



Civil Resolution Tribunal

Date Issued: September 4, 2020

File: SC-2020-003474

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grady v. Edwards*, 2020 BCCRT 994

BETWEEN:

KRISTA GRADY

APPLICANT

AND:

STACEY EDWARDS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a failed horse sale. The applicant, Krista Grady, claims reimbursement of \$524 that she paid for x-rays of the horse “Geneva” that the respondent, Stacey Edwards, was selling on behalf of the horse’s owner KB. KB is

not a party to this dispute. Ms. Grady says Ms. Edwards misrepresented the horse's prior history and that the x-rays were unnecessary since she would never have considered buying the horse had she known of the history.

2. Ms. Edwards denies any misrepresentation and says the horse's known issues were disclosed by KB and her to Ms. Grady. Ms. Edwards says the horse "trial" contract Ms. Grady signed clearly says all expenses, such as x-rays, are Ms. Grady's responsibility.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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.
6. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

8. In the Dispute Notice, Ms. Grady suggests she is “adding slander” in her claim against Ms. Edwards. While Ms. Grady did not make any formal claim for slander or defamation, such a claim is not within the CRTA’s jurisdiction because section 119 of the CRTA expressly excludes slander. So, I make no further comment or findings about any alleged slander.

ISSUE

9. The issue in this dispute is whether Ms. Edwards misrepresented the horse’s condition, and if so, is Ms. Grady entitled to reimbursement of the \$524 x-ray examination fee.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, as the applicant Ms. Grady bears 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.
11. Ms. Grady made inquiries about purchasing KB’s horse in April 2020, which Ms. Edwards offered for sale for \$4,000 “or best offer”. The parties agree Ms. Edwards acted as KB’s agent for the purpose of selling the horse. Ms. Grady says the horse was advertised as “no soundness issues” and one medical issue, which was a navicular condition in the horse’s front feet.
12. Ms. Grady says apart from the disclosed navicular, the horse had soundness issues in addition to an aggression history, which she says Ms. Edwards ought to have disclosed but failed to do so.
13. Ms. Grady submitted the “free’ trial/lease agreement” she signed. While many of the pre-printed terms had some blanks in the version she signed, one of the terms Ms. Grady agreed to was that she would “cover all financial obligations” for the horse during the trial period, at her own expense. I find this includes Ms. Grady’s voluntary decision to have x-rays done on the horse to further assess the disclosed navicular condition. As discussed below, the issue is whether Ms. Edwards

misrepresented the horse's history, with the result that Ms. Grady unnecessarily incurred the \$524 x-ray expense.

14. Ms. Grady hauled the horse onto her property on April 17, 2020. Ms. Grady wanted to obtain a pre-purchase horse examination, but due to weather conditions this could not be done. The 3-day trial period extended to 5 days. As referenced above, on April 22, 2020 Ms. Grady chose to have x-rays done to assess the extent of the disclosed navicular condition. The pre-purchase horse examination, which would have disclosed any "soundness issues", was never done.
15. Ms. Grady submits that she claims for the \$524 because she found out from the horse's prior owner TN that the horse had a history of soundness issues and aggression. Ms. Grady says that she would never have had the x-rays done if she had known of the aggression and "soundness" history.
16. Ms. Edwards submitted a statement from KB, who had taken possession of the horse from TN on November 18, 2019. KB wrote that TN had told her that the horse required front shoes as she had 2 front naviculars. KB said that TN also told her the horse could be "pushy on the ground" and was best led in a chain or rope halter. KB said she always led the horse with a chain and the horse was never disobedient. KB said the horse showed no issues with temperament or soundness. KB said she told Ms. Edwards that the horse could be pushy, had 2 front naviculars, and was out of shape. For the trial, KB asked Ms. Edwards to send the horse with a chain, which she did. KB denied ever seeing TN's old veterinarian reports. All of this is undisputed and is consistent with other evidence before me, including a text message between TN and Ms. Grady that I discuss below. I accept KB's description summarized above.
17. The evidence, including text messages, shows in addition to the navicular condition Ms. Edwards disclosed that the horse needed some "fine tuning". Further, Ms. Grady did not dispute Ms. Edwards told her or her trainer that the horse could be "pushy on the ground", nor did Ms. Grady dispute she was given a chain when she had the horse in her possession for 5 days to trial it. It is also not disputed that Ms.

Edwards told Ms. Grady or her trainer/agent that the horse had not been ridden in over a month, and so was out of shape. I find Ms. Grady knew the horse could be “pushy on the ground” and was best led with a chain, and, that it needed some “fine tuning”. There is no evidence before me that Ms. Grady asked any other questions about these matters.

18. The question then is whether Ms. Edwards, as KB’s agent, misrepresented the horse as being without soundness issues and without an aggression history, and if so, is Ms. Grady entitled to reimbursement of the \$524 because she would not have spent that had she known of the issues and history.
19. First, I am not an expert on horse soundness. Ms. Grady submitted no evidence, other than her own assertions, that Ms. Edwards knew or ought to have known the horse was unsound at the time of the party’s negotiations. I note that in the videos in evidence of the horse’s gait around the time Ms. Grady trialed it, there is nothing obvious to indicate the horse is lame or unsound.
20. Second, Ms. Grady alleges KB’s horse contract with the horse’s prior owner TN included a term that the horse was not to be re-sold. Ms. Edwards and KB deny there was any such term. Even if there was, any agreement between KB and TN is not relevant to Ms. Grady’s proposed purchase of the horse. As noted, KB and TN are not parties to this dispute. I find this allegation irrelevant to the dispute before me.
21. Third, Ms. Grady says she discovered the horse had had x-rays done when owned by TN, and so the x-rays she obtained were unnecessary. However, in a text message submitted by Ms. Grady, TN told Ms. Grady that she did not provide any veterinarian or examination records to KB or Ms. Edwards. TN only said she reported the horse had “soundness issues and navicular”, and that the horse was sold as a “walk/trot” horse. Here, I find there is no evidence that Ms. Edwards was aware of prior x-rays. In any event, Ms. Edwards did not suggest that Ms. Grady should get x-rays. I cannot find Ms. Edwards responsible for unnecessary x-rays on the basis prior x-ray reports existed that Ms. Edwards did not know about.

22. Again, what matters is whether Ms. Edwards, as the named respondent and KB's agent, misrepresented anything about the horse, or, withheld known information about a latent or hidden defect in the horse that could not be readily determined through an appropriate inspection.
23. I turn to the applicable law.
24. Fraudulent misrepresentation occurs when a seller makes a representation of fact, the representation is false, the seller knew it was false or recklessly made it without knowing it was true or false, and the buyer is induced by the false representation to buy the item (see *Ban v. Keleher*, 2017 BCSC 1132).
25. A seller must exercise reasonable care to ensure representations are accurate and not misleading. A failure to exercise this reasonable care is called negligent misrepresentation. If a buyer relies on that misrepresentation in making the purchase, the seller may be responsible for any losses arising from that misrepresentation (see *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)).
26. Ms. Grady submitted prior veterinarian records from TN, from 2014 and August 2018. They show some lameness and non-healing fractures. However, there is nothing in evidence that suggests KB or Ms. Edwards were aware of these records at the time they entered into the sale process with Ms. Grady, and TN's text exchange noted above says they were not. So, while Ms. Grady submits that these pre-existing medical records prove the horse has "other medical and soundness issues not disclosed", I find nothing turns on these 2014 and 2018 veterinarian records. To the extent Ms. Grady alleges Ms. Edwards or KB had a positive obligation to inquire about, solicit, and produce to Ms. Grady any pre-existing records, I disagree, particularly since that was not a term of the parties' agreement.
27. Ms. Grady says the 2018 veterinarian record proves the horse had a previous unhealed coffin bone fracture and a "reaction to exam of sidebone area". She says it proves the horse has these issues, gas, and "other medical issues than navicular". Again, the difficulty for Ms. Grady is that there is no evidence Ms. Edwards was

aware of this 2018 record, or the reported underlying conditions, at the time of the proposed sale to Ms. Grady.

28. The only evidence that Ms. Edwards or KB knew that the horse had “soundness issues” is TN’s text to Ms. Grady saying she mentioned them. KB says in her statement she was not aware of any soundness issues. TN’s text does not identify what the “soundness issues” were that she mentioned to KB or Ms. Edwards. On balance, I find I am unable to weight TN’s text message in evidence over KB’s detailed statement. Ms. Grady did not provide a statement from TN nor an explanation for not doing so. I also do not know to what extent the horse needing “fine tuning” refers to any soundness issues.
29. Ms. Edwards submitted a screenshot from a September 2018 auction of the horse, when an unnamed owner bought it before selling it to TN. The ad describes Geneva as having 3 balanced gaits and would appeal to an ambitious beginner. Contrary to Ms. Grady’s submission that the horse had been sold previously for \$500, Ms. Edwards submitted evidence this September 2018 buyer paid \$9,850 for the horse. This evidence negates Ms. Grady’s argument that Ms. Edwards knew the horse was lame.
30. On balance, I find Ms. Edwards did not misrepresent the horse’s soundness. The evidence before me does not show that Ms. Edwards knew about the horse’s history as reported in the veterinary records from 2014 and 2018.
31. I turn then to the aggression issue.
32. TN also told Ms. Grady (or Ms. Grady’s trainer) in the text message discussed above that she had been told the horse was aggressive but TN said she had not experienced that. I do not agree with Ms. Grady that TN’s account was something Ms. Edwards was required to disclose. I say this because as the horse’s owner before KB, TN said she did not experience aggression. In the circumstances here, I find a hearsay report of past aggression with no recent history was not required to be disclosed, in the absence of a particular inquiry about it. Even if I am wrong

about that, Ms. Grady has not proved that the prior aggression from before TN's ownership was something different than being "pushy on the ground", which Ms. Grady does not dispute was disclosed to her. Ms. Grady also does not dispute that she was given a chain to lead the horse, given the "pushy on the ground" issue. I find there is insufficient evidence that Ms. Edwards was aware of an aggression history that was not disclosed to Ms. Grady. So, I find Ms. Edwards did not misrepresent the horse's aggressiveness.

33. I also note that Ms. Grady's submission is essentially that the aggression history amounts to a hidden or latent defect that Ms. Edwards was required to disclose. Again, since I find it unproven that Ms. Edwards knew of any aggression apart from the horse being "pushy on the ground", I find there is nothing known to her that she failed to disclose.
34. Given my conclusion above that Ms. Edwards did not misrepresent the horse's condition or history, I find Ms. Grady is not entitled to reimbursement of the \$524 for x-rays she chose to obtain.
35. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees. As Ms. Grady was unsuccessful, I find she is not entitled to reimbursement of her paid CRT fees. Ms. Edwards did not pay CRT fees and no dispute-related expenses were claimed.

ORDER

36. I order Ms. Grady's claims and this dispute dismissed.

Shelley Lopez, Vice Chair