



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ta et al v. Vernon*, 2019 BCCRT 675

B E T W E E N :

Thi Chung Ta and Eric Andrew Drever Liddle

APPLICANTS

A N D :

Yvonne Vernon

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicants, Thi Chung Ta and Eric Andrew Drever Liddle, bought a puppy from the respondent, Yvonne Vernon, named Mialana (Mia). Unfortunately, Mia died 10 months later. The applicants say Mia had a genetic disorder and was “defective,” and they want the respondent to reimburse them \$2,000 for the cost of buying Mia,

\$554.38 for the cost of spaying, microchipping and vaccinations, \$374.85 for veterinary treatments for ear infections, and \$649.50 for the cost of medications and cremation, for a total of \$3,578.73. They also want the tribunal to order the respondent to stop breeding dogs.

2. The respondent says she fulfilled her obligations under the parties' contract and there is insufficient evidence to establish that Mia died from a genetic disorder or was otherwise "defective." She says she is not required to refund the applicants or pay for their expenses.
3. The applicants are represented by Thi Chung Ta. The respondent is self-represented.

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*. 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. Some of the evidence in this dispute amounts to a "they said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and 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 9.3 (2), 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 respondent is required to pay the applicants \$3,578.73 or to stop breeding dogs because she sold them a defective puppy.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicants' claims.
11. On December 3, 2017 the parties entered into a contract for the applicants to buy Mia, a Coton de Tulear puppy, from the respondent for \$2,000. It appears only one of the applicants signed the contract, but the signature is illegible, so I cannot determine which of the applicants signed it. In any event, the applicants do not deny entering into the contract.

12. The contract says Mia was guaranteed to be in good health at the time of purchase, and that if a licensed veterinarian found her to be in unacceptable health when Mia was 6 months old or younger, the applicants could return Mia to the respondent in exchange for a replacement puppy or a full refund.
13. The contract also states that the respondent would not pay any of Mia's veterinarian fees and that any such costs were the applicants' sole responsibility.
14. The contract says the applicants were required to have Mia spayed at a suitable age at their expense, and that once the applicants provided the respondent with proof from their veterinarian that Mia had been spayed, the respondent would register her in the applicants' name with the Canine Federation of Canada (CFC).
15. It is undisputed that at the time the applicants bought Mia the respondent gave them copies of Mia's parents' registrations with the CFC, Mia's veterinary health record, and a copy of the contract. The CFC documents are in evidence and they clearly show the identity of the parents, grandparents and great-grandparents of Mia's mother and father. The applicants say that at the time they bought Mia the respondent told them Mia's parents were healthy and that Mia's only issue was a slight underbite.
16. On February 23, 2018, the applicants had Mia spayed, vaccinated and microchipped, and notified the respondent. The respondent completed the paperwork to register Mia with the CFC on February 27, 2018, but after an inadvertent delay she sent the paperwork to the CFC several months later.
17. From February 2018 onwards, the applicants say Mia suffered from "constant" ear infections requiring 3 veterinary visits in June, August and October 2018. They say the respondent knew Mia was predisposed to ear infections based on the history of other dogs she bred, but I find the evidence does not support this allegation.
18. On October 2, 2018 the respondent received Mia's CFC registration papers and mailed them to the applicants. She phoned the applicants to explain and apologize for the delay in getting them the registration papers, and to let them know the

papers were in the mail. The applicants received Mia's registration papers on October 5, 2018, which indicate the registration date was September 7, 2018.

19. On October 7, 2018 Mia died from epileptic seizures.
20. The applicants say Mia had never had a seizure until the day she died. The documentary evidence from the veterinarian indicates that the possible causes of Mia's death included idiopathic epilepsy, liver disorder, a central nervous system abnormality, or another cause. The applicants say the veterinarian told them that these possible causes of death all stemmed from inherited health problems, but since this hearsay statement is not included in any of the documentary evidence I place no weight on it.
21. The applicants say they assumed that as part of the respondent's guarantee of Mia's good health in the contract she had conducted genetic testing, and that the contract includes an implied warranty that Mia was free of genetic health issues. However, I find the evidence does not support that such a term was implied in the contract. Even if the contract did imply such a term, I find the evidence does not establish that Mia's seizures and subsequent death were caused by genetic health issues.
22. The applicants say that under the *Sale of Goods Act* (SGA), there was an implied warranty in the contract that Mia would be durable for a reasonable period of time after purchase. The applicants say most ethical breeders would provide guarantees that their dogs were free of genetic defects up to 2 years of age, but they provided no evidence to support this claim. The contract guaranteed Mia's good health for the first 6 months of her life. Given the unpredictability of health issues, and the lack of evidence to indicate an industry standard, I find that a warranty of durability for 6 months was reasonable in the circumstances.
23. There is no indication that Mia's parents suffered from epileptic seizures or that there were any warning signs that Mia might suffer seizures. The respondent says she could not reasonably foresee that Mia would suffer from seizures at the time

she sold her to the applicants. On the evidence before me, I agree. I find the respondent did not breach the implied warranty of durability in the contract.

24. The applicants say that after receiving their puppy's registration papers and Mia's death they researched Mia's pedigree and learned that Mia's mother and father were previously owned by N.M., who was involved in a case against the SPCA for mistreatment of animals, and who had her dogs seized from her. The applicants say the respondent misrepresented Mia's pedigree by intentionally withholding this information from them at the time they entered into the contract because she knew it would deter them from buying Mia.
25. The respondent says she answered all of the applicants' questions about Mia's health and background to the best of her knowledge at the time of purchase. The evidence establishes that the respondent gave the applicant Mia's parents' pedigrees at the time of purchase, so they could have discovered that N.M. previously owned them by exercising due diligence. There is no evidence to establish that N.M.'s previous ownership of Mia's mother or father caused Mia's health issues. I find the applicants have failed to establish that the respondent misrepresented Mia's health condition or pedigree at the time of purchase.
26. The applicants say that under the *Animal Pedigree Act (APA)*, the transfer of ownership and registration papers of a purebred must be provided within 6 months of the purchase date. They say the respondent breached this legislation by providing the required paperwork 10 months after they bought Mia. The applicants say that since Mia was not registered with CFC at the time they bought her, there is no proof Mia's parents were who the respondent said they were, that Mia was 100 percent purebred, or that the respondent had the right to sell Mia to them. However, there is no evidence to establish that any of the documents the respondent provided to the applicants at the time of purchase were incorrect, that Mia was not 100 percent pure bred, or that the respondent did not own Mia at the time she sold her to the applicants. The respondent's delay in registering Mia with the CFC and providing the paperwork to the applicants appears to have been nothing more than

an innocent mistake, and there is no evidence that the applicants incurred any damages as a result of the delay. I find there was no relevant information in Mia's registration papers that was not available to the applicants at the time they purchased Mia.

27. The applicants say they are "confident" the respondent used improper breeding techniques which caused Mia's medical problems. However, aside from alleging the respondent knowingly breeds dogs from "questionable" genetic backgrounds, they do not specify precisely which techniques the respondent used that were improper. The applicants say the respondent is not a registered member of any national kennel club that recognizes ethical breeding protocols, however there is no indication the respondent is required to be a member of such an organization.
28. The respondent denies using improper breeding techniques. She says she is a registered breeder with the CFC as required, and that the Canadian Kennel Club (CKC) does not register the Coton de Tulear breed because it is considered an "evolving" breed. The respondent says there is a Coton Club of Canada, but membership requires sponsorship.
29. On balance, I find the applicants have failed to establish any legal basis on which the respondent is required to pay them \$3,578.73. I also find the applicants have failed to establish that the respondent uses improper breeding techniques such that she should be prevented from breeding. I note that the tribunal could not grant this requested remedy in any event as it is a request for injunctive relief which is outside the tribunal's small claims jurisdiction. I dismiss the applicants' claim.
30. Under section 49 of the Act, and tribunal rules, since the applicants were unsuccessful I find they are not entitled to reimbursement of their tribunal fees or any dispute-related expenses.

ORDER

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

Sarah Orr, Tribunal Member