Civil Resolution Tribunal

Date Issued: April 7, 2022

File: SC-2021-005440

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vanlaarhoven v. Sklarchinsky*, 2022 BCCRT 397

B E T W E E N :

LYNNE VANLAARHOVEN

**APPLICANT**

A N D :

CASSANDRA SKLARCHINSKY and MICHAEL SIMON

**RESPONDENTS**

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**REASONS FOR DECISION**

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Tribunal Member: Eric Regehr

## INTRODUCTION

1. The applicant Lynne Vanlaarhoven says that she and the respondent Cassandra Sklarchinsky started a second-hand goods business together. While Ms. Sklarchinsky disputes this, it is undisputed that Mrs. Vanlaarhoven purchased many used items in early 2021, which she stored in a barn on the respondent Michael Simon's property. Mr. Simon and Ms. Sklarchinsky are siblings, and both live on Mr.

Simon's property. Mrs. Vanlaarhoven says that after the business venture fell apart, the respondents refused to let her pick up all the items she purchased. She claims $3,172.52 for the items that the respondents kept, including $400 for wicker furniture and $200 for a barbecue.

2. Mrs. Vanlaarhoven also claims that she and her husband, HV, sold Mr. Simon wood for his barn that he never paid for. She claims $1,827.48 for this wood.

3. The respondents admit that Mrs. Vanlaarhoven left certain items in Mr. Simon's barn. Mr. Simon also admits that he told Mrs. Vanlaarhoven and HV that they were not allowed back on his property. However, the respondents say they do not want the remaining items and Mrs. Vanlaarhoven should have hired movers to pick them up. Mr. Simon also says that Mrs. Vanlaarhoven gave him the wicker furniture, barbecue, and wood as gifts. The respondents ask me to dismiss Mrs. Vanlaarhoven's claims.

4. The parties are each self-represented.

## JURISDICTION AND PROCEDURE

5. 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.

6. 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. In some respects, the parties of this dispute call into question the credibility, or truthfulness, of the others. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before

me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

7. 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.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

9. I note here that Mrs. Vanlaarhoven started 2 CRT disputes on the same day, this one and SC-2021-005442 (other dispute). Ms. Sklarchinsky is a respondent in both disputes, but Mr. Simon is only a respondent in this dispute, so I have published a separate decision for each of the 2 disputes. However, because the combined value of the 2 disputes is well over the CRT's $5,000 monetary limit, I considered whether Mrs. Vanlaarhoven inappropriately split her claims to fit within the CRT's jurisdiction. In a previous dispute, *De Bayer v. Yang*, 2019 BCCRT 298, I found that an applicant may bring multiple claims against the same respondent that total over $5,000 as long as the claims are sufficiently different.

10. Here, between the 2 disputes, I find that Mrs. Vanlaarhoven alleges that Ms. Sklarchinsky breached 4 different contracts (the alleged business agreement, 2 loan agreements, and a puppy breeding agreement). In this dispute, Mrs. Vanlaarhoven alleges that the respondents breached a contract about purchasing wood. Her claim about the missing inventory is not based on a contract. Instead, as discussed in more detail below, it is a tort claim.

11. With that, I find that Mrs. Vanlaarhoven's claims are sufficiently different even though they are all at least partially against Ms. Sklarchinsky. I find that Mrs.

Vanlaarhoven did not inappropriately split her claims and I have considered each claim as presented.

12. Both parties uploaded evidence to the CRT's online portal after the deadline had passed. CRT staff gave each party the opportunity to comment on the other's late evidence. I therefore find that neither party was prejudiced by the late evidence. Given the CRT's mandate that includes flexibility, informality, and accessibility, I have admitted the late evidence.

## ISSUES

13. The issues in this dispute are:

    a. Did Mrs. Vanlaarhoven give Mr. Simon the wood as a gift? If not, how much does Mr. Simon owe Mrs. Vanlaarhoven?

    b. Do the respondents have to reimburse Mrs. Vanlaarhoven for the items still on Mr. Simon's property? If so, how much?

## EVIDENCE AND ANALYSIS

14. In a civil claim such as this, Mrs. Vanlaarhoven as the applicant must prove her case on a balance of probabilities, which means "more likely than not". While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision. In this dispute in particular, the parties all provided a considerable amount of evidence about matters I find irrelevant to Mrs. Vanlaarhoven's claims, such as whose fault it was that the parties' relationship broke down. I see no reason to comment on these issues.

15. In early 2021, Mrs. Vanlaarhoven and Ms. Sklarchinsky decided to work together in some capacity to sell used goods in Mr. Simon's barn. The parties dispute the nature of this relationship, which I will not address here because I find it is not relevant to this dispute (I address it in the other dispute). In any event, it is undisputed that Mrs. Vanlaarhoven spent thousands of dollars on mostly used

merchandise that she intended to resell. It is also undisputed that Mrs. Vanlaarhoven stored these items in Mr. Simon's barn, with his permission.

## The Wood Claim

16. It is undisputed that in February 2021, HV dropped off several tongue and groove pine planks. It is also undisputed that Mr. Simon used the wood to finish a ceiling in his barn. The question is whether Mrs. Vanlaarhoven and HV sold the wood to Mr. Simon, as Mrs. Vanlaarhoven says, or gave them as a gift, as Mr. Simon says.

17. Under the law of gifts, the person who received the alleged gift (here, Mr. Simon) must prove that Mrs. Vanlaarhoven and HV intended it to be a gift, and that Mr. Simon accepted the gift. Once a person gives a gift, the gift cannot be revoked. See *Pecore v. Pecore*, 2007 SCC 17. There is no written evidence about whether the wood was a sale or a gift.

18. Mrs. Vanlaarhoven says that she and HV purchased the wood from another person, RM, for $5,000, for their own renovations. There is an email from RM in evidence confirming this, so I accept it is true. Mrs. Vanlaarhoven says that the wood they sold to Mr. Simon was left over from their project. She says that they agreed to give Mr. Simon 3 months to pay for the wood.

19. In contrast, Mr. Simon says when HV first brought the wood over, Mr. Simon told HV he did not want it because he could not afford it. He says that if HV had not made it clear that the wood was free, he would not have accepted it. He said he had already had particle board that he intended to use complete the ceiling but took HV's wood because it looked nicer. On February 24, 2021, Mr. Simon texted HV some photos of the wood being installed in the barn, and said he was "loving all of it". Mr. Simon says this text message shows him expressing appreciation for the gift.

20. I find that the wood was likely a gift. I say this for 3 reasons. First, I find that Mrs. Vanlaarhoven's evidence is vague. She does not say how much of the $5,000 worth of wood they gave to Mr. Simon. She also does not say how much Mr. Simon agreed to pay for the wood, other than that it was "well below market value". I note

that the claimed amount, $1,827.48, was the maximum amount she could claim to fit within the CRT's $5,000 monetary limit for small claims, so I find it does not necessarily reflect the amount Mr. Simon allegedly agreed to pay. This vague evidence is in sharp contrast to the detailed records she kept about other financial matters, which I discuss more below. I find that if she and HV had agreed to sell the wood to Mr. Simon, there would be clearer evidence about the volume, price, and payment terms.

21. Second, I accept Mr. Simon's evidence that he had planned on finishing the barn interior with particle board, and so had no reason to spend a significant sum on pine planks for the ceiling. The photos in evidence confirm that he had already finished several walls with particle board. I agree with Mr. Simon that it would have been illogical for him to spend thousands of dollars on attractive pine planks for the ceiling of a room with particle board walls.

22. Third, I find that the parties' dealings as of February 2021 are consistent with the wood being a gift. At that point, the parties were still getting along very well. It is undisputed that Mr. Simon had allowed Mrs. Vanlaarhoven to store a significant amount of inventory in his barn for free. He also intended to allow Mrs. Vanlaarhoven and Ms. Sklarchinsky to use the barn to hold at least 1 sale, also for free. I find that it is unlikely in this context that Mrs. Vanlaarhoven and HV would sell Mr. Simon their leftover wood, which they presumably had no use for. I find it more likely that they gave it to him as a gift to thank him for using the barn.

23. As mentioned above, gifts are irrevocable. I therefore dismiss Mrs. Vanlaarhoven's $1,827.48 claim for the wood planks.

## The Inventory Claim

24. The parties' relationship broke down suddenly on April 18, 2021. The parties have very different accounts of why, but the following facts are undisputed. On April 19, 2021, Mr. Simon told Mrs. Vanlaarhoven she was no longer welcome on his property. Mr. Simon said HV could pick up her inventory. Over the next 3 days, HV

and several friends took many loads of items from the barn. On the third day, Mr. Simon told HV that HV was no longer welcome on his property either. At this point, HV had not picked up all of Mrs. Vanlaarhoven's items.

25. Mrs. Vanlaarhoven says that she kept a detailed list of inventory and later went through the things HV had retrieved and crossed off everything he was able to get. She provided her initial inventory list as evidence, which was 14 pages long included over 1,000 items with descriptions and cost. The list of items she says are missing is 3 pages long.

26. Mr. Simon says that Mrs. Vanlaarhoven's missing items list is "totally fabricated", although he does not dispute that any particular item is still in his possession. The respondents provided a handwritten list of items, but it is unclear who wrote it and they do not refer to it or explain it in their submissions. I have therefore placed no weight on this list.

27. On balance, I accept Mrs. Vanlaarhoven's inventory lists are accurate. I find that because Mrs. Vanlaarhoven intended to resell the inventory for a profit, she had a reason to keep detailed records of what she had and how much she had paid for it. I acknowledge that Mrs. Vanlaarhoven did not provide receipts or records for all of the listed items. However, given she purchased many of them used from private sellers, I find it understandable that she does not have records for each purchase. For the purchases where records exist, I find that the purchase records match the values in the missing inventory list, with the sole exception of the wicker furniture. Mrs. Vanlaarhoven claims $400 for the wicker furniture, but the records in evidence say she only paid $300 for it. I do not find that this one discrepancy undermines the reliability of the list overall, because it is vastly outnumbered by the accurate entries. Therefore, with the exception of the wicker furniture set, I find that Mrs. Vanlaarhoven's missing inventory list accurately reflects the items that are still in Mr. Simon's barn, including their values.

28. While Mrs. Vanlaarhoven does not use this term, I find that her claim is for the tort of conversion. Conversion is when a person wrongfully interferes with another

person's belongings in a way that is inconsistent with the other person's ownership. See *Ast v. Mikolas*, 2010 BCSC 127.

29. Mr. Simon says that Mrs. Vanlaarhoven should have arranged for movers to pick her items up after Mr. Simon banned her and HV from his property. Mr. Simon says he should not have to pay for items he never asked for and does not want. I find that Mr. Simon's argument is that he has not wrongfully interfered with Mrs. Vanlaarhoven's ownership of the items because they have always been available to be picked up by someone else.

30. There is no evidence that Mr. Simon communicated with Mrs. Vanlaarhoven or HV after banning them from his property. He also never responded to a June 16, 2021 demand letter from Mrs. Vanlaarhoven's lawyer that asked him to contact Mrs. Vanlaarhoven to arrange for the items to be retrieved.

31. I find that by banning Mrs. Vanlaarhoven and HV from his property and ignoring the demand letter, Mr. Simon wrongfully interfered with Mrs. Vanlaarhoven's ownership of the items. I find it unrealistic and unreasonable for Mr. Simon to expect Mrs. Vanlaarhoven to arrange for movers because Mr. Simon gave her no reason to believe he would cooperate. I find that Mr. Simon is liable in conversion for the missing items, subject to his argument that the wicker furniture and barbecue were gifts, which I address next.

32. Mr. Simon says Mrs. Vanlaarhoven told him the barbecue and wicker furniture were "his to enjoy". He therefore says they were gifts. As with the wood, he says that Mrs. Vanlaarhoven gave him the gifts to show appreciation for the use of his barn.

33. I find that Mr. Simon has not proven that the barbecue and wicker furniture were gifts. In contrast with the wood, Mrs. Vanlaarhoven bought the barbecue and wicker furniture to sell for a profit. I find it unlikely that Mrs. Vanlaarhoven would gift these 2 items immediately after purchasing them. I find it more likely that she allowed Mr. Simon to use the barbecue and wicker furniture until the sale, which was not

expected to happen until the summer. I find that Mr. Simon is liable in conversion for the barbecue and wicker furniture.

34. I find that Mrs. Vanlaarhoven has not proven that Ms. Sklarchinsky is liable for the missing items. The items are stored on Mr. Simon's property. It was Mr. Simon who prevented Mrs. Vanlaarhoven from retrieving the items. I find there is no evidence to support Mrs. Vanlaarhoven's claim against Ms. Sklarchinsky for the missing inventory. I dismiss Mrs. Vanlaarhoven's claims against Ms. Sklarchinsky.

35. Accounting for the $100 reduction for the wicker furniture, I order Mr. Simon to pay Mrs. Vanlaarhoven $3,072.52 for the missing inventory.

36. The *Court Order Interest Act* (COIA) applies to the CRT. Mrs. Vanlaarhoven is entitled to pre-judgment interest on the missing inventory from April 22, 2021, the approximate date Mr. Simon barred Mrs. Vanlaarhoven and HV from his property, to the date of this decision. This equals $13.26.

37. 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. Mrs. Vanlaarhoven was partially successful against Mr. Simon, so I find she is entitled to reimbursement of half of her $175 in CRT fees, which is $87.50. Mrs. Vanlaarhoven also claimed $203.52 in dispute-related expenses related to serving Mr. Simon, first unsuccessfully by registered mail and courier and then successfully by process server. While I do not necessarily agree that Mr. Simon intentionally evaded service as Mrs. Vanlaarhoven alleges, I still find her expenses reasonable. Given her partial success, I award her half of these claimed expenses, which is $101.76. I dismiss Mrs. Vanlaarhoven's claim for $11.05 in dispute-related expenses associated with serving Ms. Sklarchinsky, since she was unsuccessful against Ms. Sklarchinsky in this dispute.

## ORDERS

38. Within 30 days of the date of this order, I order Mr. Simon to pay Mrs. Vanlaarhoven a total of $3,275.04, broken down as follows:

    a. $3,072.52 in damages,

    b. $13.26 in pre-judgment interest under the COIA, and

    c. $189.26 for $87.50 in CRT fees and $101.76 in dispute-related expenses.

39. I dismiss Mrs. Vanlaarhoven's remaining claims against Mr. Simon. I dismiss Mrs. Vanlaarhoven's claims against Ms. Sklarchinsky.

40. Mrs. Vanlaarhoven is entitled to post-judgment interest, as applicable.

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.

Eric Regehr, Tribunal Member