



Civil Resolution Tribunal

Date Issued: December 7, 2022

File: SC-2022-003651

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tompkins v. Blackrete Builders Inc.*, 2022 BCCRT 1318

B E T W E E N :

LUCAS TOMPKINS

APPLICANT

A N D :

BLACKRETE BUILDERS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about missing tools. The applicant, Lucas Tompkins, was employed by the respondent, Blackrete Builders Inc. (Blackrete). Mr. Tompkins says that while he was off work due to an injury, in February 2022 he left his tools in Blackrete's safe lock-up. Mr. Tompkins says some of his tools went missing while he was away. In the

Dispute Notice, Mr. Tompkins claims \$2,000 for the missing tools from Blackrete. In his later reply submissions, Mr. Tompkins reduces his claim to \$697.92.

2. Blackrete says that it did not know Mr. Tompkins had left his tools in the safe lock-up until Mr. Tompkins came to retrieve the tools on May 17, 2022. Blackrete says that it was not responsible for storing Mr. Tompkins' tools and denies it owes him anything.
3. Mr. Tompkins is self-represented. Blackrete is represented by its owner or principal, Trevor Weber.

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. 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. 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 in the interests of justice.
6. 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.

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.

Preliminary Issues

8. Mr. Tompkins provided some evidence that I was unable to view. At my request, CRT staff asked Mr. Tompkins to resubmit the unviewable evidence, which he did. Since Blackrete had an opportunity to review and respond to the resubmitted evidence, I find that neither party has been prejudiced and allow it. Nothing turns on the resubmitted evidence in any event.
9. Next, Blackrete's written argument and evidence both refer to settlement discussions. CRT rule 1.11 says that communications made attempting to settle claims by agreement in the CRT process are confidential and must not be disclosed during the CRT's decision process. CRT rule 1.11 exists to encourage settlement by allowing parties to make admissions without fear that those admissions will end up as evidence in a later hearing. However, if the parties agree, settlement discussions may be disclosed. Here, I have no evidence the parties agreed to disclosure. So, given the confidential nature of these discussions and the absence of an agreement, I have not considered these discussions in reaching my decision.
10. In its written argument and evidence, and expressly without admitting liability, Blackrete makes further settlement offers to Mr. Tompkins. Mr. Tompkins says he accepts "the offer of replacement tools, except the hammer". Mr. Tompkins says the hammer Blackrete offered is a lower quality hammer than his missing hammer. I find Mr. Tompkins' response to Blackrete's offers is an attempt to further negotiate the terms of a potential settlement. So, I find the parties have not reached a binding settlement agreement and consider Mr. Tompkins' claims on their merits below.

ISSUE

11. The issue in this dispute is whether Blackrete is liable for Mr. Tompkins' missing tools, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant, Mr. Tompkins must prove his claims on a balance of probabilities (meaning "more likely than not"). I have reviewed all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
13. Text messages in evidence show that in late February 2022, Mr. Tompkins told Blackrete's foreman that he would be off work for 6 weeks due to an injury. Mr. Tompkins says that during this time, he left his work tools in Blackrete's safe lock-up. Mr. Tompkins returned on May 17, 2022 to Blackrete's worksite to retrieve his tools, some of which were undisputedly missing. Exactly which tools were missing and the value of those tools is in dispute.
14. In any event, Blackrete says it is not in the storage business. Blackrete acknowledges that it provides a place for its employees to lock up their tools. However, Blackrete says that it granted Mr. Tompkins a layoff at his request, so he was no longer employed by Blackrete. So, Blackrete says it was not required to continue storing Mr. Tompkins' tools. Mr. Tompkins denies asking for a layoff. I note a March 2, 2022 Record of Employment (ROE) in evidence lists "quit/health reasons" as the reason that Blackrete issued this ROE for Mr. Tompkins. However, I find it unnecessary for me to decide whether Mr. Tompkins asked to be laid off or not since it is undisputed that Mr. Tompkins was not working due to his injury at the time his tools went missing.
15. I find the law of bailment applies in this situation. A bailment is a temporary transfer of property, where the personal property of one person, a "bailor", is handed over to another person, a "bailee".

16. The bailor is the person who gives the goods or possessions and the bailee is the person who holds or stores them. The extent of the duty of care a bailee must take over goods in their possession depends on the type of bailee they are. There are bailees for reward who are paid to store goods, gratuitous bailees who store goods for someone but are not paid, and involuntary bailees who have someone else's goods on their property against their will or consent (see *MacAulay v. Meise*, 2020 BCPC 135 at paragraph 73).
17. Here, it is undisputed that Blackrete was not paid to store Mr. Tompkins' tools. While working for Blackrete, Mr. Tompkins got to leave his tools in the safe lock-up for free, instead of having to take them with him when he left and then having to bring them back for subsequent work shifts. Blackrete received no benefit from Mr. Tompkins leaving his tools in its safe lock-up. So, I find Blackrete was a gratuitous bailee during the time Mr. Tompkins was working for Blackrete.
18. There is no evidence before me, nor does Mr. Tompkins argue, that Blackrete agreed to keep Mr. Tompkins' tools in Blackrete's safe lock-up when he took time off in late February 2022. As noted, Blackrete says that it did not know Mr. Tompkins had left any tools behind until May 17, 2022, the day Mr. Tompkins returned to retrieve his tools. Based on text messages in evidence, I find May 17, 2022 was the first time Mr. Tompkins mentioned anything about his tools to Blackrete.
19. Since there is no evidence that Blackrete knew about or consented to keeping Mr. Tompkins' tools in its safe lock-up when Mr. Tompkins asked for time off in late February, I find Blackrete became an involuntary bailee at this time. While gratuitous bailees are held to the degree of care which they would exercise with respect to their own property in similar circumstances (see *Robertson v. Stang*, 1997 CanLII 2122 (BCSC) at paragraphs 66 and 67), involuntary bailees are generally held liable only for reckless or intentional damage (see *MacAulay* at paragraph 80). Here, I find there is no evidence that Blackrete was reckless or intentionally caused Mr. Tompkins' tools to go missing. Further, as found by the court in *MacAulay* at paragraph 85, as an involuntary bailee I find Blackrete had no duty to take any positive steps to protect

Mr. Tompkins' tools from theft. So, I find Blackrete is not responsible for Mr. Tompkins' missing tools. I dismiss Mr. Tompkins' claims.

20. 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. Tompkins was unsuccessful, I dismiss his reimbursement claim for CRT fees. Blackrete did not pay CRT fees or claim any dispute-related expenses.

ORDER

21. I dismiss Mr. Tompkins' claims and this dispute.

Nav Shukla, Tribunal Member