



Civil Resolution Tribunal

Date Issued: September 9, 2022

File: SC-2022-002027

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *SE Restoration Ltd. v. Xu*, 2022 BCCRT 1002

BETWEEN:

SE RESTORATION LTD.

APPLICANT

AND:

LIMIN XU

RESPONDENT

AND:

SE RESTORATION LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about the return of personal property. The applicant and respondent by counterclaim, SE Restoration Ltd. (SE), says its former employee, the respondent and applicant by counterclaim, Limin Xu, improperly kept a company cell phone after her employment was terminated. SE also asks that Ms. Xu provide SE's WeChat login information. SE claims for the return of the 2, or \$1,000 in damages.
2. Ms. Xu says the cell phone was a gift and she does not have to return it. In her counterclaim, she seeks the return of a company vehicle she also says was a gift, or \$5,000 in damages. SE denies either item was a gift.
3. SE is represented by its owner, Fei (Alex) Han. Ms. Xu is 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, she said" scenario. 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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.

6. Section 42 of the CRTA says that 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.

ISSUES

8. The issues in this dispute are:
 - a. Is SE is entitled to the return of the phone or reimbursement for purchasing a new cell phone?
 - b. Must Ms. Xu provide SE's WeChat login information?
 - c. Is Ms. Xu entitled to the car's return, or \$5,000 in damages?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant SE must prove its claims on a balance of probabilities (meaning "more likely than not"). In her counterclaim, Ms. Xu bears this same burden. While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision.
10. I note both parties submitted the majority of their evidence in Chinese, with no translations provided. CRT staff advised both parties that they needed to provide their evidence in English, or provide a translation. Further, CRT Rule 1.7(5) says all information and evidence must be in English or translated to English. In making my

decision I have not relied on any evidence provided that was not English and did not have an accompanying translation.

11. However, the background facts of this case are not significantly in dispute. SE hired Ms. Xu as its mobile “Marketing Representative” and provided her with a logo-wrapped vehicle and a cell phone with the company’s main phone number. In March 2022, SE terminated Ms. Xu’s employment for cause, alleging she was improperly referring work out to her friends instead of to SE. Ms. Xu does not explicitly address those claims, but denies her termination was legitimate. She says she has started an Employment Standards claim against SE. I make no findings about the termination or employment relationship between SE and Ms. Xu, as those are not issues before me in this dispute.
12. In any event, on March 10, 2022 SE gave Ms. Xu a letter explaining her termination and requested the return of the company’s vehicle and cell phone. Ms. Xu undisputedly refused to return either. The police were involved and ultimately the vehicle was towed back to SE. In its claim, SE seeks either the return of its cell phone, or \$1,000 (which SE later increased to \$1,128 in submissions). It also asks that its WeChat account information be handed over. SE also asks for reimbursement of dispute-related expenses including of \$196.73 in towing expenses to repossess the car, as well as \$18 to reprint the registration and insurance, plus new windshield wipers (\$35.84), and \$300 for an insurance deductible for damage to the car’s wrap that SE alleges Ms. Xu caused. I find these are substantive claims, not dispute-related expenses. As SE did not make these claims in its Dispute Notice, I find the claims are not properly before me. So, I have made no decision about them.
13. Ms. Xu argues that the cell phone and car were gifts to her by SE’s owner, Mr. Han. She says she should not have to return the phone or pay for a replacement. Ms. Xu says she no longer has access to SE’s WeChat because it is tied to the company’s cell phone number, which she says SE “withdrew”. In her counterclaim, as noted Ms. Xu asks that SE return the vehicle that she says was a gift or pay her \$5,000 in damages.

14. In its submissions, SE says that when it hired Ms. Xu it had her read the company's "Job Description", "Job Offer" and "Employee Handbook" before starting. Neither the job description or job offer were produced, but the Employee Handbook in evidence is signed by Ms. Xu. Page 12 of the handbook states that when an employment relationship is over, the employee must return all company property at the time of separation, including cell phones. Although the handbook does not explicitly mention a company vehicle, I find that would fall within "company property" as referenced in the handbook.
15. Under the law of gifts, the party alleging the item was a gift has the burden of establishing it was a gift (see: *Pecore v. Pecore*, 2017 SCC 17). So, Ms. Xu bears the burden of proof to establish SE gifted her the cell phone and vehicle. 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 must show that the intention of leaving Ms. Xu with the cell phone and vehicle is inconsistent with any other intention (see: *Lundy v. Lundy*, 2010 BCSC 1004). For the reasons that follow, I find the weight of the evidence does not support Ms. Xu's assertion that the items were gifted to her.
16. First, the vehicle and cell phone both remained in the company's name. Although Ms. Xu was added as a driver/employee to the vehicle insurance, title for the vehicle was not transferred to her. Additionally, the vehicle was completely wrapped in SE's company logos and contact information. I find that is inconsistent with Ms. Xu's assertion that the vehicle was a gift her to continue to use personally, regardless of her employment. I also find it is irrelevant that Ms. Xu sold her personal vehicle.
17. Ms. Xu alleges Mr. Han gifted her the vehicle through text messages, but I find the English text messages in evidence do not support that. Although Mr. Han says things like "we'll get you a new car", I find that refers to him upgrading the aging company vehicle that Ms. Xu was entitled to use with her position at SE. I also note the phone number provided to Ms. Xu with the cell phone was a custom number for SE's company, which is inconsistent with the phone and number being gifted to Ms. Xu

personally. I find it irrelevant that Ms. Xu chose to download personal apps and store personal information on the phone.

18. I also find that in its termination letter, SE requested the return of all company property, including the vehicle and cell phone, which is inconsistent with SE intending to donate the items to Ms. Xu. I find Ms. Xu has not established the cell phone or the vehicle were a gift. I find Ms. Xu improperly kept those items. So, I dismiss Ms. Xu's counterclaim to return the vehicle.
19. As for the cell phone, SE undisputedly purchased a new one because Ms. Xu has not returned it. Ms. Xu alleges she has personal information stored on the phone which does not require any password to access, including banking information and personal information about her children. Ms. Xu also alleges she is scared of Mr. Han and his business partner. So, I find it is more practical to award reimbursement for the new cell phone and allow Ms. Xu to keep the phone. Although SE later claimed \$1,128 for the phone supported by an invoice, the Dispute Notice only asked for \$1,000, so that's what I award.
20. As for the WeChat information, I find SE has not proven on balance that Ms. Xu still has access to the account. So, I make no order.
21. The *Court Order Interest Act* applies to the CRT. SE is entitled to pre-judgment interest on the new cell phone from the date it was purchased to the date of this decision. This amounts to \$4.69.
22. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As SE was successful, Ms. Xu must reimburse it \$125 in paid tribunal fees. As Ms. Xu was unsuccessful in her counterclaim, I dismiss her claim for reimbursement of tribunal fees.
23. SE claimed \$1,000 in dispute-related expenses for Mr. Han's "working time and damage caused by" Ms. Xu. Mr. Han did not explain this claim or provide any evidence or submissions in support of it. Also, CRT rule 9.5(5) says parties are

generally not compensated for their time spent on a dispute except in extraordinary circumstances, which I find are not present here. I dismiss this claim.

ORDERS

24. Within 30 days of the date of this decision, I order Ms. Xu to pay SE a total of \$1,129.69, broken down as follows:

- a. \$1,000 in damages,
- b. \$4.69 in pre-judgment interest under the *Court Order Interest Act*,
- c. \$125 in tribunal fees.

25. SE is also entitled to post-judgment interest, as applicable.

26. Ms. Xu's claims are dismissed.

27. 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.

Andrea Ritchie, Vice Chair