Civil Resolution Tribunal

Date Issued: April 7, 2022

File: SC-2021-005442

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vanlaarhoven v. Sklarchinsky*, 2022 BCCRT 396

B E T W E E N :

LYNNE VANLAARHOVEN

APPLICANT

A N D :

CASSANDRA SKLARCHINSKY

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. The applicant Lynne Vanlaarhoven says that she and the respondent Cassandra Sklarchinsky agreed to start a second-hand goods business. She says that this required them to travel around BC to buy inventory. She says that the business collapsed before they opened the planned store. She claims $2,296.07, which she says is half of the business expenses she had paid for, which is mostly travel

expenses for their purchasing trips. Ms. Sklarchinsky denies that the parties agreed to any sort of business arrangement.

2. Mrs. Vanlaarhoven also says that she loaned Ms. Sklarchinsky $462 for truck insurance. Mrs. Vanlaarhoven says that Ms. Sklarchinsky has not paid her back. Ms. Sklarchinsky says that it was Mrs. Vanlaarhoven's choice to insure her truck, so the cost is not Ms. Sklarchinsky's responsibility. Mrs. Vanlaarhoven also initially claimed $30 for another loan, but Ms. Sklarchinsky has paid this since this Civil Resolution Tribunal (CRT) dispute began.

3. Mrs. Vanlaarhoven also claims $100 for an electric fireplace she says Ms. Sklarchinsky took from their inventory after their business relationship broke down. Ms. Sklarchinsky says that the fireplace was a gift.

4. Finally, Mrs. Vanlaarhoven claims that the parties agreed to breed their dogs, and that Ms. Sklarchinsky owes her $1,500 in breeding fees. Ms. Sklarchinsky admits that their dogs bred but says they did so spontaneously.

5. Ms. Sklarchinsky asks me to dismiss all of Mrs. Vanlaarhoven's claims.

6. The parties are each self-represented.

JURISDICTION AND PROCEDURE

7. 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). 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.

8. 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, both parties of this dispute call into question the credibility, or truthfulness, of the other. 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.

9. 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.

10. 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.

11. I note here that Mrs. Vanlaarhoven started 2 CRT disputes on the same day, this one and SC-2021-005440 (other dispute). The other dispute has different parties, so I have published a separate decision for the 2 disputes. However, because the combined value of the 2 disputes is over the CRT's $5,000 monetary limit, I considered whether Mrs. Vanlaarhoven inappropriately split claims in order to fit within the CRT's jurisdiction. For the reasons set out in the other dispute, I find that Mrs. Vanlaarhoven's claims are sufficiently different that she has not split her claims.

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. As mentioned above, Mrs. Vanlaarhoven initially claimed $30 for partial payment for a used fridge. The parties agree that Ms. Sklarchinsky has since paid this $30, so I find that this claim has been resolved and is not before me.

14. The remaining issues in this dispute are:

    a. Did the parties form a partnership, and if so, how much does Ms. Sklarchinsky owe Mrs. Vanlaarhoven for business expenses?

    b. Does Ms. Sklarchinsky owe Mrs. Vanlaarhoven anything for insuring Ms. Sklarchinsky's truck?

    c. Was the electric fireplace a gift, and if not, how much does Ms. Sklarchinsky owe Mrs. Vanlaarhoven for it?

    d. Did the parties have an agreement about dog breeding, and if so, how much does Ms. Sklarchinsky owe Mrs. Vanlaarhoven for breeding fees?

EVIDENCE AND ANALYSIS

15. In a civil claim such as this, Mrs. Vanlaarhoven as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

The Business Expenses

16. Mrs. Vanlaarhoven claims travel and other expenses she alleges she incurred as part of the parties' "business venture". Mrs. Vanlaarhoven does not use the term "partnership", but I find that this is what she alleges existed. Under section 2 of the *Partnership Act*, a partnership exists when 2 people "carry on business in common with a view to profit". To prove the existence of a partnership, Mrs. Vanlaarhoven must also prove that the parties agreed on the essential terms of the partnership. See *Linnebank v. 0786763 B.C. Ltd.*, 2016 BCSC 2220, at paragraphs 26 to 27.

17. The following facts are undisputed. In January 2021, the parties discussed going into business together. Between January 2021 and April 2021, they took several trips together, during which Mrs. Vanlaarhoven spent around $18,000 on used goods to resell. Mrs. Vanlaarhoven paid for all of the travel expenses, including Ms. Sklarchinsky's meals. She also bought a domain name, signage, a mobile debit machine, and business cards. In March 2021, Ms. Sklarchinsky became a joint account holder on one of Mrs. Vanlaarhoven's bank accounts. Again, none of this is disputed. However, the parties have very different accounts of why Mrs. Vanlaarhoven paid for everything.

18. Mrs. Vanlaarhoven says that the parties had agreed on the following arrangement. Ms. Sklarchinsky would contribute $1,000 towards expenses and initial inventory and Mrs. Vanlaarhoven would contribute the rest. Initially, half of the revenue would go towards paying Mrs. Vanlaarhoven's initial investment back and half would go towards buying new inventory. After Mrs. Vanlaarhoven's initial investment was paid off, they would split profits 50/50. Mrs. Vanlaarhoven says she did not intend to participate in the business long-term, as she was retired. She expected that Ms. Sklarchinsky would carry on the business by herself.

19. Mrs. Vanlaarhoven says that the initial plan was for her to buy or lease a commercial property for their business. However, she says that there was not much to choose from in their small community, so they decided to temporarily operate out of Ms. Sklarchinsky's brother's barn.

20. Mrs. Vanlaarhoven says that the parties agreed on a name "Used Treasures" and ordered business cards. The business cards in evidence list Ms. Sklarchinsky as the "owner" and Mrs. Vanlaarhoven as the "assistant".

21. In contrast, Ms. Sklarchinsky denies any business arrangement at all. She says that she had previously held garage sales in her brother's barn, and she asked Mrs. Vanlaarhoven if she wanted to do one. She says Mrs. Vanlaarhoven suggested that they go into business, but Ms. Sklarchinsky said she would need time to think about it. Ms. Sklarchinsky says that on January 16, 2021, she texted Mrs. Vanlaarhoven

that she did not want to go into business together. She says that all of the money Mrs. Vanlaarhoven spent on inventory, travel, and other business expenses was for her own business that she would operate alone.

22. I pause here to note that Ms. Sklarchinsky did not provide the alleged January 16, 2021 text message, even though it is clearly relevant to a central question in this dispute. She provided several other text messages between the parties. When a party fails to provide relevant evidence without a reasonable explanation, the CRT may draw an adverse inference. An adverse inference is where the CRT assumes that a party failed to provide relevant evidence because the missing evidence would not support their case or does not actually exist. I find that an adverse inference is appropriate here. I find that Ms. Sklarchinsky did not text Mrs. Vanlaarhoven that she did not want to go into business together.

23. There is no written agreement between the parties or written correspondence to support either party's account. However, a partnership agreement can be verbal. I find that Mrs. Vanlaarhoven's evidence on the parties' relationship is more credible than Ms. Sklarchinsky's evidence. I say this primarily because Ms. Sklarchinsky does not explain why Mrs. Vanlaarhoven paid for all of Ms. Sklarchinsky's transportation, accommodation, and food costs.

24. I also find Ms. Sklarchinsky's explanation about why she was on a joint account with Mrs. Vanlaarhoven does not make any common sense. She says she only got put on the bank account so that she could use a mobile debit machine for Mrs. Vanlaarhoven's sales if Mrs. Vanlaarhoven was not there. Ms. Sklarchinsky does not explain why it would be necessary for the parties to have a joint bank account for Ms. Sklarchinsky to operate a mobile debit machine to sell Mrs. Vanlaarhoven's items.

25. I also find it unlikely that Mrs. Vanlaarhoven would order and pay for business cards listing Ms. Sklarchinsky as the owner if the parties did not have an agreement to go into business together.

26. In contrast, I find that Mrs. Vanlaarhoven's evidence about the parties' agreement is credible because it is consistent with the parties' behaviour. I find that the parties had a partnership agreement on the terms Mrs. Vanlaarhoven alleges.

27. The parties had a falling out on April 18, 2021. I find that the reasons for the breakdown of their relationship do not matter. Section 35 of the *Partnership* Act says that a partnership is dissolved when a partner tells the other of their intention to dissolve it. I find that Ms. Sklarchinsky told Mrs. Vanlaarhoven of her intention to dissolve the partnership on April 18, 2021, when she had her brother send Mrs. Vanlaarhoven a text message that she was "going to step down from travelling and all barn activity". I find that the partnership was dissolved on this date.

28. Section 47 of the *Partnership Act* says that when a partnership dissolves, the partners must individually contribute to losses in proportion to their entitlement to share profits. Since the parties' business never earned revenue, I find that all of its business expenses are losses that the parties must contribute to. The parties' agreement was that they would split profits evenly once Mrs. Vanlaarhoven's initial contribution was repaid. I therefore find that Ms. Sklarchinsky is required to pay half of the partnership's losses.

29. Mrs. Vanlaarhoven provided detailed records, including receipts, for travel, accommodation, and food expenses from the parties' purchasing trips. She also provided receipts for the other claimed expenses. Based on these records, I find that she spent $4,592.15 on business expenses. I order Ms. Sklarchinsky to pay Mrs. Vanlaarhoven half of this, which is $2,296.07.

The *Truck Insurance*

30. It is undisputed that Mrs. Vanlaarhoven paid to insure Ms. Sklarchinsky's truck for 3 months starting on March 4, 2021. The parties used the truck for their purchasing trips, but Mrs. Vanlaarhoven says Ms. Sklarchinsky also used it personally. Ms. Sklarchinsky says that Mrs. Vanlaarhoven asked to insure Ms. Sklarchinsky's truck

so that she could use it to go on purchasing trips, so the cost should be her responsibility.

31. I find that in the context of their business relationship, the parties likely decided that they would insure Ms. Sklarchinsky's truck for business purposes. I find that it was a partnership expense. I find that Mrs. Vanlaarhoven is therefore entitled to be reimbursed half the insurance cost until the partnership dissolved on April 18, 2021. I find that she is entitled to be reimbursed the full insurance cost after this, because Ms. Sklarchinsky could have cancelled it at any time. I find that Ms. Sklarchinsky owes $324 for the truck insurance.

The *Electric Fireplace*

32. The parties agree that Mrs. Vanlaarhoven bought it and offered it to Ms. Sklarchinsky. The parties agree that Ms. Sklarchinsky eventually took it. Mrs. Vanlaarhoven says that Ms. Sklarchinsky bought it from her for $100. Ms. Sklarchinsky says that it was a gift.

33. Under the law of gifts, the person who received the alleged gift (here, Ms. Sklarchinsky) must prove that Mrs. Vanlaarhoven intended it to be a gift, and that Ms. Sklarchinsky accepted the gift. Once a person gives a gift, the gift cannot be revoked. See *Pecore v. Pecore*, 2007 SCC 17.

34. I find that Ms. Sklarchinsky has not proven that the electric fireplace was a gift. As stated in the other dispute, I find it unlikely that Mrs. Vanlaarhoven would gift something that she had recently bought with a view to earning a profit on reselling it. I order Ms. Sklarchinsky to pay $100 for the electric fireplace.

Dog *Breeding*

35. Ms. Sklarchinsky has 2 female dogs and Mrs. Vanlaarhoven has a male dog. It is undisputed that Mrs. Vanlaarhoven's dog and one of Ms. Sklarchinsky's dogs mated and Ms. Sklarchinsky's dog had a litter. Mrs. Vanlaarhoven says that the parties had agreed to breed their dogs and that Ms. Sklarchinsky owes her $1,500 in breeding

fees. Ms. Sklarchinsky says that their dogs mated spontaneously and that they never agreed to anything.

36. I find that Mrs. Vanlaarhoven has not proven that the parties had an agreement about breeding fees. She says that she told Ms. Sklarchinsky before the dogs bred that she would charge breeding fees or get "pick of the litter" but does not say what they agreed to. In her Dispute Notice, she relies on what "typical" breeding fees are, which implies that she and Ms. Sklarchinsky did not have a specific agreement about breeding fees. While it is impossible to know with certainty given the lack of objective evidence, I find it more likely than not that the dogs bred spontaneously, and Mrs. Vanlaarhoven only demanded compensation after the parties' relationship broke down. I dismiss Mrs. Vanlaarhoven's claim for breeding fees.

37. In summary, I order Ms. Sklarchinsky to pay Mrs. Vanlaarhoven $2,720.07.

38. The *Court Order Interest Act* (COIA) applies to the CRT. Mrs. Vanlaarhoven is entitled to pre-judgment interest from April 18, 2021, the date the partnership dissolved, to the date of this decision. This equals $11.87.

39. 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, so I find she is entitled to reimbursement of half of her $175 in CRT fees, which is $87.50. I also note that she claimed $11.05 in the other dispute for serving the 2 Dispute Notices by registered mail. She was unsuccessful in that dispute, so I did not award anything for this expense. The 2 Dispute Notices were in the same envelope, so I find it appropriate to award her half this cost due to her partial success in this dispute, which is $5.53. Ms. Sklarchinsky did not claim any dispute-related expenses or pay any CRT fees.

ORDERS

40. Within 30 days of the date of this order, I order Ms. Sklarchinsky to pay Mrs. Vanlaarhoven a total of $2,824.97, broken down as follows:

    a. $2,720.07 in debt and damages,

    b. $11.87 in pre-judgment interest under the COIA, and

    c. $93.03 for $87.50 in CRT fees and $5.53 in dispute-related expenses.

41. I dismiss Mrs. Vanlaarhoven remaining claims.

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

43. 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.

44. 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