



Civil Resolution Tribunal

Date Issued: May 24, 2022

File: SC-2021-005671

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stumph v. Karok*, 2022 BCCRT 609

BETWEEN:

BLAIR STUMPH

APPLICANT

AND:

SHANNON KAROK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a necklace. The applicant, Blair Stumph, says he temporarily left a necklace with the respondent, Shannon Karok, which she refuses to return. Mr. Stumph claims the return of the necklace, which he values at \$1,820.

2. Ms. Karok denies Mr. Stumph's claim. She says that he gifted her the necklace and she is entitled to keep it.
3. Both parties are 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). 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. Ms. Karok asks the CRT to anonymize her name in the decision for privacy reasons. She says that Mr. Stumph's allegations could negatively affect her professional reputation. Ms. Karok says that she works in the property insurance field. The CRT's decisions generally identify the parties because these are considered open proceedings. This is done to provide transparency and integrity in the justice system. The CRT only anonymizes decisions in certain limited situations such as disputes that involve a vulnerable party, such as a child. The CRT may also anonymize decisions in disputes that include sensitive information, such as medical issues. Other than these circumstances, the CRT generally discloses the parties' names. After consideration, I decline Ms. Karok's request to anonymize her name. I am not satisfied that her concern of potential reputation damage is a sufficient basis to remove her name from this decision.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court

recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly 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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

Late evidence

9. Ms. Karok submitted evidence late, consisting of text messages exchanged between the parties which I find are relevant to this dispute. Further, I find that Mr. Stumph was not prejudiced by this late evidence because he had an opportunity to respond. So, I have allowed Ms. Karok's late evidence and I have considered it in my decision.

ISSUE

10. The issue in this dispute is whether Mr. Stumph gifted Ms. Karok the necklace, and if not, what the appropriate remedy is.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Stumph, as the applicant, must prove his claims on a balance of probabilities. However, as discussed below, Ms. Karok has the burden of proving that Mr. Stumph gifted her the necklace. I have read all the parties' evidence and arguments but refer only to what I find relevant to provide context for my decision.

12. It is undisputed that Mr. Stumph purchased a gold necklace in November 2020. Mr. Stumph provided a November 20, 2020 receipt showing that he paid \$1,535 for the necklace. It is also undisputed that Ms. Karok currently possesses the necklace.
13. Mr. Stumph says that he bought the necklace as a holiday gift for his mother and he temporarily left it at Ms. Karok's residence. In contrast, Ms. Karok says that Mr. Stumph gave her the necklace as a holiday gift in November 2020.
14. Under the law of gifts, once an applicant has proved a transfer, the burden shifts to the person receiving the transfer to establish it was a gift (see *Pecore v. Pecore*, 2007 SCC 17). It is also the law that once someone has made a true gift to another person, the gift cannot be revoked (*Bergen v. Bergen*, 2013 BCCA 492). So, Ms. Karok bears the burden of proof to establish that Mr. Stumph gifted her the necklace.
15. For there to be a legally effective gift, three things are required: an intention to donate, an acceptance, and a sufficient act of delivery. The evidence needs to show that the intention of the necklace as a gift was inconsistent with any other intention (see *Lundy v. Lundy*, 2010 BCSC 1004). For the reasons discussed below, I find the weight of the evidence shows that Mr. Stumph gifted the necklace to Ms. Karok.
16. The parties exchanged several text messages about the necklace and a trip that Mr. Stumph bought for Ms. Karok. Mr. Stumph says that Ms. Karok was supposed to pay for a portion of the trip. However, I make no findings about the trip since there is no claim for trip reimbursement in the Dispute Notice.
17. Ms. Karok sent Mr. Stumph a November 25, 2020 text message saying that she could give him back the "gift" if he was stressed about money. She wrote that, "The trip is enough. Don't worry about another gift." Mr. Stumph sent Ms. Karok multiple reply text messages, including the statement, "I'm not taking that back, as if." The parties' November 25, 2020 text messages do not specify what "gift" they were referring to. However, Ms. Karok says that they were referring to the necklace, which Mr. Stumph does not dispute. Further, Mr. Stumph did not provide any evidence or submissions showing that the text messages could be referring to a different gift, other than the

necklace. In the absence of evidence of any other gifts, I find it likely that the parties were referring to the necklace as the “gift” in their November 25, 2020 text messages.

18. Mr. Stumph also sent Ms. Karok a November 27, 2020 text message discussing the upcoming trip. Ms. Karok sent Mr. Stumph a reply text message thanking Mr. Stumph for the necklace. Mr. Stumph does not explain why Ms. Karok thanked him for the necklace if he had not given it to her as he claims.
19. Ms. Karok texted Mr. Stumph again on December 8, 2020 discussing the necklace. Ms. Karok wrote that Mr. Stumph could take back the necklace if he needs to. She also wrote that she did not ask for the trip or the gift. Based on the context, I infer and find that Ms. Karok’s reference to the “gift” in this text message again relates to the necklace.
20. Ms. Karok also provided a November 30, 2020 jewelry appraisal of the necklace, that was prepared for her. Ms. Karok says that she appraised the necklace for insurance purposes. I find that Ms. Karok’s motivation to insure the necklace is consistent with her submission that Mr. Stumph gifted her the necklace.
21. In contrast, Mr. Stumph has not provided any evidence, other than his own submissions and statement, supporting his claim that he purchased the necklace for his mother as he claims. He submitted no witness statement from his mother. Also, I find Mr. Stumph’s submission that Ms. Karok refused to return the necklace is inconsistent with the multiple text messages sent by Ms. Karok offering to return the necklace in November and December 2020. Further, since the text messages show that Mr. Stumph declined Ms. Karok’s offers to return the necklace, I find that she is no longer bound by those offers.
22. On balance, I find that the weight of the evidence shows that Mr. Stumph intended to gift Ms. Karok the necklace, he delivered it to her and she accepted it. So, I find that Mr. Stumph gifted the necklace to Ms. Karok and I dismiss Mr. Stumph’s claim.

CRT fees and dispute-related expenses

23. 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. I see no reason in this case not to follow that general rule. Since Mr. Stump was unsuccessful, I find that he is not entitled to reimbursement of his CRT fees. Ms. Karok did not claim reimbursement of dispute-related expenses.

ORDER

24. I dismiss Mr. Stumph's claims and this dispute.

Richard McAndrew, Tribunal Member