



Civil Resolution Tribunal

Date Issued: July 25, 2022

File: SC-2022-001153

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Simper v. Maier*, 2022 BCCRT 840

BETWEEN:

NICOLE SIMPER

APPLICANT

AND:

AMBER MAIER and BENEDIKT MAIER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. The applicant, Nicole Simper, says the respondent, Benedikt Maier, verbally agreed on November 4, 2021 to pay her \$4,000 for various household appliances. The

respondent Amber Maier is Mr. Maier's spouse. Ms. Simper says the appliances remained in the home when the Maiers took possession of it but they have refused to pay her. Ms. Simper claims the \$4,000.

2. The Maiers says they bought the house as a foreclosure property and that it was sold "as is". The Maiers admit they offered "some money" to Ms. Simper for the appliances "if she fully moved out". However, the Maiers say Ms. Simper did not remove all her belongings by the November 5, 2021 possession date and still had not done so by November 17, 2021. So, the Maiers say that as of the November 5, 2021 possession date "everything on the property" belonged to them and they owe Ms. Simper nothing for the appliances.
3. Ms. Simper is self-represented and Mr. Maier represents the respondents.

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, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. 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. In the Dispute Notice, Ms. Simper also claimed \$411.72 for pro-rated insurance but in later submissions she says she “will dismiss that” and will deal with the insurance claim provider. So, I dismiss the \$411.72 claim. My decision below addresses only the \$4,000 claim for appliances.

ISSUES

9. The issues are whether the Maiers owe Ms. Simper \$4,000 for appliances under a verbal agreement that the Maiers would buy them.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Ms. Simper must prove her claims on a balance of probabilities (meaning “more likely than not”). I have read Ms. Simper’s submitted documentary evidence and the parties’ arguments but refer only to what I find relevant to provide context for my decision. The Maiers did not submit any documentary evidence and Ms. Simper did not file a reply submission, despite their each having the opportunity to do so.
11. Ms. Simper says the Maiers verbally offered \$4,000 for a Bosch stainless steel washer, dryer, dishwasher, convection oven/stove, range hood, Fisher and Paykel stainless steel fridge, and a new Noma 50 pint dehumidifier (collectively, the

appliances). The Maiers undisputedly have retained the appliances following their purchase of Ms. Simper's former home.

12. The purchase and sale contract for the home is not in evidence. I accept the Maiers bought it through a foreclosure process, which is undisputed. There is undisputedly no written agreement about the purchase of the appliances either. The only documentary evidence before me is a series of text messages between Ms. Simper and Mr. Maier. No price, appliance details, or other terms are mentioned in the submitted text messages.
13. However, I accept the home was sold to the Maiers "as is", as Ms. Simper does not dispute it. It is also undisputed November 5, 2021 was the possession date.
14. Significantly, the Maiers do not deny they offered \$4,000 for the appliances. They argue that because Ms. Simper was not completely moved out by the November 5 possession date that legally the appliances became theirs. Elsewhere the Maiers argue that the appliance agreement was contingent on Ms. Simper's being "fully out of the property" by November 12. I find this inconsistent with the friendly tenor of the texts, discussed further below.
15. So, I turn then to the parties' text messages. I find they do not support the Maiers' position that Ms. Simper agreed to have her things moved out by November 5 or even by November 17, 2021, which is when she had removed most if not all her things. None of the text messages in that period indicate the Maiers were at all concerned about Ms. Simper's timeline. Instead, they indicated she need not feel stressed about rushing. None of the text messages indicate the purchase of the appliances was contingent on Ms. Simper's timeline or on anything else.
16. In particular, in a November 2, 2021 text Mr. Maier asked Ms. Simper about her appliances. In a November 4, 2021 text exchange, Ms. Simper said she had talked to her spouse and "he is accepting of the offer for the appliances". Mr. Maier immediately responded, "that is frigging awesome". While the \$4,000 price and the appliance details are not noted in the texts, the Maiers do not dispute the

appliances retained are as described by Ms. Simper. They also do not dispute \$4,000 was what they offered to pay for them. So, I accept \$4,000 was the parties' agreed price for the appliances, which as noted the Maiers have in their possession.

17. After a series of friendly texts about Ms. Simper's timeline for moving out her belongings, which as noted she substantially completed on November 17, Ms. Simper texted Mr. Maier on November 22, "just wondering about the agreement we made on the appliances?". Mr. Maier did not immediately respond. As referenced above, on November 27, Mr. Maier responded that after he had a home inspection done, there was "a lot more to be fixed" than expected. Plus "there is still stuff behind the shed and in the crawl [space] that we will bring to the dump. So we will have to use the money for all of that. Sorry".
18. In the absence of an agreement about the home's or the appliances' purchase, I find it unproven the appliances legally became the Maiers' property on the possession date or on November 12, simply because Ms. Simper's belongings had not been completely removed from the home or because the appliances themselves were still there. I find the text messages are the best evidence before me of the parties' agreement and they do not support the Maiers' position that the appliance agreement was contingent on a particular date that Ms. Simper would be fully moved out.
19. Next, the Maiers argue that they later discovered, after a home inspection was completed, that the home required more fixes than expected. I find this irrelevant to the parties' agreement about the Maiers' purchase of the appliances. The Maiers did not file a counterclaim and so I make no findings about the alleged additional fixes required, which the Maiers did not prove in any event.
20. In summary, I find the parties had an enforceable contract for the Maiers' purchase of the appliances for \$4,000. There is no issue raised about the quality or function of the appliances and the Maiers have undisputedly retained them. Given my conclusions above, I find the Maiers must pay Ms. Simper \$4,000 for the appliances.

21. Since Ms. Simper expressly says she does not claim interest, I make no order for interest.
22. 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 Ms. Simper was substantially successful, I find she is entitled to reimbursement of \$175 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

23. Within 30 days of this decision, I order the Maiers to pay Ms. Simper a total of \$4,175, broken down as follows:
 - a. \$4,000 in debt, and
 - b. \$175 in CRT fees.
24. Ms. Simper is entitled to post-judgment interest, as applicable. I dismiss Ms. Simper's other \$411.72 claim.
25. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Acting Chair and Vice Chair