



Civil Resolution Tribunal

Date Issued: January 12, 2022

File: SC-2021-004630

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ward v. Andronyk*, 2022 BCCRT 34

B E T W E E N :

TAMMY WARD

APPLICANT

A N D :

MICHAEL ANDRONYK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about vehicle storage. The respondent, Michael Andronyk, agreed to let the applicant, Tammy Ward, store her 2004 Dodge Ram 1500 truck on his property in late 2018, for free. Mrs. Ward says that Mr. Andronyk did not respond to her attempts to arrange a truck pickup. She also says he demanded storage fees before he would release the truck to her, which she refused to pay. Mrs. Ward requests an

order that Mr. Andronyk return the truck to her, or if it cannot be returned, an order that he pay her \$5,000 for it.

2. Mr. Andronyk says Mrs. Ward did not contact him about the truck for almost 2 years, and he was unable to contact her. He says that he stored the truck for far longer than the week or so the parties originally agreed. Mr. Andronyk says Mrs. Ward abandoned the truck, so he transferred its registration to himself. He says he is willing to either keep the allegedly abandoned vehicle, or to transfer it back to Mrs. Ward if she first pays \$3,500 for storage on his property and \$500 for his time and expenses, plus registration transfer fees. However, Mr. Andronyk filed no counterclaim in this dispute.
3. The parties are each 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. Although the parties' submissions each call into question the credibility of the other party to some extent, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly 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.

ISSUE

8. The issue in this dispute is whether Mrs. Ward abandoned the truck, and if not, must Mr. Andronyk return it to her or pay her \$5,000 for it?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mrs. Ward as the applicant must prove her claims on a balance of probabilities, meaning “more likely than not”. I have read all the parties’ submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
10. The undisputed evidence is that in late 2018, Mrs. Ward was moving to a new city. She needed a place to keep her truck, which was not running well, until she could return and pick it up. Mr. Andronyk agreed to let Mrs. Ward store the truck on his property. The parties agree they did not discuss a storage fee or a particular storage end date.
11. Mr. Andronyk says Mrs. Ward told him she would be back in a week or so to pick up the truck, which Mrs. Ward denies. Mrs. Ward says Mr. Andronyk said the truck could stay there as long as necessary. There is no written evidence of the parties’ storage agreement before me. However, Mrs. Ward says that she called Mr. Andronyk in November 2018 to arrange the truck pickup, but Mr. Andronyk said the truck was buried in snow so it would be better to wait until spring. On balance, I find Mrs. Ward

likely agreed to pick up the truck in a few weeks, and at the latest in the spring of 2019 when the snow retreated.

12. Mrs. Ward says she left voice and text messages for Mr. Andronyk and his wife about picking up the truck beginning in April 2019 and afterward, but they did not respond. She also says she spoke with Mr. Andronyk's wife in person about picking up the truck at one point. However, Mr. Andronyk says that Mrs. Ward simply left the truck on his property in late 2018 and did not respond to his attempts "every few months" to contact her, including by text message. He says he was first contacted in April 2020 when Mrs. Ward's husband, JW, visited his property. JW asked for the truck's return, and Mr. Andronyk refused. Mrs. Ward says that after the visit, Mr. Andronyk requested a storage fee payment in order to release the truck, which she refused. Despite further conversations with Mrs. Ward about the truck and storage fees, beginning in early 2021 Mr. Andronyk filled out paperwork in evidence to have the truck's registration transferred into his name as an abandoned vehicle.
13. Mr. Andronyk says he has proof of the text messages he sent, and I find it likely that Mrs. Ward could have submitted any text messages she sent to Mr. Andronyk. Yet neither party submitted any records supporting their alleged attempts to contact each other before April 2020. So, I draw an adverse inference against each party. I find the evidence fails to show Mr. Andronyk attempted to contact Mrs. Ward before April 2020, and it also fails to show Mrs. Ward attempted to contact Mr. Andronyk before that date. Other than Mrs. Ward's own unsupported submission, I find there is no evidence before me showing that she attempted to pick up the truck or to contact Mr. Andronyk about it before April 2020. As noted, the parties' agreement was to store the truck until the spring of 2019 at the latest.
14. The law of bailment is about a party's obligations to safeguard another's possessions. I find Mr. Andronyk was a "gratuitous bailee" of the truck because Mrs. Ward did not agree to compensate him for its storage. Gratuitous bailees must exercise reasonable care for the goods in their possession in all of the circumstances (see *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273).

15. I find Mrs. Ward's claim for the truck's return may also be based on the torts of conversion or detinue, although she did not use those legal terms. Conversion is when a party wrongfully possesses another's personal property and claims ownership of it. To prove conversion, Mrs. Ward must show a wrongful act by Mr. Andronyk involving handling, disposing, or destroying the truck, and that the act was intended to or actually interfered with Mrs. Ward's right or title to the truck (see *Li v Li*, 2017 BCSC 1312 at 214). Detinue is a legal term that applies to a situation where a bailee refuses to give up possession of an item demanded by a person who is entitled to the item (see *Schentag v. Gauthier*, 27 D.L.R. (3d) 710, 1972 CanLII 1205 (SK QB)).
16. Analyzing this as either a bailment, conversion, or detinue situation, I find that Mr. Andronyk would not be required to return the truck or pay for it if the evidence shows Mrs. Ward abandoned it before her April 2020 demand for it, meaning she no longer had a right to possess it (see *Bangle v. Lafreniere*, 2012 BCSC 256 at paragraph 30). The party seeking to rely upon the abandonment principle bears the burden of proof (see *Jackson v. Honey*, 2007 BCSC 1869 at paragraph 30). Here, Mr. Andronyk alleges abandonment, so I find he bears the burden of proving that Mrs. Ward abandoned the truck.
17. Factors to consider when determining whether personal property has been abandoned include the passage of time, the nature of the transaction, the owner's conduct, and the nature and value of the property (see *Jackson* at paragraph 30). I find the most persuasive factor here is that the truck had been stored for nearly 1.5 years when JW demanded its return in April 2020. This was at least 1 year beyond spring 2019, which I found was the latest pick up time agreed by the parties. As noted, I find the evidence does not show that Mrs. Ward made any attempts to pick up the truck before April 2020 or to ask for further storage time. I find that the parties' agreement was that Mrs. Ward would only store the truck with Mr. Andronyk for a reasonable period as agreed. In the circumstances, I find that an additional 1 year of storage, with no proven attempts by Mrs. Ward to contact Mr. Andronyk or pick up the truck, was not a reasonable period in the circumstances or as agreed. Although as noted Mr. Andronyk has not proven he attempted to contact Mrs. Ward about the

stored truck before April 2020 either, I find the parties' agreement was that Mrs. Ward would pick up the truck within the expected time frame, and she did not reasonably attempt to do so. I also find there is no evidence before me about the truck's value, which I find is unproven.

18. For all of the above reasons and based on the submitted evidence, I find Mrs. Ward likely abandoned the truck before JW's April 2020 visit. So, I find Mr. Andronyk was no longer liable to Mrs. Ward for the truck by April 2020 because Mrs. Ward no longer had a right to possess it. I find Mrs. Ward has not met her burden of proving that Mr. Andronyk was required to return the truck to her under the law of bailment, conversion, or detinue. I dismiss Mrs. Ward's claim for the truck's return, and for \$5,000 for the truck's value. I make no findings about Mr. Andronyk's offer to give Mrs. Ward the truck in exchange for requested storage fees.

CRT FEES AND EXPENSES

19. Under section 49 of the CRTA, and the 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. Mrs. Ward was unsuccessful in her claim, and Mr. Andronyk paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements.

ORDER

20. I dismiss Mrs. Ward's claim, and this dispute.

Chad McCarthy, Tribunal Member