



Civil Resolution Tribunal

Date Issued: April 7, 2022

File: SC-2021-008141

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kerwood v. Neifer (dba Neifer Fine Painting)*, 2022 BCCRT 391

BETWEEN:

ROY KERWOOD

APPLICANT

AND:

KEVIN NEIFER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The parties were formerly friends. The applicant, Roy Kerwood, says he loaned the respondent, Kevin Neifer, various tools and equipment so that Mr. Neifer could

refurbish his sailboat. Mr. Kerwood says he has asked for the tools' return but Mr. Neifer refused. Mr. Kerwood claims \$2,600 for a tool box, drill, saw, socket set, and "several HD Action Cameras and assorted accessories".

2. Mr. Neifer says that in May 2021 Mr. Kerwood was emptying his airplane hangar and asked Mr. Neifer to assist with disposing of various items in a dumpster that was adjacent to Mr. Neifer's boat. Mr. Neifer says he disposed of most of the items that were mostly garbage and only retained a few "small things" he says Mr. Kerwood said he could keep. Mr. Neifer says he owes nothing.
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). CRTA section 2 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. 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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. CRTA section 42 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. Mr. Neifer submitted late evidence after the CRT's deadline. Mr. Kerwood had an opportunity to respond to it and so I find he is not prejudiced by my admitting it. The evidence has marginal relevance as they are all photos of either Mr. Neifer or his boat, which Mr. Neifer provided to show he did not need Mr. Kerwood's tools and to show where Mr. Kerwood dropped off the "garbage" and allegedly loaned tools. Given the CRT's flexible mandate, I allow the late evidence and have considered it in my analysis below.
9. I pause to note there was a technical problem with the CRT's issuance of the Amended Dispute Notice. On its face, the Amended Dispute Notice does not indicate who the named respondent is (the relevant box is blank). At the bottom however, it indicates the amendment history. In the original Dispute Notice, the named respondent was "Kevin Niefer (Doing Business As Neifer Fine Painting)" (spelling as in original). In the amendment history note on the Amended Dispute Notice, it shows the respondent name was changed to "Kevin Neifer". This "Kevin Neifer" is also consistent with Mr. Neifer's spelling in other documents and is consistent with information provided by CRT staff about the request for the Amended Dispute Notice. So, in the style of cause above I have shown the respondent as "Kevin Neifer".

ISSUES

10. The issues in this dispute are whether Mr. Kerwood loaned any tools to Mr. Neifer, and if so, whether Mr. Kerwood is entitled to \$2,600 in damages for them.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Mr. Kerwood must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. I note Mr. Kerwood chose not to provide a final reply submission, despite having the opportunity to do so.
12. Mr. Kerwood’s submitted argument is only that Mr. Neifer was enthusiastic about being loaned “tools” and “gleefully accepted them as a loan”. Mr. Kerwood does not say when the alleged loan occurred or where. There is no written documentation about the loan, and no contemporaneous texts or emails mentioning it.
13. As referenced above, Mr. Neifer says that Mr. Kerwood called him in May 2021 asking if Mr. Neifer had access to a dumpster as Mr. Kerwood needed to empty his airplane hangar. Mr. Neifer says Mr. Kerwood wanted to save on dump fees. Mr. Neifer says he confirmed he had dumpster access. Mr. Kerwood arrived where Mr. Neifer was storing his boat and “unloaded a tangled mess” of items from his car onto the ground near a dumpster. Mr. Neifer says the items appeared to be broken scraps of metal and wire, remains of a metal airplane project. Mr. Neifer says Mr. Kerwood told him that if he found anything in the garbage that Mr. Neifer found useful, he could keep it. Mr. Neifer further says Mr. Kerwood then muttered something over his shoulder, as he was leaving, that “he might be back for them someday”.
14. Mr. Neifer denies receiving any equipment or tools that might suggest a binding agreement to care for or return them. Mr. Neifer says he “didn’t take much” as his space is limited and most items had no value to him. Mr. Neifer says he only took “a few small things” that Mr. Kerwood was welcome to have back if he could have refrained from insults “long enough to receive them”.
15. Whether Mr. Kerwood’s claim is rooted in the law of bailment (the obligation to care for goods left in one’s care) or in the tort of conversion (wrongfully interfering with another’s property), I find the result is the same. I find Mr. Kerwood abandoned a

variety of items, including the items in question, that were mostly garbage. So, I find Mr. Neifer had no obligation to care for them and no obligation to return anything he did retain. My further reasons follow.

16. Apart from Mr. Kerwood's bare assertion that I find remarkably vague, there is no evidence that Mr. Neifer ever asked to borrow the tools or equipment and Mr. Neifer denies asking. Mr. Kerwood did not deny he delivered the garbage to Mr. Neifer at his boat yard and unloaded the items out of his car onto the ground beside the dumpster. Rather, Mr. Kerwood says only that he loaned Mr. Neifer tools. Mr. Neifer denies needing any tools and said he had his own.
17. Mr. Kerwood says he asked Mr. Neifer for the tools' return but Mr. Neifer refused. Yet, Mr. Kerwood submitted no supporting evidence of such communications. I acknowledge Mr. Neifer's admission that after Mr. Kerwood unloaded the car and was leaving, Mr. Kerwood "muttered over his shoulder" that he "might come back someday". However, in the circumstances I find this vague utterance did not reasonably require Mr. Kerwood to take responsibility for Mr. Kerwood's belongings that he otherwise was asking Mr. Neifer to put in a dumpster. In other words, I find insufficient evidence that Mr. Neifer was entrusted to care for the tools and equipment in question, and so I find I need not detail the law of bailment or the tort of conversion.
18. In any event, I also find Mr. Kerwood's damages claim unproven. As noted above, Mr. Kerwood claims \$2,600 for a tool box, a drill, a saw, a socket set, and several "HD Action Cameras and assorted accessories". In support, Mr. Kerwood's submitted a typed list of payment records to Canadian Tire (without breakdown in terms of any item description apart from "tools for the plane"), dating back to 2019. The total is \$800.43 and Mr. Kerwood says this is "half the items" he bought. Mr. Kerwood also submitted screenshots of a new \$199 drill and a new \$119.99 saw, which he says were 2 of the tools loaned.
19. However, Mr. Kerwood does not explain how he arrived at the \$2,600 figure. There is no evidence as to the tools' condition when left with Mr. Neifer in May 2021. Even if I accepted Mr. Kerwood's typed list, the \$800 in items were purchased in 2019 and

were dumped out of his car in May 2021. Given my conclusions above, I dismiss Mr. Kerwood's claim.

20. 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. As he was unsuccessful, I dismiss Mr. Kerwood's claim for reimbursement of paid CRT fees. Mr. Neifer did not pay fees and no dispute-related expenses were claimed.

ORDER

21. I dismiss Mr. Kerwood's claims and this dispute.

Shelley Lopez, Vice Chair