



# Civil Resolution Tribunal

Date Issued: March 2, 2022

File: SC-2021-003374

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Reagh v. Reagh*, 2022 BCCRT 225

**B E T W E E N :**

RANDY REAGH, Executor of the Estate of EUPHEMIA REAGH,  
deceased

**APPLICANT**

**A N D :**

GARY REAGH and JANE REAGH

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is over family photo albums. The applicant Randy Reagh, executor of the estate of Euphemia Reagh, deceased, claims he loaned the respondents, his brother Gary Reagh and Gary's wife Jane Reagh, original family photo albums in 2015. Because the parties and Randy and Gary's mother Euphemia share the same surname, without intending any disrespect, I refer to them by first names.
2. The respondents have undisputedly refused to return the original albums and included photos. Randy claims the albums and included photos' return in their original condition, which he values at \$5,000.
3. Randy says the respondents allegedly said they would scan the photographs so that the originals and copies could be distributed to Euphemia Reagh's 4 beneficiaries that includes Randy and Gary. Randy says the original albums were only loaned to allow the scanning.
4. Gary agrees he received the albums from Randy in 2015 but says they were an unconditional gift. Jane agrees with Gary but says she is not a properly named respondent, because the albums were given to Gary rather than to her. The respondents also say that Euphemia's estate is the subject of litigation before the BC Supreme Court (BCSC) and beyond the Civil Resolution Tribunal's (CRT) jurisdiction. As discussed below, they also say Randy is out of time to bring his dispute.
5. Randy is represented by a lawyer, Scott Kerwin. The respondents are also represented by a lawyer, Max Wolinsky.

## **JURISDICTION AND PROCEDURE**

6. These are the CRT's formal written reasons. 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.

7. CRTA section 39 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.
8. Under CRTA section 42, 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.
9. Where permitted by CRTA section 118, 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. CRTA section 118 specifically gives the CRT jurisdiction over recovery of personal property.
10. In their Dispute Responses filed at the outset of this CRT proceeding, the respondents said there was an ongoing BCSC action about the administration of Euphemia's estate. In evidence is a September 14, 2021 BCSC decision (*Reagh Estate (Re)*, 2021 BCSC 1807) which dealt with Randy's passing of accounts as Euphemia's executor and real property entitlements under Euphemia's will for her 4 beneficiaries (including Randy and Gary). There is no mention of the photo albums in question in that decision or in the petition that started that proceeding, and none of the parties say they were ever raised as part of that proceeding, which dealt with Euphemia's other property. Randy says the estate's administration is nearing completion, with the albums being one outstanding matter. I accept this, as Gary does not dispute it.

11. This CRT dispute is not about the validity or interpretation of a will. It is undisputed that Randy was Euphemia's executor with the authority to distribute the albums as he saw fit. This dispute is about whether Randy, as Euphemia's executor, gave Gary the photo albums outright in 2015 or whether he only loaned them for scanning, on the condition of their return. In substance, I find this dispute is about opposing claims over personal property, which falls squarely under the CRT's jurisdiction under CRTA section 118.
12. So, again bearing in mind the CRT's mandate, I find the CRT has jurisdiction to resolve this dispute, which I note the respondents no longer expressly dispute in their later submissions.

## **ISSUES**

13. The issues in this dispute are:
  - a. Is Jane a proper respondent in this CRT dispute?
  - b. Is Randy's claim out of time under the *Limitation Act*?
  - c. Did Randy gift the photo albums to Gary in 2015 and, if not, is Randy now entitled to their return?

## **EVIDENCE AND ANALYSIS**

14. In a civil claim like this one, the applicant Randy has the burden of proving his 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.
15. The photo albums in question contain various family photos, some dating back to when Euphemia's beneficiaries were children. The number of albums is not clear on the evidence, but the undisputed evidence is that there were 6 or 7 albums.

Euphemia died in January 2015. Apart from certain real property, Euphemia's will said that the residue of her estate was to be divided equally between her 4 sons, including Randy and Gary. Her will did not specifically mention photo albums. In a non-binding October 2007 memorandum to her executor (Randy), Euphemia wrote, "Please divide the albums up the way you want (according to family)". None of this is disputed.

16. Randy undisputedly handed the photo albums to Gary in 2015, when Gary and Jane came to visit Randy at Euphemia's home after her death (which is where Randy also then lived). Randy says he did so only because Gary said he had a "high end" scanner at his office and that he would scan and return the original photo albums to Randy. Randy submitted an October 25, 2021 statement from his spouse ER to the same effect.
17. In contrast, Gary and Jane deny saying they had a scanner. They say Randy unconditionally gave the albums to Gary at that 2015 meeting, and only asked for their return after Randy and Gary had a falling out in March 2019.

### ***Claim against Jane***

18. Randy's claim against Jane is essentially based on his assertion that Gary and Jane together received the photo albums at the 2015 meeting. I find the evidence clearly shows that Randy delivered the albums to Gary because Gary was Euphemia's beneficiary and Randy was her executor. Whether the albums were loaned or gifted, I find only Gary, not Jane, received the albums. So, while Jane is Gary's wife, I find it is not within Jane's power or control to return the albums as claimed. I dismiss Randy's claim against Jane.

### ***Is Randy's claim out of time?***

19. The *Limitation Act* (LA) applies to the CRT. Here, Randy had a 2-year limitation period to start his claim, running from when a) he discovered or ought to have discovered "injury, loss or damage" due to Gary's retention of the albums and b) Randy knew that a CRT proceeding against Gary would be appropriate.

20. Randy notes the suspension of limitation periods during the pandemic. The mandatory limitation period suspension under the *COVID-19 Related Measures Act* (CRMA) applied to the court but not the CRT. Rather, under the CRMA the CRT had discretion to suspend limitation periods, but only until 90 days after the state of emergency ended on June 30, 2021. So, the CRT's ability to exercise that discretion ended in September 2021 and I find the limitation period was not suspended. Even if I still had that discretion, I would not have exercised it as Randy did not argue his ability to file the dispute was impacted by the pandemic, which I find would need to be established for a discretionary suspension under the CRMA.
21. Randy applied to the CRT on April 27, 2021. This means that if his claim arose before April 27, 2019 it was filed out of time.
22. In Randy's CRT application, he said that he became aware of the claim in March 2019. However, Randy now argues that the running of time started when Gary expressly refused the albums' return, which was not until he filed a Dispute Response in this CRT proceeding. Randy says this is the "well-settled" law for this claim (citing non-binding Manitoba and Ontario decisions), which he says is based on the tort of detinue. Generally speaking, detinue is where a respondent refuses to deliver goods that belong to the applicant.
23. In contrast, Gary says that based on Randy's version of events, Gary was only supposed to have the albums long enough to make copies of them, which he says would at most have been a year after 2015. So, Gary says the limitation period has long expired.
24. As noted, Randy says his claim is based on the tort of detinue. Under BC case law, I find Randy must show Gary failed or refused, upon proper demand, to deliver the albums without lawful excuse: *Schaffner v. Insurance Corporation of British Columbia*, 2016 BCSC 1186 at paragraph 11, and paragraph 10 citing Lewis Klar's text *Tort Law*.

25. So, I find the running of time only started when Gary failed to deliver the albums after Randy asked for them. Contrary to Randy's assertion, given *Schaffner* I do not agree that an express refusal was required. However, nothing turns on this. I find Gary only failed to return the albums when he failed to respond to Randy's October 2019 emails that first demanded them back. Given this was after April 2019, I find Randy's claim was filed in time.

***Did Randy gift the photo albums to Gary or is Randy entitled to their return?***

26. Randy says he only loaned the albums to Gary for scanning. Randy says as executor he requires the original albums and included photos back, so he can distribute them among the 4 beneficiaries. The issue before me is whether the albums were gifted to Gary or were only loaned to Gary. If the former, then Randy is not entitled to their return.

27. I turn then to the relevant chronology.

28. On January 30, 2015, Randy emailed Gary and his 2 other brothers that Euphemia "has some personal possessions and furniture etc which need to be divided" and asked the brothers to contact him. The albums were not specifically mentioned.

29. On February 2, 2015, Randy and Gary's brother T emailed Randy to say, among other things, that he wanted copies of photos of his parents. T added, "I believe Gary is looking after this activity. I assume at some point that we will ALL have to sort out all the pictures contained in mum's picture albums." Later that day, Randy responded to T's email and, among other things, wrote, "Gary has the photo albums at the moment and numerous pictures we can all share in when Gary is finished. Mum has told me on numerous occasions, Gary was entitled to the original photo's of Mum and Dad" (quote reproduced as written), which Randy says referred to certain framed photos apart from the albums. Randy relies on this exchange as support for his position that he had only loaned Gary the albums for scanning or copying purposes.

30. Randy says he asked Gary about the scanning progress in 2016 and early 2017. Randy says Gary said the scanning was not completed and that his daughter was planning on compiling a family history. Randy says he recalls asking Gary about the scanning again in 2018, and again Gary said it was not complete. There is no documentary evidence before me of these alleged inquiries, such as emails or texts. Gary did not specifically address this evidence in his more general submission denying the albums were only on loan, but Gary did deny he ever said he had a scanner.
31. In December 2018, in his role as Euphemia's executor Randy petitioned the court in the BCSC proceeding mentioned above, with Gary and his 2 brothers as respondents. At issue in the petition was the disposition of certain real property Euphemia had owned. The petition did not mention the albums or any personal property. The BCSC litigation was contentious, although I accept Randy's undisputed evidence that his relationship with Gary was cordial around 2016, if not beyond.
32. As noted above, on or shortly before March 3, 2019 Randy and Gary undisputedly had a falling out over Randy's handling of the estate. None of the parties suggest that the albums were discussed during Randy and Gary's heated March 2019 conversation. On March 3, 2019, Randy emailed Gary to say their "personal dialogue and communication has come to an end", again with no mention of the albums. There is no evidence Gary ever responded.
33. On October 7, 2019, Randy emailed Gary, "I would like to pick up the family albums. Could you give me a time and place where I can pick them up?" Based on the evidence before me, this was Randy's first demand for the albums' return. On October 12, 2019, Randy forwarded Jane his October 7 email and asked her to forward it to Gary. On November 12, 2019, Mr. Kerwin emailed Gary asking for the albums, referring to them as estate property. Based on the evidence before me, Gary and Jane did not respond to any of this.
34. I turn to the applicable law.



35. Gary has undisputedly refused to return the albums. Given the law of detinue discussed above, the issue is whether Gary has a lawful excuse, namely whether Randy as executor had gifted the albums to Gary unconditionally. Under the law of gifts, the burden shifts to Gary to prove Randy gifted the albums. To make a gift, the person transferring the gift must intend for it to be a gift and deliver it to the receiver who must accept it (see *Pecore v. Pecore*, 2007 SCC 17).
36. On balance, I find it unproven that Randy intended to gift Gary the albums. On the one hand, it is somewhat surprising that Randy did not more actively pursue the albums' return before late 2019, particularly when there was ongoing estate litigation. However, I find the most likely explanation is that Randy believed Gary was arranging scanning and since the estate was not yet wound up, he did not perceive there to be any rush. I find a gift inconsistent with Randy's other contemporaneous emails to beneficiaries around the time of Euphemia's death, that show Randy was trying to honour his mother's wishes in terms of the albums and otherwise. I find it more likely that Randy intended to distribute the albums and their contents among the 4 beneficiaries, as part of his executor role.
37. So, I find Randy is entitled to the albums' return. I note I have no jurisdiction as to how Randy distributes them or their contents in his role as executor and I make no order about that.
38. As noted above, one difficulty is that the albums' number is uncertain and is either 6 or 7. I considered whether there was insufficient specificity about the albums such that I could not make an order for their return. However, bearing in mind the CRT's mandate, I find that I can order Gary to return all the original family photo albums he received from Randy in 2015 (with their included original photos), whatever the actual number of albums. I say this because the parties do not dispute there was only the one delivery of albums and Gary also does not dispute there were 6 or 7 albums.

39. 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. Randy was successful in his claim against Gary and so I find Gary must reimburse Randy the \$175 in paid CRT fees. While Randy argues for an order that the respondents "pay a portion of his legal costs", no evidence about what Randy spent on legal fees was submitted and Randy also did not specifically claim dispute-related expenses. In any event, the CRT's rules say that legal fees are not reimbursable except in exceptional cases and I find this is not an exceptional case. So, I make no order for legal expense reimbursement or for other dispute-related expenses.

## **ORDERS**

40. Within 30 days of this decision, I order Gary to deliver to Randy all of the original family photo albums Randy provided to Gary in 2015, with the original photos included, in the albums' original condition. Gary must deliver the albums to Randy's address as set out on the CRT Dispute Notice, by a traceable method such as registered mail or courier, unless Randy and Gary agree in writing otherwise. I dismiss Randy's claims against Jane.

41. 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.

42. 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

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Shelley Lopez, Vice Chair