



Civil Resolution Tribunal

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File: SC-2019-002102

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *De Wit v. Ioussouпова*, 2019 BCCRT 916

B E T W E E N :

NORMAN DE WIT

APPLICANT

A N D :

INNA IOUSSOUPOVA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about a contract for the sale of a Maine Coon kitten.
2. The applicant, NORMAN DE WIT, claims that the respondent, INNA IOUSSOUPOVA, sold him a kitten that was not in good health and was not registered with the Cat Fanciers' Association (CFA). He claims a total of \$4,660.49

for breach of contract, broken down as: \$450.30 in veterinarian bills, \$1,100 reimbursement of half of the purchase price, \$110.19 for DNA testing, and \$3,000 for his time.

3. The respondent says she sold the kitten in good health and that she did not tell the applicant the kitten was registrable with the CFA. She denies that she breached the contract of sale or that she owes the applicant any of the claimed amount.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. 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.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the Act:
 - 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

- 9. The issues in this dispute are:
 - a. Did the respondent breach the contract of sale?
 - b. If so, what damages are appropriate?

EVIDENCE AND ANALYSIS

- 10. In a civil claim such as this, the applicant must prove his claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
- 11. On October 15, 2018, the applicant purchased a kitten from the respondent for \$2,200. He met the respondent, signed the contract, and picked up the kitten at the animal hospital.
- 12. The signed contract in evidence states that the kitten was sold in "good health to the best of our knowledge" and "with CFA registration as PET ONLY, NOT FOR SHOW OR BREEDING". It says that "all vet cost for the life of a cat, including first exam, are the full and sole responsibility of purchaser".
- 13. At the time of the sale, the respondent's veterinarian examined the kitten. I do not have the respondent's veterinarian records. However, it is undisputed that the kitten had a cough with a "suspected upper respiratory issue". The veterinarian prescribed an antibiotic, which the respondent paid for. The respondent says she suggested that she keep the kitten for a few days to make sure he was okay. Despite the cough, the respondent says the applicant said it was "all-good" and chose to take the kitten with him.

14. On October 18, 2018, the applicant took the kitten to his own veterinarian because the kitten had a “wheezing cough”. The applicant’s veterinarian diagnosed feline herpes and prescribed medication. In December 2018, the applicant’s veterinarian ran a fecal test and diagnosed the kitten with Corona virus and giardia and prescribed medication.
15. The applicant submitted a statement from his veterinarian about the cause of the kitten’s health problems. The veterinarian opines that both “infectious agents, herpes and giardia, are most likely to have come with [the kitten] from the breeder’s facility. It is difficult to be absolutely certain but given the fact you live in a condominium with no contact with other cats he must have come with the two issues.” The respondent refutes that the kitten had these health problems at time of sale.
16. The applicant asked the respondent to pay for the veterinarian bills. The respondent refused on the basis that she was not responsible under the contract for the bills. I agree. Unless she breached the contract, I find she is not responsible for any veterinarian bills after the applicant purchased the kitten.
17. The applicant says the respondent breached the contract because she sold him a kitten with pre-existing health problems. In determining breach of contract, the issue is the respondent’s knowledge of the kitten’s health at the time of sale. Even if the other health problems existed, the applicant must establish that the respondent knew about them when she sold him the kitten.
18. I find the applicant has not established that the respondent knew the kitten had anything other than the respondent’s veterinarian’s diagnosis of a cough and suspected upper respiratory infection at the time of sale. I find these symptoms do not necessarily mean the kitten was not in “good health”. The applicant knew the kitten had these symptoms. Since he bought the kitten despite the symptoms, I infer he considered that the kitten was in “good health” even if he was not in “perfect health” at the time of sale.

19. I find the applicant has not established that the respondent breached any terms in the contract related to the kitten's health. Accordingly, I dismiss the applicant's claim for reimbursement of the veterinarian bills.
20. The parties made submissions about the timing of the applicant's veterinarian examination. The contract states that if the purchaser's veterinarian examines the kitten within 48 hours of pickup and finds the kitten in ill health, it must be returned immediately for a full refund. Since the applicant does not want to return the kitten for a refund, I find the timing of the examination is not relevant to resolving the applicant's claim.
21. The next issue I must decide is whether the respondent breached the contract by selling a kitten that was not registered by the CFA. The CFA is a registry for pedigreed cats.
22. The parties agree that the kitten was not registered with the CFA at the time of sale. The applicant provided copies of correspondence with the CFA and a list of the respondent's "Disciplinary Suspensions/Probations". This evidence shows that as of August 1, 2018, the respondent was suspended from the CFA and not permitted to register her kittens.
23. The respondent says she was "confused" and sent the wrong contract that incorrectly stated the kitten "was registered". She says at the time of sale the parties changed the wording on the contract. She says they "crossed and initialed that the kitten was sold with NO REGISTRATION". She says the parties signed the contract and each kept a copy. However, the respondent only provided a copy of a blank contract in response to this dispute. She provided no amended contract.
24. The applicant on the other hand, provided a copy of the contract he signed. Apart from the type-written terms, it contains handwritten notes with the date, the price, the applicant's contact information, the veterinarian visit, and a description of the kitten. There is no amendment to the CFA registration provision and nothing is crossed out. The signed contract in evidence says, "this kitten is sold with CFA

registration". I find the signed contract submitted by the applicant is the contract of sale. I find the respondent sold the kitten **with** CFA registration. Therefore, I find the respondent breached the express term in the contract by selling a kitten to the applicant that was not registered with the CFA at the time of sale.

25. The respondent says kittens are "goods" as defined by the *Sale of Goods Act*. She says the kitten was "fit for purpose of a pet" and "durable". She says the applicant has no right to cancel the contract and be refunded the purchase price. However, the issue in this dispute is not about whether the applicant can cancel the contract. The applicant is not asking to cancel the contract. The issue is whether the respondent breached the contract by selling something other than what the contract said. A breach of contract often results in damages, which is what the applicant is seeking in this dispute. As I found the respondent breached the contract, the next issue is whether the applicant is entitled to damages.
26. The applicant argues that he paid the respondent a premium price for a pedigreed, CFA-registered Maine Coon kitten and this was not the kitten he received. He says the value of a non-CFA registered Maine Coon kitten is about half what he paid. He says he paid too much and is entitled to reimbursement of \$1,100 for the kitten.
27. The respondent argues that the applicant suffered no loss from the lack of CFA registration. She says she sold the kitten as a "pet" that cannot be bred and therefore, registration is not important. I disagree. CFA registration might still be important irrespective of whether the kitten is a breeding animal or a pet. I accept that it was important to the applicant. The evidence shows that the applicant contacted the CFA for the kitten's registration paperwork after purchase. He then attempted to register his kitten, at his own expense, after the CFA told him that none of the respondent's kittens were registered.
28. The parties provided no evidence of the market value of a non-registered Maine Coon kitten. However, I accept that the CFA registration might attract a higher price. The respondent is in the business of selling Maine Coon kittens. I infer she would have knowledge of their selling price. Since, she did not dispute that \$1,100 was the

market value for a non-CFA Maine Coon kitten, I accept that it was. I will allow the applicant's claim for reimbursement of \$1,100 from the purchase price of the kitten.

29. The applicant claims \$110.19 in DNA testing. He provided an invoice in the amount of \$80 USD for the tests. I accept that \$110.19 was the currency conversion to CAD at the time the applicant filed the Dispute Notice.
30. The applicant says the CFA advised him that a DNA test confirming the kitten's lineage might allow him to register the kitten. However, he says after he performed the DNA test, the CFA would not register the kitten without the respondent's approval to release the sire's records. The respondent did not provide any evidence in response to this aspect of the claim.
31. I find that it is reasonably foreseeable that the applicant would attempt to mitigate his damages by taking steps to have his kitten registered by the CFA. I find the costs of the DNA testing arose naturally from the respondent's breach of contract. I find the respondent must pay the applicant \$110.19 for DNA testing.
32. The applicant claims \$3,000 in remuneration for his time. However, he provided no proof of loss, such as lost wages. To the extent that the applicant is claiming compensation for his time in dealing with this dispute, the tribunal does not generally award parties expenses for their own time spent on a dispute. This is consistent with the tribunal's general practice of not awarding legal fees. I dismiss this aspect of his claim.

33. 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. As the applicant was primarily successful in this dispute, I award \$175 in tribunal fees. The applicant made no claim for dispute-related expenses.

ORDERS

34. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,402.26, broken down as follows:

- a. \$1,100.00 as reimbursement for the purchase price of the kitten,
- b. \$110.19 as reimbursement for the DNA testing.
- c. \$17.07 in pre-judgment interest under the *Court Order Interest Act* calculated from October 18, 2018, and
- d. \$175.00 in tribunal fees.

35. The applicant is entitled to post-judgment interest, as applicable under the *Court Order Interest Act*.

36. The applicant's remaining claims are dismissed.

37. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

38. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has

been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Trisha Apland, Tribunal Member