Civil Resolution Tribunal

Date Issued: April 23, 2024

File: SC-2023-001944

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Potter v. MacInnis*, 2024 BCCRT 389

B E T W E E N :

CONNOR POTTER

APPLICANT

A N D :

ZABREE MACINNIS

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Christopher C. Rivers

INTRODUCTION

1. This dispute is about a settlement agreement concerning a dog named Henry.

2. The applicant, Connor Potter, and the respondent, Zabree MacInnis, ended their common law relationship and negotiated a settlement agreement about Henry.

Further to the agreement, the respondent had to pay the applicant $9,000 for Henry, minus a contribution to a veterinarian's check-up. The applicant undisputedly provided Henry to the respondent, but he says the respondent still owes him $3,000 of the settlement amount.

3. The applicant asks for an order for $2,999. While he does not say so, I infer he chose to make his claim for $2,999 to reduce the Civil Resolution Tribunal (CRT) fees he was required to pay to file his claim. This is because the fee for claims over $3,000 is higher.

4. The respondent says they never signed the settlement agreement. They also argue the applicant unnecessarily increased the respondent's legal bills, withheld Henry to force a settlement under duress, and was responsible for additional veterinarian bills. They ask me to dismiss the applicant's claim.

5. The parties are each self-represented.

6. For the reasons that follow, I allow the applicant's claim.

JURISDICTION AND PROCEDURE

7. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. 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.

8. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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.

9. 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 court.

10. Where permitted by CRTA section 118, 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.

11. The respondent provided evidence after the deadline set by CRT staff. However, CRT staff gave the applicant an opportunity to address that evidence in their final reply. Given the CRT's mandate, which includes flexibility, I have allowed the evidence. However, I note it is not relevant to the issues in this dispute, so I give it no weight.

12. The parties agree they cohabited in a common law relationship from 2018 to 2022. This means they are presumptively spouses under the *Family Law Act*. Claims about family property, which includes property from common law relationships, are the Supreme Court of British Columbia's exclusive jurisdiction. Here, however, the parties are not disputing the nature of the property in question (Henry). They are disputing whether or not the respondent has breached the parties' alleged settlement agreement.

13. A settlement agreement is a type of contract. The CRT is able to address claims about contracts under its small claims jurisdiction. I address the application on its merits below.

ISSUE

14. The issue in this dispute is whether the respondent owes the applicant money for Henry under the parties' settlement agreement.

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

16. As noted above, the parties lived together in a common law relationship from 2018 to 2022. Each party provided detailed evidence about the breakdown of their relationship and the history of Henry's ownership. However, other than to address the respondent's allegation of duress, that evidence is not relevant to my decision.

Settlement Agreement

17. After their relationship ended, the parties disagreed about Henry's ownership. The respondent hired a lawyer who negotiated with the applicant. The applicant says the parties agreed the respondent would pay the applicant $9,000 for Henry and the applicant would pay $214.55 towards a veterinarian check-up. Off-setting one amount against the other, the applicant says the respondent agreed to pay $8,786.45.

18. The respondent's lawyer prepared a draft release containing the terms of settlement, including the above-noted settlement figure. The applicant signed the release, but the respondent did not. However, that does not necessarily mean the respondent did not agree to the settlement's terms.

19. A written contract signed by both parties is not always necessary to prove an agreement exists. For a contract to exist, there must be a "meeting of the minds." In other words, the parties must agree to all the essential terms of a contract, such as scope and price. There must be an outward expression of that agreement, which can be in writing, verbal, implied from the parties' conduct, or some combination of these.[1]

20. The respondent acknowledges they paid the applicant $4,500 by a money order dated November 8, 2022. It is undisputed the respondent has had Henry since November 10, 2022 after Henry's check-up. A November 14, 2022 email from the

[1] See: *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.*, 2009 BCSC 1303.

respondent's lawyer confirms Henry is doing "very well" and attaches the draft release. The lawyer's email confirms the respondent still owes $4,500 and suggests that the parties can arrange the transfer themselves.

21. The applicant signed the draft release on December 16, 2022. The respondent sent the applicant a further $286.45 and $1,000 in e-transfers on December 18 and 22, 2022. This means the respondent has paid $5,786.45 and leaves an outstanding balance of $3,000.

22. I find the unusual transfer amount of $286.45, which corresponds exactly with the settlement amount's small digits, proves the respondent was aware of, and agreed to, the total cost of settlement.

23. I find the respondent's conduct clearly shows an intention to be bound by the parties' agreement's terms as contained in the draft release. The respondent made payments both before and after receiving Henry, including a payment that corresponds evenly with the amount outstanding. So, I find the parties have a binding agreement, subject to the respondent's defense of duress and their argument about legal expenses.

Duress

24. The respondent specifically argues they entered into the settlement agreement under duress.

25. Duress exists where one party can prove that other exerted pressure to such a degree that their true consent did not exist. In determining this, I must consider various factors such as whether the respondent objected, whether they had an adequate legal remedy or alternative course of action, whether they received independent legal advice, and whether they took steps to avoid the contract. If the respondent can establish this first aspect of the test for duress, they must then prove that there was an improper or illegitimate element to the pressure.[2]

[2] See: *Dairy Queen Canada, Inc. v. M.Y. Sundae*, 2017 BCCA 442

26. Here, the respondent had a lawyer who was negotiating on their behalf. The respondent says their lawyer did not agree with the settlement amount, but clearly instructed their lawyer to proceed with drafting the release anyway. The draft release shows the parties had an ongoing dispute in BC Provincial Court and agreed to resolve it, in part, to end that court proceeding. While the respondent may have felt pressured to resolve the dispute because they wanted to see Henry, I find given their use of a lawyer and the court process, they agreed to the settlement's terms with informed and true consent. So, I find the respondent has not established duress, and I do not need to consider whether any alleged pressure was improper or illegitimate.

Other Arguments

27. While the respondent alleges harassment from the applicant, the evidence they provided does not support their allegation. They provided a single screenshot of four text messages from the applicant's unnamed friend. The messages were brief, non-threatening, lacked vulgarity, and confined to two days. They do not provide evidence to support other allegations they made about the applicant's actions.

28. To the extent she claims a set off for harassment, I note there is no recognized tort of harassment in British Columbia.[3] This means a person cannot sue another for harassment in this province or seek an equitable set off on that basis.

29. Similarly, while the respondent alleges the applicant inflated their legal bill by contacting their lawyer unnecessarily, they say the applicant was requesting changes to the release and asking about legal terms they did not understand. These are common email exchanges when negotiating a settlement, such as was the case here.

30. The respondent's decision to hire a lawyer to negotiate and prepare the settlement was their own. The applicant is not responsible for those costs.

[3] See: *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473, at paragraph 61.

31. Finally, the respondent argues they had to pay for additional veterinary exams because of the applicant's actions. They did not file a counterclaim, so I infer they are asking for an equitable set-off.

32. A set off is a right between parties who owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the remaining balance. When a party alleges a set off, the burden of proving the set off is theirs. This includes proving the amount of damages the party says they suffered.[4]

33. Under the draft release's terms, the respondent was only required to pay the outstanding balance of settlement funds "reasonably shortly after" confirmation from the veterinarian that the applicant's intentional act or omission did not cause a "health ailment" to Henry.

34. Here, the respondent alleges that the applicant improperly fed Henry prior to the veterinary check-up, requiring the veterinarian to recommend re-doing radiographs after fasting. However, they provided no evidence to show that the applicant was aware of the need for Henry to fast before the check-up. Even if the applicant did know, giving Henry food does not create a "health ailment" within the ordinary meaning of those words. Finally, the parties specifically negotiated the applicant's veterinarian costs and included them in their settlement agreement.

35. So, I find the respondent is not entitled to any equitable set off for Henry's additional veterinary costs.

36. So, further to the parties' settlement agreement, I order the respondent to pay the applicant $2,999.

37. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the outstanding settlement balance from December 23, 2022, the date of the respondent's last payment, to the date of this decision. This equals $190.98.

[4] See: *Wilson v. Fotsch*, 2010 BCCA 226 and *Dhothar v. Atwal*, 2009 BCSC 1203.

38. Under CRTA section 49 and the 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. I find the applicant is entitled to reimbursement of $125 in CRT fees. He did not claim any dispute-related expenses.

ORDERS

39. Within 21 days of the date of this order, I order the respondent to pay the applicant a total of $3,314.98, broken down as follows:

    a. $2,999 in debt,

    b. $190.98 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $125 in CRT fees.

40. The applicant is entitled to post-judgment interest, as applicable.

41. This is a validated decision and order. Under CRTA section 58.1, 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.

Christopher C. Rivers, Tribunal Member