malekzad, stole his dog and then sold the dog

to Mr. Malekzad's friend DC. Mr. Marshall seeks the dog's return, which he values at \$5,000.

2. Mr. Malekzad says Mr. Marshall abandoned the dog because Mr. Marshall was moving somewhere he could not take the dog. Mr. Malekzad says he told Mr. Marshall he was going to have to find someone to adopt the dog, and that he ultimately gave the dog to DC for free.
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). 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 parties to a dispute that will likely continue after the dispute resolution 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. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under section 42 of the CRTA, 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, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

8. Mr. Marshall worked for Mr. Malekzad at a used car lot. Mr. Marshall does not claim for unpaid wages in this CRT dispute.
9. Next, I note both parties were given the opportunity by CRT staff to add DC as a respondent, and both declined to do so.
10. Finally, I note Mr. Marshall submitted some evidence late. These are 3 witness statements about Mr. Marshall's history of Bentley's ownership and care. Bearing in mind the CRT's flexible mandate, I admit this late evidence (though I find it to be only marginally relevant), as Mr. Malekzad was given the opportunity to respond to it and so was not prejudiced by it.

ISSUES

11. The issues in this dispute are:
 - a. Was Mr. Malekzad entitled to give the dog to DC?
 - b. Is Mr. Marshall entitled to an order for the dog's return or for payment of \$5,000 in the alternative?

EVIDENCE AND ANALYSIS

12. In a civil claim like this one, as the applicant Mr. Marshall has the burden of proving his claim, on a balance of probabilities (meaning "more likely than not"). I have only referenced below what I find is necessary to give context to my decision. In particular, I have not set out all the details of the parties' prior working relationship.
13. Mr. Marshall says in January 2021 he moved into housing that would not permit his dog, unless the dog was approved as an emotional support pet. He submits he was told that approval process could take 2 to 4 months. He argues Mr. Malekzad agreed to care for his dog or arrange for its care while he awaited that approval. In contrast, Mr. Malekzad argues Mr. Marshall abandoned the dog. While Mr. Marshall submits he now has approval for an emotional support pet, he did not submit

evidence of it. In any event, the material point is that in January and February 2021 Mr. Marshall undisputedly was unable to care for his dog.

14. The parties agree:

a. Mr. Malekzad's father looked after the dog temporarily. I find the evidence shows this was from January to late February 2021.

b. Mr. Malekzad found a home for the dog when his father could no longer care for it. As discussed further below, I find the evidence shows this happened around February 23, 2021, with Mr. Malekzad giving the dog to DC.

15. Mr. Malekzad submitted a February 26, 2021 text exchange with Mr. Marshall. In it, Mr. Marshall asked how things were and Mr. Malekzad responded asking if he meant about Bentley and attached a photo and indicated the dog was content with DC. Mr. Marshall replied that he had not meant to text Mr. Malekzad, but that it was "good to see Bentley though". I find this exchange does not support Mr. Marshall's allegation Mr. Malekzad acted improperly in giving the dog to DC, as the text shows Mr. Marshall was happy that Bentley was being cared for by her.

16. As noted above, Mr. Malekzad denies he sold the dog to DC, and instead says he gave it to her because Mr. Marshall had abandoned it given his housing situation. In a Statement of Facts in evidence, Mr. Marshall says that whether Mr. Malekzad sold the dog or not is outside his knowledge. I find there is no evidence Mr. Malekzad sold the dog and instead find he gave it to DC. This is consistent with DC's July 1, 2021 statement in evidence, in which she notes she got the dog for free from Mr. Malekzad and that the dog has been in her possession for 6 months.

17. In this dispute, Mr. Marshall seeks the dog's return. Mr. Marshall submits that there is "no other satisfactory judgment" apart from Bentley's return to him, and so I find he does not seek compensation in lieu of Bentley's return. In any event, I find a value of \$5,000 unproven. Mr. Marshall says he paid \$1,100 for the dog in 2011 and

the dog is now senior at 12 years old, with evidence from DC that the dog required significant veterinary care.

18. Significantly, Mr. Malekzad does not have the dog, DC does. As noted, Mr. Marshall chose not to add DC as a respondent. Even if I found Mr. Marshall was entitled to the dog's return, I could not order Mr. Malekzad to return something he does not have control over. I cannot order DC to do anything, such as return the dog, because DC is not a party.
19. As referenced above, Mr. Marshall submits that he agreed DC could "temporarily" care for Bentley. His claim against Mr. Malekzad appears to be based on the fact that DC refuses to return the dog, and an allegation that Mr. Malekzad lied to him that DC knew the arrangement would only be temporary. I find that allegation unproven.
20. In summary, I find Mr. Marshall's claim against Mr. Malekzad cannot succeed. I find I do not need to determine whether Mr. Marshall in fact had abandoned the dog or not, because DC has the dog and Mr. Marshall admittedly agreed to DC's care of it. As noted, I find no evidence to support the conclusion Mr. Malekzad "stole" Mr. Marshall's dog, as alleged. I dismiss Mr. Marshall's claims.
21. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Neither party paid CRT fees or claimed dispute-related expenses, so I make no order about them.

ORDER

22. I dismiss Mr. Marshall's claims and this dispute.

Shelley Lopez, Vice Chair

