



Civil Resolution Tribunal

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File: SC-2020-006951

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Revill v. Anderson dba Woodside German Shepherds*, 2021 BCCRT 88

B E T W E E N :

CHRISTOPHER REVILL

APPLICANT

A N D :

SANDY ANDERSON (Doing Business As WOODSIDE GERMAN SHEPHERDS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a refund for a pet dog. The applicant, Christopher Revill, purchased a pet dog named Gwen from the respondent, Sandy Anderson dba Woodside German Shepherds. Mr. Revill says he returned Gwen to Ms. Anderson

after a verbally agreed-upon trial period, because the dog's behaviour was not compatible with his family, but she refused to refund the purchase price. Mr. Revill says he stopped his credit card payment for Gwen, after which he says Ms. Anderson wrongly reinstated the credit card payment. Mr. Revill claims a \$2,240 refund for Gwen from Ms. Anderson, and \$2,240 in punitive damages for her allegedly wrongful actions.

2. Ms. Anderson says there was no verbal agreement about a trial period. She says that Gwen's sale contract says there are no refunds, but says a replacement dog may be provided if certain conditions are met. Ms. Anderson says Mr. Revill was not entitled to a refund of Gwen's \$2,240 purchase price, and that she acted reasonably and owes nothing.
3. Each party is self-represented in this dispute.

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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Although the parties' submissions each call into question the credibility of the other party in some respects, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue.

Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

6. Section 42 of the CRTA says 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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
8. In his submissions, Mr. Revill requests that Ms. Anderson be charged with an offence under CRTA section 92. That section says that a person who provides false or misleading evidence or other information in a CRT proceeding commits an offence. However, the CRTA does not provide me with the authority to charge anyone with an offence. That would be a matter for the court. In any event, as explained below, the evidence before me fails to prove that Ms. Anderson provided significantly false or misleading evidence.

ISSUES

9. This issues in this dispute are:
 - a. Was Mr. Revill entitled to return Gwen, and if so, does Ms. Anderson owe him a refund of \$2,240 or another amount?
 - b. Should I award Mr. Revill \$2,240 or another amount in punitive damages for Ms. Anderson's allegedly wrongful actions?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Revill must prove his claims on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

Was Mr. Revill entitled to return Gwen, and if so, does Ms. Anderson owe him \$2,240 or another amount?

11. The law considers pets to be personal property (see *Brown v. Larochelle*, 2017 BCPC 115). The undisputed evidence is that Mr. Revill purchased a dog named Gwen from Ms. Anderson on April 2, 2020. He paid the \$2,240 purchase price with his credit card. Ms. Anderson told Mr. Revill that Gwen had been returned by a previous purchaser, and was 1 year old. The parties disagree on the transaction's other details, and on what they said and promised. There is no evidence before me showing what the parties discussed on April 2, 2020, other than each party's own statement.

12. As further explained below, Mr. Revill denies agreeing to a written sale contract that Ms. Anderson says he signed. Mr. Revill says he and Ms. Anderson instead made a verbal agreement, which Ms. Anderson denies. In short, the written contract says there are no refunds for purchased dogs. Mr. Revill says the parties verbally agreed to a trial purchase period, during which he could return Gwen for a refund. The "return for a refund" terms in these 2 alleged agreements contradict each other.

13. Under the legal principle called the parol evidence rule, there is a strong presumption that a written contract correctly represents the parties' bargain, and that verbal terms contradicting the written contract do not (see *Gallen v. Butterley*, 1984 CanLII 752 (BCCA) at paragraph 56). I find that presumption applies here, because the verbal agreement alleged by Mr. Revill contradicts the written agreement, and I find the written agreement binds the parties, as described below.

14. Even if did not rely on the parol evidence presumption here, I find there was no verbal agreement between the parties, for the following reasons. Mr. Revill says that on April 2, 2020, he and Ms. Anderson verbally agreed that he would take Gwen on a trial

basis, and that he could return Gwen for a refund if she was not a good fit for his household. Ms. Anderson says she did not verbally vary the terms of her standard written agreement, which say no refunds are paid. I find the parties did not amend the written agreement to provide refunds. Other than Mr. Revill's statement, which Ms. Anderson denies, I find there is no evidence before me showing that Ms. Anderson agreed to sell Gwen on a trial basis or to provide a refund. I find Mr. Revill has not met his burden of proving there was a verbal agreement between the parties.

15. Ms. Anderson says Mr. Revill signed her standard written purchase agreement on the hood of her car in her driveway, which she says she remembers very clearly because she says Mr. Revill was wearing a protective mask and gloves because of the COVID-19 pandemic. Ms. Anderson says she explained the contract to Mr. Revill, and that he was aware of the no cash refunds policy. She says that Mr. Revill then paid for Gwen inside her office using a credit card.
16. Mr. Revill denies signing a written agreement, or being presented with one. He says that Ms. Anderson forged his signature on the written document after he paid for Gwen and took it home. Although it is undisputed that the contract in evidence says no cash refunds are provided, and that Mr. Revill's contact information and a signature appear on the contract, he says he never signed or agreed to that contract.
17. As the applicant, Mr. Revill bears the burden of proving that he did not sign the written purchase contract. He provided an opinion by David Babb on the written agreement's signature. I find that analyzing the contract's signature is a subject outside of ordinary knowledge that requires expert evidence to prove. Mr. Babb's report contained a list of his training and experience in forensic document analysis, which included handwriting discrimination and signature comparison.

Expert Evidence

18. Under CRT rule 8.3, I must decide whether Mr. Babb is qualified by education, training, or experience to give an opinion on the written agreement's signature. I note Mr. Babb has provided opinions in other proceedings. In *Technicon Industries Ltd. v.*

Woon, 2017 BCCA 294, the court indicated that Mr. Babb failed to state whether his forensic document opinion considered original documents or copies, so the court did not accept the opinion as expert evidence. In *Flack v. Rossi*, 2008 BCSC 670, the court considered Mr. Babb's written opinion that a signature and 5 comparison signatures were signed by different authors. On cross-examination in *Flack*, Mr. Bab admitted that factors including aging, disease, the space left for a signature, being rushed or writing slowly, and others, can change the appearance of a signature, and that it was possible the signatures he analyzed could have been signed by the same author. In *City Realty Ltd. (Re)*, 2010 CanLII 46484 (BC REC), Mr. Babb indicated that he was a forensic document examiner, which was a separate field from handwriting analysis. There is no description of these fields in the evidence submitted in this dispute.

19. Based on my review of the above decisions and others, I find Mr. Babb's expert opinions have been both accepted and rejected in various proceedings. I note that the CRT's rules about accepting expert evidence are more flexible than the courts' rules. On balance, given Mr. Babb's stated qualifications that were not disputed by Ms. Anderson, I accept that he is qualified to provide an expert opinion on the written agreement's signature. That said, I find Mr. Babb's conclusion is not reliable, for the following reasons.
20. Mr. Babb said that he compared the signature on the written agreement to several samples of Mr. Revill's signature from previous years, copies of which were provided with the report. Mr. Babb said that "the 'Q' signature is highly probable Not authored by the author of the known signatures of" Mr. Revill (reproduced as written). I note that in all other areas of the report, Mr. Babb labelled the contract signature "Q1", not "Q". However, I also note that Mr. Babb referred to a questioned signature as "Q" in a handwriting opinion in a different CRT dispute, *Revolution Resource Recovery Inc. v. New Image Contracting Ltd.*, 2020 BCCRT 1331. According to paragraph 31 of that decision, Mr. Babb arrived at exactly the same conclusion about a "Q" signature in that report as he did in his report on Mr. Revill's signature, letter-for-letter, including

the same grammar and capitalization mistakes. I find this raises some doubt about whether the opinion section of Mr. Babb's report addressed Mr. Revill's signature.

21. In any event, I find Mr. Babb's report states that the only handwriting examined was the signature in a copy of the written agreement and 13 sample "K" signatures, images of which were viewed on a computer screen. On balance, I accept Mr. Babb's report as evidence that the signature on the written agreement is different than the other signature samples. I find this is within ordinary knowledge, and does not require expert evidence to prove, because the signatures are obviously and radically different.
22. However, I find Mr. Babb did not explain how he arrived at his conclusion that the **author** of the agreement's signature was different than the **author** of the samples, in particular without specifically addressing any other handwriting samples and given that the sample signatures all appear to be illegible figures. Mr. Babb did not identify which forensic document examination principles and techniques he applied, or how those led to his conclusion. He did not comment on whether he considered the passage of time between the K signature samples and the agreement signature, or other factors mentioned in the *Flack* decision. Further, I find Mr. Babb did not evaluate the initials that Mr. Revill allegedly wrote on the agreement. He also did not say whether he considered the fact that, unlike the K signature samples, the Q signature on the agreement was in a field marked "(Print)", and appeared to be printed rather than written. Given my findings above, and the lack of critical detail in Mr. Babb's report, I place no weight on his opinion that the author of the written signature was probably different than the author of the samples.
23. I find I am left with two possible scenarios. First, that Mr. Revill did not sign the written agreement, and did not accept it. Second, that Mr. Revill did sign the written agreement, but he used a different style of handwriting for it than in the samples provided to Mr. Babb. Mr. Revill bears the burden of establishing his signature is a forgery on a balance of probabilities (see *F.H. v. McDougall*, 2008 SCC 53 at paragraph 49). Upon weighing the limited, conflicting evidence before me, I find Mr.

Revill has failed to meet his burden of proving that the signature on the written agreement is a forgery, and that he did not write it.

24. So, I find the written agreement binds the parties. I find the agreement provides for no cash refunds, but says Ms. Anderson may optionally offer a “2 year credit towards a future animal”, which I find means a replacement dog. It is undisputed that Mr. Revill has so far refused a replacement, which he does not claim in this CRT dispute.
25. I note that even if I had found that Mr. Revill did not sign the written agreement, I still would have found he was not entitled to a refund, for the following reasons. I find Mr. Revill was not entitled to a refund based on a breach of an implied warranty under section 18(b) of the *Sale Of Goods Act*, namely that Gwen was of merchantable quality. Although witness evidence submitted by Mr. Revill provides anecdotes of Gwen growling, baring her teeth, and possibly lunging at other dogs, I find the evidence fails to show that such behaviour was unusual or unacceptably abnormal in the circumstances. On balance, I find that Gwen was of merchantable quality. I also note that Mr. Revill says he told Ms. Anderson on April 2, 2020 that there were other pets in his residence, and that small children regularly visited, which Ms. Anderson denies. Regardless, I find that on balance, Ms. Anderson did not provide any guarantee to Mr. Revill that Gwen would be fit for a particular purpose or for any particular living situation. So, I find there was no implied warranty of fitness for a particular purpose under SGA section 18(a). Overall, even in the absence of the written agreement, I find Gwen was not defective, and there was no reasonable basis for Mr. Revill to return Gwen for a refund.
26. It is undisputed that Ms. Anderson accepted Gwen’s return on April 10, 2020, but refused to provide a refund for the dog. I find Ms. Anderson was not required to provide a refund for Gwen. Ms. Anderson says, and Mr. Revill does not directly deny, that she offered to accept Gwen’s return as a goodwill gesture, and to attempt to place another one of her dogs with Mr. Revill in the future, according to the parties’ agreement. Mr. Revill refused to accept a different dog. However, Mr. Revill left Gwen

with Ms. Anderson, despite knowing that Ms. Anderson would not provide a refund and would only consider providing a new dog in the future.

27. Mr. Revill then cancelled his credit card payment for Gwen, after which Ms. Anderson admittedly had the payment reinstated. Much of the parties' arguments address whether each was truthful in cancelling or reinstating this credit card payment. I address this below when considering the claim for punitive damages.

28. I find that between the parties, Mr. Revill is still Gwen's owner, and Ms. Anderson does not owe him a \$2,240 refund for Gwen. I dismiss Mr. Revill's claim. I make no further findings about Gwen.

Should I award Mr. Revill \$2,240 or another amount in punitive damages?

29. Punitive damages are usually granted only for malicious and outrageous acts deserving of punishment on their own (see *Honda Canada Inc. v. Keays*, 2008 SCC 39 at paragraphs 62 and 68).

30. Mr. Revill says that Ms. Anderson should pay \$2,240 in punitive damages, primarily because she allegedly forged his signature on Gwen's purchase contract. Mr. Revill also says that Ms. Anderson provided the allegedly forged contract as evidence to the CRT, and to the credit card company in order to convince the company to have Gwen's payment reapplied to his credit card. However, I found above that Mr. Revill has not met his burden of proving that the contract's signature was forged.

31. Mr. Revill says that Ms. Anderson made other allegedly false statements to the credit card company, such as that Gwen was in his possession for 10 days "without complaint" and that Gwen was attacked by another dog during that time. On the evidence before me, I find the alleged 10-day lack of complaints was likely a misstatement or an incomplete account rather than a purposeful lie. Further, the parties disagree about whether another dog attacked Gwen, and I find Gwen's interactions with other dogs are uncertain on the evidence before me.

32. Having weighed all of the evidence, I find Ms. Anderson did not act maliciously or outrageously in the circumstances. I deny Mr. Revill's claim for punitive damages.

CRT FEES ANDS EXPENSES

33. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Anderson was successful here, but paid no CRT fees and claimed no CRT-related expenses. Mr. Revill was unsuccessful, so I order no reimbursement of his CRT fees, or his claimed \$1,741.99 in expenses for legal fees that pre-date this CRT dispute and for Mr. Babb's signature analysis fee.

ORDER

34. I dismiss Mr. Revill's claims, and this dispute.

Chad McCarthy, Tribunal Member