



Civil Resolution Tribunal

Date Issued: May 10, 2024

File: SC-2023-007719

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MacWilliams v. Buchwitz*, 2024 BCCRT 444

B E T W E E N :

SHAWN MACWILLIAMS

APPLICANT

A N D :

GERALD BUCHWITZ

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a motorcycle. Shawn MacWilliams says he lent Gerald Buchwitz a motorcycle 9 years ago, but Mr. Buchwitz refused to return it. Mr. MacWilliams says Mr. Buchwitz was responsible for maintaining the motorcycle, but it is now in pieces and not running. Mr. MacWilliams claims \$2,500 in compensation for the motorcycle's alleged replacement cost.

2. Mr. Buchwitz disputes Mr. MacWilliams's claims. Mr. Buchwitz says Mr. MacWilliams gifted him a dilapidated motorcycle over 10 years ago, along with the registration documents so Mr. Buchwitz could transfer ownership. Mr. Buchwitz says he legally owns the motorcycle, and owes nothing.
3. The parties are each 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.
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. In some respects, both parties in this dispute call into question the credibility, or truthfulness, of the other. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
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 court.

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.

Evidence

8. In submissions, Mr. MacWilliams indicated he had a statement from a third party, CB, but was unable to include it in evidence. However, I reviewed the documentary evidence and it included a statement from CB sent via text message, so I find Mr. MacWilliams was able to include the statement from CB despite his initial submissions to the contrary.

ISSUE

9. The issue in this dispute is whether Mr. Buchwitz is responsible to pay Mr. MacWilliams \$2,500 for the motorcycle's alleged value?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. MacWilliams must prove his claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.
11. It is undisputed that Mr. MacWilliams gave Mr. Buchwitz possession of his 1983 Suzuki motorcycle. The specific date Mr. Buchwitz received the motorcycle is unclear. However, Mr. MacWilliams' own evidence is that he lent the motorcycle to Mr. Buchwitz in 2014, and Mr. Buchwitz says he received the motorcycle over 10 years ago. So, I find Mr. Buchwitz took possession of the motorcycle around 10 years ago. As noted, Mr. MacWilliams says Mr. Buchwitz failed to return the motorcycle. Mr. MacWilliams says Mr. Buchwitz was responsible for maintaining the motorcycle, but the motorcycle is in pieces and not running. I find Mr. MacWilliams alleges that Mr. Buchwitz committed the tort of conversion by keeping the motorcycle and failing to

maintain it. Mr. MacWilliams does not ask for the motorcycle's return. Instead, he asks for \$2,500 for the motorcycle's alleged replacement cost.

12. I turn then to the applicable law. The elements of the tort of conversion, which is essentially the wrongful interference with another person's property, are set out at paragraphs 213 and 214 of *Li v. Li*, 2017 BCSC 1312. In order to be successful, Mr. MacWilliams must prove that:

- a. Mr. Buchwitz committed a wrongful act involving the motorcycle, inconsistent with Mr. MacWilliams' rights to it,
- b. The act must involve handling, disposing of, or destroying the motorcycle, and
- c. Mr. Buchwitz's actions must have the effect or intention of interfering with or denying Mr. MacWilliams' right to the motorcycle.

13. The parties dispute whether Mr. MacWilliams intended to gift the motorcycle, or, whether he intended only to lend the motorcycle to Mr. Buchwitz. If Mr. MacWilliams gifted the motorcycle to Mr. Buchwitz, then Mr. Buchwitz is not liable for the tort of conversion because he did not interfere with Mr. MacWilliams' right to the motorcycle. Similarly, Mr. Buchwitz is also not liable for the tort of conversion if Mr. MacWilliams abandoned the motorcycle. See *Bangle v. Lafreniere*, 2012 BCSC 256.

14. Although disputed, I find it unnecessary to determine whether Mr. MacWilliams gifted or loaned the motorcycle to Mr. Buchwitz. I say this because even if Mr. MacWilliams did initially loan the motorcycle to Mr. Buchwitz as alleged, I find that Mr. MacWilliams has abandoned it.

15. Abandonment is a legal term which may apply to Mr. MacWilliams' leaving the motorcycle with Mr. Buchwitz for a prolonged period. Factors to consider when determining whether personal property has been abandoned include the passage of time, the nature of the transaction, the owner's conduct, and the nature and value of the property. See *Jackson v. Honey*, 2007 BCSC 1869 at paragraph 30.

16. As noted, on his own evidence, Mr. MacWilliams loaned the motorcycle to Mr. Buchwitz in 2014. However, Mr. MacWilliams did not explain the loan's terms. Other than saying Mr. Buchwitz was supposed to return it "when he was done with it", Mr. MacWilliams did not say when or how Mr. Buchwitz was expected to return the allegedly loaned motorcycle.
17. Mr. MacWilliams also undisputedly gave Mr. Buchwitz the motorcycle registration papers with the motorcycle. Mr. Buchwitz submitted an undated vehicle registration form signed by Mr. MacWilliams. Mr. Buchwitz says Mr. MacWilliams did so to allow Mr. Buchwitz to transfer the motorcycle into his name. Mr. MacWilliams disputes this and says if he had intended to gift Mr. Buchwitz the motorcycle, he would have signed the transfer paperwork when he dropped off the motorcycle. He says he gave Mr. Buchwitz the registration paper to keep with the motorcycle for insurance purposes.
18. Mr. Buchwitz submitted an unregistered vehicles and missing signatures declaration dated August 18, 2015, where he said he was gifted the motorcycle, had fixed it up, had attempted to contact Mr. MacWilliams, had no knowledge of Mr. MacWilliams whereabouts, and had no contact with Mr. MacWilliams since 2012. Finally, Mr. Buchwitz provided an owner's certificate that shows he was the motorcycle's registered owner as of August 18, 2015. Mr. MacWilliams did not provide evidence to show he took any issue with this ownership transfer for several years. Mr. MacWilliams also did not say that he attempted to insure the motorcycle at any point after Mr. Buchwitz transferred ownership, and the evidence does not show that Mr. MacWilliams did so.
19. Although Mr. MacWilliams says he left some phone messages with Mr. Buchwitz asking about returning the motorcycle, he did not say when. He also did not explain what steps he took, if any, to attempt to retrieve the motorcycle between 2014 and 2021.
20. Mr. MacWilliams says Mr. Buchwitz called him in 2021 and wanted to give the motorcycle back, advising that the motorcycle was at his mother-in-law's home. Mr. MacWilliams says he called Mr. Buchwitz's mother-in-law but was advised Mr.

Buchwitz had retrieved the motorcycle. Mr. MacWilliams says he tried to call Mr. Buchwitz back but Mr. Buchwitz did not respond. Mr. Buchwitz denies that Mr. MacWilliams made any attempts to contact him at this time, or otherwise. Although the CRT can accept hearsay evidence, I decline to do so here without supporting evidence from Mr. Buchwitz's mother-in-law. Even if I did accept this hearsay evidence, I would place no weight on it because it does not show that Mr. MacWilliams himself sought the motorcycle's return in 2021, and he did not say that he took any further steps to connect with Mr. Buchwitz to retrieve the motorcycle in 2021.

21. I find the evidence does not show that Mr. MacWilliams took any steps to retrieve the motorcycle between at least 2014 and 2021, and he did not provide any explanation for why he would have loaned the motorcycle to Mr. Buchwitz for so long without attempting to retrieve it.
22. I acknowledge Mr. MacWilliams' submission that he requested the motorcycle's return in June 2023. However, I find that Mr. MacWilliams' previous conduct supports a finding that he abandoned the motorcycle before that time. The evidence does not show Mr. MacWilliams' made any meaningful efforts to retrieve the motorcycle between at least 2014 and 2023. In *Bangle*, it was roughly a 2-year period where the applicant was found to have abandoned their property. Significantly, here it was around 10 years between Mr. MacWilliams leaving the motorcycle with Mr. Buchwitz and explicitly requesting its return. So, I find his request for the motorcycle's return a decade after he says he first gave it to Mr. Buchwitz does not mean that he did not abandon it earlier. In making this finding I place significant weight on the absence of any explanation from Mr. MacWilliams' about when he expected the alleged loaned motorcycle to be returned.
23. On balance, based on the evidence before me, I find Mr. MacWilliams abandoned the motorcycle. So, I find Mr. Buchwitz is not liable for the tort of conversion, and is not responsible to pay Mr. MacWilliams for the motorcycle's alleged replacement cost.

24. Finally, even if Mr. MacWilliams did not abandon the motorcycle, I would not award Mr. MacWilliams any of the \$2,500 he claimed to replace the motorcycle. The motorcycle is now over 40 years old. There are no photographs or other evidence of the motorcycle's condition. Mr. MacWilliams' text messages indicated there were several similar bikes on what I infer is Facebook Marketplace. However, Mr. MacWilliams did not provide any evidence of these alleged similar bikes, or any other evidence to show the value of a 1983 Suzuki motorcycle, either in pristine or poor condition. So, he has not proven the alleged replacement cost.

25. For the reasons above, I dismiss Mr. MacWilliams' claim.

CRT fees and expenses

26. 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. As Mr. MacWilliams was unsuccessful, I dismiss his fee claim. Mr. Buchwitz did not claim any CRT fees and neither party paid any dispute-related expenses.

ORDER

27. I dismiss Mr. MacWilliams' claims and this dispute.

Leah Volkers, Tribunal Member