



Civil Resolution Tribunal

Date Issued: March 28, 2024

File: SC-2023-003970

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grandinetti v. Asencio*, 2024 BCCRT 326

BETWEEN:

DYLAN GRANDINETTI

APPLICANT

AND:

TELMAN ASECIO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. The applicant, Dylan Grandinetti, and the respondent, Telman Asencio, are former roommates and friends. Mr. Grandinetti says Mr. Asencio kept some of his belongings when Mr. Grandinetti moved out, and refused to return them. Mr. Grandinetti seeks \$5,000 as compensation for the belongings. Mr. Grandinetti represents himself.
2. Mr. Asencio says Mr. Grandinetti moved out everything he wanted to take, and anything left behind Mr. Grandinetti either gave to Mr. Asencio or abandoned. He

says he was entitled to dispose of the items and that he owes Mr. Grandinetti nothing. Mr. Asencio also represents himself.

JURISDICTION AND PROCEDURE

3. 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.
4. 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. In some respects, the parties in this dispute call into question the credibility, or truthfulness, of the other. 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.
5. 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 court.
6. 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.

ISSUE

7. The issue in this dispute is whether Mr. Asencio owes Mr. Grandinetti \$5,000, or some other amount, for failing to return his belongings.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant Mr. Grandinetti must prove his claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision. Mr. Asencio did not provide any documentary evidence, and Mr. Grandinetti did not provide any final reply submissions, despite both having the opportunity to do so.
9. The parties moved in together as roommates in November 2022. In March 2023, Mr. Grandinetti moved out-of-province for family reasons. Mr. Asencio helped Mr. Grandinetti coordinate movers and sell various items of Mr. Grandinetti’s, at Mr. Grandinetti’s request. However, Mr. Grandinetti says the movers did not pick up all his things, and then Mr. Asencio refused to continue helping him sell his items or let him pick the items up. Specifically, Mr. Grandinetti says Mr. Asencio kept an HVAC fan coil, an HVAC heat pump, a couch, dining table, desk, and an entertainment centre. Mr. Grandinetti seeks either the return of the items, or \$5,000 in compensation.
10. As noted, Mr. Asencio says Mr. Grandinetti either gifted him or abandoned the remaining items. In either case, Mr. Asencio says he has since disposed of them, and does not owe Mr. Grandinetti any money.
11. Under the law of gifts, the burden of proof shifts to the person receiving the transfer to establish it was a gift (see: *Pecore v. Pecore*, 2007 SCC 17). Once someone has made a true gift to another person, that gift cannot be revoked (see: *Bergen v. Bergen*, 2013 BCCA 492).
12. Here, Mr. Asencio provided no supporting evidence that the items left behind were gifted to him. In fact, the text messages in evidence support Mr. Grandinetti’s position both that the movers left behind some items that he wished to collect, and that Mr. Asencio was assisting Mr. Grandinetti sell various items on Facebook Marketplace. I find the items were not gifts.

13. Like the law of gifts, when a person alleges items were abandoned, they have the burden of proving it. 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).
14. The movers attended the property on March 27, 2023. Later that same day Mr. Grandinetti texted Mr. Asencio to advise him the movers did not get all of his belongings. He asked if Mr. Asencio would let them back in to collect the things they missed. Mr. Asencio did not respond. Mr. Grandinetti followed up again on March 30 and April 1. Mr. Asencio did not respond, and Mr. Grandinetti says Mr. Asencio blocked him. I find Mr. Grandinetti did not abandon his items. As Mr. Asencio says he has since disposed of the items, I find he wrongfully interfered with Mr. Grandinetti's ownership of the items, and so is liable for conversion. Conversion is when someone (here, Mr. Asencio) commits a wrongful act involving handling, disposing, or destroying another person's property, and that act was intended to or actually interfered with Mr. Grandinetti's right or title to the property (see: *Li v. Li*, 2017 BCSC 1312 at paragraph 214).
15. The usual remedy for conversion is either to return the property or a monetary order for the property's market value. As noted, Mr. Asencio says he disposed of the items, so I find a monetary order is appropriate. Mr. Grandinetti says the items were worth the following:
- a. HVAC fan coil: retail \$1,000, listed on Marketplace for \$450
 - b. HVAC heat pump: retail \$3,000, listed on Marketplace for \$1,000
 - c. Couch: paid \$3,316, listed on Marketplace for \$1,500
 - d. Dining table: listed on Marketplace for \$375
 - e. Desk: listed on Marketplace for \$200
 - f. Entertainment centre: listed on Marketplace for \$375

16. Although Mr. Grandinetti claimed \$5,000 in compensation, his estimates total \$3,900. In any event, the issue for Mr. Grandinetti is that, other than the couch, he provided no supporting evidence showing the items' value other than his own estimates. That being said, I accept that the items are rather large pieces of furniture and mechanical equipment that appear to be in good condition from the photos. On a judgment basis, I find Mr. Asencio must pay Mr. Grandinetti \$3,000 for the items he refused to return.
17. The *Court Order Interest Act* applies to the CRT. However, there is no evidence Mr. Grandinetti has paid any money to replace the items, so I order no interest.
18. 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 Mr. Grandinetti was mostly successful, I find Mr. Asencio must reimburse him \$175 for paid CRT fees. He did not claim any dispute-related expenses.

ORDERS

19. Within 21 days of the date of this decision, I order Mr. Asencio to pay Mr. Grandinetti a total of \$3,175, broken down as follows:
 - a. \$3,000 in damages, and
 - b. \$175 in tribunal fees.
20. Mr. Grandinetti is also entitled to post-judgment interest, as applicable.

21. This is a validated decision and order. 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