



Civil Resolution Tribunal

Date Issued: March 19, 2019

File: SC-2018-003029

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wheeler et al v. Murphy*, 2019 BCCRT 337

B E T W E E N :

Megan Wheeler and Robert Wheeler

APPLICANTS

A N D :

Sarah Murphy

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a dog the applicants, Megan Wheeler and Robert Wheeler, sold to the respondent, Sarah Murphy, in November 2015. The applicants say the respondent breached the parties' contract, and so they want to exercise their

“majority ownership” and take possession of the dog, a Doberman named Rocky, as provided in the contract. While the applicants claim \$2,500, their requested remedy is that Rocky be returned to them.

2. In her Dispute Response filed at the outset of this proceeding, the respondent says she was only 17 years old when she signed the contract, and so it is void. She also said she intends to keep the dog. The respondent further stated that the applicants failed to properly register the dog to reflect the respondent’s purchase of it. However, as discussed below, the respondent chose to provide no evidence or submissions in this dispute.
3. The parties are each self-represented. For the reasons that follow, I dismiss the applicants’ claim for return of the dog.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (Act). The tribunal’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal 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. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal’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 BC Supreme Court recognized the tribunal’s process and found that oral hearings are not necessarily required where credibility is in issue.

6. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether the applicants are entitled to the return of the dog they sold to the respondent in November 2015.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants bear the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. The applicants sold the dog to the respondent on November 21, 2015 for \$2,500. I accept the applicants' evidence that in April 2018, the respondent applied to surrender the dog to Seattle Purebred Dog Rescue. The screen shot of the respondent's handwritten application to do so makes this clear, although I note it is undated on its face. However, I accept the applicants' evidence about the timing because the respondent did not dispute this piece of evidence.
11. I also accept the applicants' position that the November 21, 2015 contract the parties signed allows the applicants the right to take the dog back if the respondent "no longer desire[s] or [is] unable to continue to care for" the dog. The contract further sets out re-homing options and the possibility of some refund to the respondent buyer if she returns the dog. Another term of the contract states that the

respondent buyer agrees that she is not permitted to sell the dog or transfer ownership of it without the applicants' knowledge and written consent.

12. As noted above, the respondent chose not to file evidence or submissions in support of this decision. In particular, she provided no proof that she was only 17 when she signed the contract in November 2015. If she had been under the age of 19, the contract would be void given the provisions of the *Infants Act*.
13. However, I do not need to rely on the *Infants Act* to decide this dispute. It is undisputed the respondent did not in fact surrender the dog. As noted, in her Dispute Response the respondent said that she intends to keep the dog. There is no evidence before me that the respondent currently wants to surrender the dog and no evidence that she is unable to care for it. The only evidence is her attempt to surrender it in April 2018, but as noted again, that did not occur. I find the contract's provisions for re-homing back to the applicants are not engaged.
14. The applicants also rely on the dog's kennel club registration papers that show they remain as 2/3 owners of the dog. However, I find those papers are not determinative of the dog's ownership. Nothing in the parties' contract provides for ongoing 2/3 ownership. I also note the contract states that the respondent will receive the "registration package" within 6 months of the date of sale, which I find indicates that the respondent was entitled to full ownership under the contract.
15. Given my conclusions above, I find the applicants' claims must be dismissed. Under the parties' contract, the applicants have not proved they are entitled to the return of the dog.
16. As the applicants were unsuccessful, in accordance with the Act and the tribunal's rules I find they are not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

17. I dismiss the applicants' claims and this dispute.

Shelley Lopez, Vice Chair