



Civil Resolution Tribunal

Date Issued: June 8, 2020

File: SC-2020-001528

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Reed v. Langevin*, 2020 BCCRT 631

BETWEEN:

REBECCA REED

APPLICANT

AND:

PAMELA LANGEVIN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about the purchase of a domestic cat.
2. The applicant, Rebecca Reed, bought a kitten named Dexter from the respondent, Pamela Langevin. The applicant says that Dexter developed symptoms after the sale, and after veterinarian visits, had to be euthanized. The applicant says the

respondent knew, or ought to have known, that Dexter had a disease at the time of purchase. The applicant claims a total of \$2,000: \$1,469.15 for Dexter's purchase price plus veterinary costs, and \$530.85 in estimated lost wages while taking Dexter to the veterinarian.

3. The respondent says she did not knowingly sell the applicant a sick kitten. The respondent says she provided a 72-hour health guarantee, but she was not responsible for Dexter's health after that time. She says she owes the applicant nothing.
4. The parties are both self-represented in this dispute.

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* (CRTA). 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 only, as 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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

9. Did the respondent misrepresent Dexter's health or breach the parties' purchase contract, and if so, what are the appropriate remedies?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove her claim on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
11. The undisputed evidence is that the respondent operates a cat breeding business that sells cats. The applicant paid the respondent a \$200 deposit toward the purchase of a cat in August 2019. An August 20, 2019 bill of sale said that the balance of Dexter's \$650 purchase price was due when he was picked up. The parties do not dispute that the applicant paid the respondent \$650 for Dexter. The purchase also included a cat named Jasper, which the respondent provided at no charge.

Misrepresentation

12. On September 7, 2019, the applicant visited Dexter, and says she was happy with her choice at that time. The applicant says she visited Dexter again on October 6, 2019 and felt disappointed because he seemed small.
13. The respondent says she took both Dexter and Jasper to a veterinarian, Dr. Lemiski, for a checkup and neutering on October 8, 2019. A March 6, 2020 letter from Dr. Lemiski said that he examined "both kittens Pam asked me about" on October 8, 2019 and found them to be normal and healthy. Dr. Lemiski also confirmed that both cats were neutered that day, and both recovered normally from

the procedures. Dr. Lemiski said all kittens from the respondent's cat breeding business he examined in October 2019 were found to be bright and healthy on a complete physical exam.

14. The applicant says Dr. Lemiski did not examine Dexter on October 8, 2019, but examined a different cat. Jasper's name appeared on one of Dr. Lemiski's October 8, 2019 chart notes in evidence, but there was no name on the other chart note provided. The unnamed chart note identified that cat as a "large male – Bling". The applicant says this means the large male cat's mother was Bling, which was not Dexter's mother. However, given Dr. Lemiski's letter, and the fact that both Jasper's chart note and the unnamed chart note were for the same day and the same checkup and neutering procedures, on balance I find the unnamed chart note is for Dexter. Further, Dr. Lemiski confirmed that all of the respondent's cats he examined in October 2019 were "bright and healthy." I find this includes Dexter.
15. The applicant took delivery of the cats on October 12, 2019. The respondent says she was not aware of any health issues at the time the cats were delivered.
16. The applicant says the cats seemed small and were not very playful at the time of the October 12, 2019 delivery or after, and that Jasper "improved" while Dexter did not. The applicant says she contacted the respondent on October 30, 2019, 18 days after receiving the cats, to say that Dexter was not doing well, although the respondent denies hearing from the applicant until November 4, 2019. I find nothing turns on this discrepancy.
17. The applicant says she first took Dexter to a veterinarian, Dr. Wilson, on October 31, 2019. A November 4, 2019 lab report ordered by Dr. Wilson confirmed that Dexter's samples, collected on October 31, 2019, contained feline coronavirus. The lab report noted that 5-10% of young cats with feline coronavirus develop a feline infection peritonitis (FIP) complication. The report said that FIP could be neither confirmed nor ruled out on the submitted samples, and that the applicant should consider submitting an alternate sample type. There is no evidence that further tests were performed. However, in an April 1, 2020 letter, Dr. Wilson said that based on

the lab results and physical examination, he diagnosed FIP. Dr. Wilson said nearly 100% of clinically confirmed FIP cases are fatal.

18. An April 2, 2020 letter from another veterinarian, Dr. Dhaliwal, said that he saw Dexter on November 6, 2019 for a second opinion. Dr. Dhaliwal said that Dexter's assessment was grave. He also said that previous blood work showed a positive result for FIP, which I find is inconsistent with the November 4, 2019 lab report stating that FIP could be neither confirmed nor ruled out. Regardless, Dr. Dhaliwal suspected a "wet form" of FIP due to fluid build up in Dexter's abdomen and lungs. Like Dr. Wilson, Dr. Dhaliwal said that once FIP is confirmed, nearly 100% of cases were fatal. Dr. Dhaliwal recommended euthanasia, which he performed on November 6, 2019.
19. The applicant alleges Dexter had feline coronavirus at the time he was purchased, and the respondent should have known this because Dexter was losing weight, although he did not develop FIP symptoms until later.
20. I find the veterinary reports and notes in evidence do not indicate how or when Dexter developed coronavirus or FIP. I find there is no evidence demonstrating that Dexter had coronavirus, or FIP, before Dr. Wilson's October 31, 2019 examination, 19 days after he was delivered to the applicant. I also find there is no evidence that any of the respondent's other cats had coronavirus or transmitted the virus to Dexter. While the applicant says she is happy to prove that Dexter met no other cats after October 12, 2019, she did not provide such evidence beyond her own statements. I note that in correspondence on August 20, 2019 and October 6, 2019, the respondent encouraged the applicant to have Dexter examined by a veterinarian within 72 hours of being picked up. The applicant did not do so.
21. It is undisputed that Dexter and Jasper were the result of a stray male cat impregnating 2 different female cats owned by the respondent. The applicant told the respondent that the applicant discussed Dexter's health with Dr. Lemiski after the feline coronavirus diagnosis. According to the applicant, Dr. Lemiski said Dexter caught FIP from the stray cat. I am not persuaded by that statement, because there

is no evidence before me showing that Dr. Lemiski gave that opinion, or that the stray cat had feline coronavirus or FIP, or how likely it was that the stray cat had those conditions and passed them on to the mothers and, in turn, Dexter.

22. Further, I find the evidence does not support any significant weight loss in Dexter before October 12, 2019. Dr. Lemiski's October 8, 2019 chart note said Dexter weighed 1.99 kilograms. A health passport document provided by the respondent said Dexter weighed 1 pound 8 ounces on October 12, 2019, but the respondent says she mistakenly wrote down pound units instead of kilograms. I find the passport weight is incorrect, because it says Dexter weighed about 680 grams, which is less than half of Jasper's weight at the time, who was the same age and breed. I find Dr. Lemiski likely would have commented on such a radically underweight cat. If the respondent intended to write 1.8 kilograms on the health passport, I find this is sufficiently similar to the 1.99 kilograms measured by Dr. Lemiski. Documents provided by the applicant show a normal weight for a cat of Dexter's age was between 1.4 and 2.1 kilograms. I find Dexter was within that range and had not significantly lost weight.
23. I acknowledge that the applicant feels both Dexter and Jasper were small and not very playful when she picked them up on October 12, 2019. The evidence suggests the applicant believed Jasper also had feline coronavirus but recovered. However, I find there is no evidence that Jasper had coronavirus, or that the kittens' observed small size and lack of playfulness on October 12, 2019 was due to coronavirus.
24. Upon weighing the evidence, I find the applicant has not met her burden of proving that Dexter had feline coronavirus or FIP before she purchased him and took delivery of him. I find Dexter was healthy on October 12, 2019, based on Dr. Lemiski's October 8, 2019 examination and the lack of evidence of ill health around that time. Further, I find that even if Dexter had feline coronavirus or FIP on October 12, 2019, the respondent did not reasonably know, or ought to have known, about those conditions, because Dexter's weight was in a normal range and Dr. Lemiski

said Dexter was healthy just 4 days before. So, I find the respondent did not misrepresent Dexter's condition when she said he was healthy at the time of sale.

Contract and Warranties

25. I next consider whether Dexter's health issue was a breach of an express or implied warranty of the parties' purchase agreement.
26. In October 6, 2019 correspondence, the respondent told the applicant that Dexter came with a 72-hour health guarantee. This meant that if Dexter developed any health problems within 72 hours of being delivered, the applicant could return him for a full refund. In the correspondence, the respondent noted that she could not provide any guarantees after 72 hours, because she could not control the kitten's care after it was delivered. The respondent also repeated her earlier recommendation to have the kitten inspected by a veterinarian during that 72 hours, which the applicant did not do. I find that the applicant accepted these terms by later taking possession of Dexter.
27. I find there is no evidence confirming that Dexter developed any health problems within 72 hours of being delivered to the applicant. So, I find the respondent did not breach her express 72-hour health guarantee.
28. I also considered whether there was an implied warranty under section 18 of the *Sale of Goods Act* (SGA) that applied to Dexter's purchase. The respondent operates a cat breeding business, so section 18(a) and 18(b) implied warranties might apply. On balance, I find that the applicant did not tell the respondent that Dexter was required for a particular purpose, beyond a general domestic pet purpose, so there was no section 18(a) implied warranty that Dexter was reasonably fit for a particular purpose. I also find that Dexter was not purchased by description, but was specifically selected by the applicant, so there was no section 18(b) implied warranty that Dexter was "of merchantable quality."
29. Under section 18(c), there is an implied warranty that goods sold will be durable for a reasonable period of time, having regard to the use to which they would normally

be put and all the surrounding circumstances of the sale. Although not binding on me, other tribunal decisions have found that this implied warranty can apply to pet sales, and I find that it can apply to Dexter's sale (for example, see *Davy v. Kidwai*, 2020 BCCRT 442 and *Ta v. Vernon*, 2019 BCCRT 675).

30. I also find that Dexter was sold as "used goods" because he was not sold from the moment of birth, but had been owned by and cared for by the respondent for months before being sold to the applicant. SGA section 18(e) says that for a sale of used goods, an express warranty that is inconsistent with an SGA implied warranty will eliminate the implied warranty. Here, the 72-hour health guarantee excluded any warranty about Dexter's health beyond 72 hours of his delivery to the applicant. This is inconsistent with an implied warranty of durability beyond 72 hours. So, I find the 72-hour health guarantee voids any implied warranty beyond 72 hours after Dexter was delivered. I find no section 18(c) implied warranty of durability applies here.
31. Even if I had found that an SGA section 18(c) implied warranty could apply here, I would not have found that the respondent breached that warranty, because I find Dexter's health did not fail due to a lack of "durability". I find the evidence fails to show Dexter had feline coronavirus or FIP before he was purchased, or within 72 hours after he was purchased. I find Dexter was in good health at that time. It follows that Dexter likely contracted those conditions later, while in the applicant's care.
32. A reasonably durable pet is not necessarily immune to all communicable disease. A seller is powerless to prevent such disease once a pet is in a buyer's possession and beyond the seller's control, apart from ensuring the pet was in good health before sale. I find that developing such a disease would not itself be a flaw in the pet's "durability" unless the disease was contracted because of some other pre-existing condition or defect in the pet. Here, I find the evidence specifically shows Dexter was healthy when sold, and does not show Dexter had a pre-existing defect that made him more susceptible to coronavirus or FIP than other healthy cats. So,

in these circumstances, I find Dexter was “durable” within the meaning of the SGA, and the respondent did not breach a section 18(c) implied warranty. I note the circumstances of this dispute are distinguishable from those in *Davy*, which is not binding on me, and which considered the durability of a parrot that had not been examined by a veterinarian close to the date of sale and found to be healthy.

33. Overall, having weighed the evidence, I find that the respondent did not misrepresent Dexter’s health and did not breach any warranty about Dexter’s health. As a result, I dismiss the applicant’s claims.

TRIBUNAL FEES AND EXPENSES

34. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The successful respondent paid no fees and claimed no expenses. The applicant’s claimed expense of sending a registered demand letter occurred before this tribunal dispute was initiated, and in any event, I would not order reimbursement of that expense, because the applicant was unsuccessful. I make no order for tribunal fees or expenses.

ORDER

35. I dismiss the applicant’s claims, and this dispute.

Chad McCarthy, Tribunal Member