



Civil Resolution Tribunal

Date Issued: June 19, 2019

File: SC-2019-001416

Type: Small Claims

Civil Resolution Tribunal

Indexed as: Holst v. Switzer, 2019 BCCRT 750

BETWEEN:

CONTESSA HOLST

APPLICANT

AND:

TERRI-LYNN SWITZER (Doing Business As THE ONE DOG RESCUE)

RESPONDENT

AND:

CONTESSA HOLST

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is mainly about who should pay for the medical bills of two dogs, Joey and Lily. The applicant, and respondent by counterclaim, Contessa Holst, says that the respondent, Terri-Lynn Switzer, doing business as The One Dog Rescue (One Dog Rescue), is obliged to pay for veterinary care in relation to Joey's leg surgery. Ms. Switzer disagrees, and counterclaims for the costs of Lily's pelvic surgery. Ms. Holst disagrees that she is responsible for Lily's surgery costs.
2. Ms. Holst is self-represented. Ms. Switzer is also self-represented and the principal of One Dog Rescue.

JURISDICTION AND PROCEDURE

3. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Both sides have called into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
5. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the

court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

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 make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are
 - a. whether Ms. Holst is entitled to reimbursement from for Joey's November 2018 leg surgery and other related costs; and
 - b. whether Ms. Switzer is entitled to reimbursement from Ms. Holst for Lily's pelvic surgery and the costs of transporting Lily and Joey from California to BC.

EVIDENCE AND ANALYSIS

9. Ms. Holst submits she learned of Joey and Lily through Facebook in early September 2018. The dogs were at risk of being put down at a dog shelter in California. Ms. Holst asked on Facebook if anyone knew of a dog rescue that could assist in transporting the dogs to her in BC.

10. Ms. Switzer submits that One Dog Rescue is a non-profit organization based in Vancouver. One service it provides is transporting dogs to new owners. The organization is run by Ms. Switzer and two volunteers when they are available.
11. One of these volunteers, MW, saw Ms. Holst's Facebook post. MW referred Ms. Holst to Ms. Switzer on September 7, 2018. At that time, Ms. Switzer explained to Ms. Holst that her organization would help arrange transportation of the dogs to Canada.
12. The parties did not have a written contract. As explained below, I find that the parties proceeded under a common understanding that was only partially documented. Ms. Holst would adopt the dogs from the California shelter and Ms. Switzer would assist with the planning and logistics of getting the dogs to Vancouver. I find Ms. Switzer agreed to assist with the dogs' veterinary bills to the extent she could, by collecting and forwarding donations.
13. Ms. Holst submits that she adopted the dogs from Ms. Switzer and Ms. Switzer disagrees. However, Ms. Holst did not provide a copy of any adoption agreement. Ms. Switzer provided a blank adoption form her organization uses and submits that such a form was never filled out. Given these facts, I find it likely that Ms. Holst adopted the dogs from the California shelter.
14. In a September 10, 2018 text, Ms. Switzer wrote to Ms. Holst, "you may not want [the dogs]" if it would cost "thousands of dollars to help [them]". Ms. Holst did not reply with any concerns. Similarly, in an undated Facebook message, Ms. Holst wrote that she knew helping the dogs would be "expensive" but felt her friends and clients would donate money to cover the dogs' veterinary costs.
15. Ms. Switzer submits, and I accept, that around the time of the September 10, 2018 text she spoke to Ms. Holst. She cautioned her that the dogs' veterinary costs would be thousands of dollars, and that Ms. Holst would be responsible for the dogs' ongoing care costs. I find her submission consistent with the above-mentioned text message and other evidence before me.

16. With the assistance of a California dog rescue, the dogs were moved from the shelter to an animal hospital (also in California) for treatment. On September 12, 2018, Ms. Switzer advised of what she learned from the animal hospital. Lily only needed 4 to 6 weeks of cage rest for her pelvis to heal from a pre-existing injury. However, Joey's broken leg required either surgery for \$2,500 USD (which included the installation of a plate and screws), or a reset of the break with a shunt cast for "a few hundred" dollars.
17. Ms. Holst texted that she would do anything she could to raise \$2,500 USD if Joey's leg wouldn't heal with a shunt cast. Ms. Switzer replied that the vet said the leg reset would leave his leg crooked, but he would have good quality of life with either option. Ultimately Ms. Holst decided upon the shunt cast. Two invoices show the procedure, along with x-rays, cost \$845.00 USD. Ms. Switzer submits, and I accept, that she collected \$739.00 USD in donations and paid the \$106.00 USD shortfall. On September 14, 2018, Ms. Switzer texted Ms. Holst that Joey's reset procedure had been done, though she referred to it simply as "surgery". In further text messages Ms. Switzer noted she would attempt to get pledges to pay for "a lot" of the costs of spaying and neutering the dogs.
18. In some of her evidence and submissions Ms. Holst states that Ms. Switzer misled her into believing that Joey had undergone the more expensive surgery. I disagree as the September 2018 text messages show that Ms. Holst considered the surgery involving surgical hardware and rejected it. I did not find Ms. Switzer's text messages misleading.
19. Ms. Switzer submits that she picked the dogs up near the Canada-USA border and delivered them to Ms. Holst in late September 2018. It was immediately obvious to Ms. Holst that the dogs still had serious medical issues. Joey's leg was infected and he required a subsequent surgery, in Canada, on November 9, 2018. Ms. Holst paid \$1,999.51 for the procedure.

20. Additionally, Lily required pelvic surgery. An October 17, 2018 invoice shows that Ms. Switzer paid \$2,148.37 for this procedure. As Ms. Switzer wants this amount repaid I shall discuss it in further detail below.

Joey's Surgical and Medical Costs

21. Ms. Holst claims \$1,999.51 for the cost of Joey's November 2018 leg surgery and ongoing related care costs of \$1,013.36. I will first discuss the applicable legal principles. In civil claims such as this, the applicant bears the burden of proof, on a balance of probabilities.

22. As noted in *Watson v. Hayward*, 2002 BCPC 259, a domestic animal is personal property under the law. In *Watson* the court referred to *Gandy v. Robinson*, [1990] N.B.J. No. 565 (Q.B.), in which a dog owner sought recovery of healthcare bills from a seller. In that case the court stated that the contract of purchase and sale of the dog provided a right of return for return or replacement. The owner's claim was dismissed as the contract did not specify that the seller had to do more than return or replace the dog.

23. In *Calder v. Lucchetta*, 2018 BCCRT 65, the applicant sold the respondent a puppy that had a serious genetic health problem. The tribunal noted that in such cases the legal principle that applies is "buyer beware", unless the applicant can establish that the respondent misrepresented the state of the puppy, in relation to a problem the applicant could not have discovered for themselves. The tribunal found that the applicant was aware of the condition of the puppy prior to the completion of its sale and dismissed the applicant's claim.

24. The above authorities show that for Ms. Holst to be successful, she must show on a balance of probabilities that Ms. Switzer had a contractual obligation to pay for Joey's medical bills.

25. I find that the evidence does not show such an obligation. Ms. Holst did not provide evidence of a written or verbal agreement that Ms. Switzer guaranteed the dogs' health or agreed to pay for ongoing medical costs.
26. Ms. Holst provided a January 23, 2019 letter from a "legal advocate", SC. In his letter, SC noted that Ms. Holst had adopted the dogs through Ms. Switzer's adoption process. He stated that his client thought that costs of ongoing care would be limited. Instead, costs to date were \$6,959.86, and were anticipated to increase. SC acknowledged the following payments: \$2,045.38 from Ms. Switzer in October 2018; \$500 in donations from an individual; \$583.45 in PayPal donations; and \$302.40 from a rescue shelter. He concluded by asking if Ms. Switzer would be able to provide further funds.
27. I find that by the time of Joey's November 2018 surgery Ms. Holst was Joey's owner. She took ownership and possession of the dog in late September 2018. SC did not refer to any agreement by Ms. Switzer to pay for Joey's ongoing medical expenses. I find SC's letter is consistent with the absence of such an agreement.
28. Ms. Holst submits that Ms. Switzer led her to believe that the dogs' health issues would be fully treated in California and paid for by Ms. Switzer prior to delivery to Ms. Holst. However, this is inconsistent with the September 2018 text messages. Joey's leg had recently been reset and Lily still required crate rest. The parties knew at the time that the dogs would not be fully healthy when they arrived in Canada.
29. Ms. Holst also provided a letter from WT, the administrator of Dogwood Rescue. Her evidence largely focused upon what financial obligations a dog rescue should take on. WT wrote that Ms. Switzer should provide greater assistance to the dogs. However, I find WT's letter to be of limited relevance regarding the contractual obligations the parties had in this dispute. WT also noted that Ms. Switzer provided financial assistance with Lily's surgery but was not obliged to do so. This tends to support Ms. Switzer's submission that she did not need to pay for Joey's surgery.

30. Finally, Ms. Holst also alleges that the donations for her dogs were mishandled. However, she did not provide any details to support her allegation. Some of her complaints also related to a breakdown in the relationship between Ms. Switzer and Dogwood Rescue, which I find irrelevant. Based on the materials before me, I cannot conclude that Ms. Switzer mishandled any donations for the dogs.
31. In summary, Ms. Holst has the burden of proving, on a balance of probabilities, that she is entitled to reimbursement from Ms. Switzer for Joey's veterinary costs. Based on my findings above, I find Ms. Holst has not met that burden. I dismiss Ms. Holst's claims.

Lily's Surgical Costs and Joey's Leg Reset Costs - Counterclaim

32. The evidence indicates that Ms. Holst asked Ms. Switzer to assist in paying for Lily's surgery and the parties agree that Ms. Switzer paid \$2,045.37 for the procedure. However, Ms. Switzer submits Ms. Holst should now pay it back.
33. There is no correspondence or document (such as a loan agreement) showing that this amount was to be repaid. I find it likely that Ms. Switzer intended the amount paid for Lily's surgery to be a gift. Ms. Switzer previously provided financial assistance for the care of the dogs. She also submits that she paid for Lily's surgery because it was urgently needed. She heads an organization that is devoted to the welfare of dogs. These factors support the conclusion that Lily's surgery was paid for without any expectation of repayment.
34. As noted in *Bergen v. Bergen*, 2013 BCCA 492, at common law a key component of gifts is the transferor's intent. Once a true gift has been made, the gift cannot be revoked (paragraph 41). Ms. Switzer therefore cannot revoke her gift.
35. Ms. Switzer submits that the funds should be returned because Ms. Holst misrepresented her financial ability to take care of the dogs. However, I do not find that Ms. Holst made any such misrepresentations. Instead, the combined costs of

the dogs' medical care were ultimately much higher than expected by the parties. Given these facts, I dismiss this portion of the claim.

36. Ms. Switzer also claims \$106.00 USD as she paid this amount when donations did not completely cover Joey's shunt cast procedure in September 2018. As above, there is little evidence that Ms. Holst was obliged to return this amount. In a September 15, 2018 text Ms. Switzer mentioned that she wished for certain costs to be reimbursed but did not list this amount. I find that this amount was also a gift that cannot be revoked. I dismiss this portion of Ms. Switzer's claim as well.

Transportation Costs for the Dogs - Counterclaim

37. Ms. Switzer also claims the following costs due to moving the dogs from California to BC: \$107.00 in fees paid to a transporter; \$19.42 for customs fees; and \$134.00 in gas expenses.
38. In a September 15, 2018 text, Ms. Switzer advised Ms. Holst that she was required to pay for \$104 in transport fees, \$20 in custom fees, and \$50 for gas. In subsequent text messages dated October 11, 2018, Ms. Switzer advised Ms. Holst that she had paid \$100 for transport fees, \$20 for custom fees, and \$50 towards the California animal hospital bill. Ms. Switzer stated that Ms. Holst should "consider it a donation for the doggies".
39. I find it unclear from these texts if Ms. Holst agreed in advance to pay Ms. Switzer the transport, customs, and gas expenses. She appeared to first learn of them through the text messages of September 2018. The October 11, 2018 text shows that it was then contemplated that donations would cover these costs, but that did not happen. Through her text message Ms. Switzer then appeared to either forgive the debt (if that is what it was) or convert the amounts paid to a gift.
40. Like the California animal hospital bill, I am satisfied Ms. Switzer intended the dog's transport fees, customs fees and gas expenses to be a gift to Ms. Holst. I therefore dismiss Ms. Switzer's claim for reimbursements of these costs.

TRIBUNAL FEES AND EXPENSES

41. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I find neither party was substantially successful, so I dismiss both parties' claims for tribunal fees and dispute-related expenses.

ORDERS

42. I dismiss Ms. Holst's claims, Ms. Switzer's counterclaims, and this dispute.

David Jiang, Tribunal Member