



Civil Resolution Tribunal

Date Issued: May 21, 2021

File: SC-2021-000569

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Forrester v. Roberts*, 2021 BCCRT 543

B E T W E E N :

CASSANDRA FORRESTER

APPLICANT

A N D :

ERICA ROBERTS and CHRISTOPHER ROBERTS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Cassandra Forrester, bought a puppy, Bruno, from the respondents, Erica Roberts and Christopher Roberts. About 3 weeks after Ms. Forrester brought

Bruno home, she found out that he had glaucoma, which required surgery to remove his eye. It is undisputed that Bruno's mother had nipped his eye. Ms. Forrester says that this caused the glaucoma. She claims \$5,000, which includes a \$3,500 refund for Bruno and veterinary bills totaling \$2,487.95. I find that Ms. Forrester has abandoned any amount of her claim above \$5,000, which is the maximum the Civil Resolution Tribunal (CRT) can award under its small claims jurisdiction.

2. The Roberts say that the "eye nip" was fully disclosed prior to Ms. Forrester taking Bruno. They also say that the eye had healed by the time they delivered Bruno. They say that they are not responsible for medical issues after Ms. Forrester took possession of Bruno. They ask that I dismiss Ms. Forrester's claim.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to 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 pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Did the Roberts misrepresent Bruno's condition?
 - b. Did the Roberts breach an express or implied warranty on Bruno?
 - c. If so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Ms. Forrester as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. Most of the background facts are undisputed. Bruno was born on October 26, 2020. In early December, his mother nipped at him, injuring his right eye.
11. Ms. Forrester first contacted Ms. Roberts on Facebook Messenger on December 5, 2020, asking how much her puppies cost. Ms. Roberts responded that they were \$3,500 each. Ms. Roberts also said that they came with "the vet health check, first shots and deworming". Ms. Forrester went to see Bruno the same day and gave a \$500 deposit to secure the sale.

12. The parties communicated throughout December about Bruno's shots, food, and other details. On December 22, 2020, Ms. Roberts confirmed that Bruno had his shots and vet checkup. Ms. Roberts said that Bruno had "a little bit of fogginess on his right cornea", which the vet believed would resolve on its own. Ms. Roberts said that this "would be from when his mother nipped at him and got him in the corner of his eye". Ms. Forrester responded "Awesome ... thanks for the update" and picked Bruno up the next day. She also paid the remaining \$3,000.
13. Bruno's vet at the time, Dr. Nancy Holling, wrote a letter about the December 22, 2020 checkup. Dr. Holling said that Ms. Roberts specifically asked Dr. Holling to assess Bruno's right eye. Dr. Holling said that Bruno had very mild opacity in his right eye that could have been a scar from the nip injury. Dr. Holling said that the scar may fade away over time. Otherwise, both eyes were normal. Dr. Holling did not mention glaucoma.
14. On January 10, 2021, Ms. Forrester took Bruno to the emergency vet because he was dizzy and vomiting. There is no evidence that this visit had anything to do with Bruno's eye, but Ms. Forrester says that the vet mentioned Bruno's eye. The record in evidence does not mention Bruno's eye. Ultimately, I find that nothing turns on whether this vet brought up Bruno's eye.
15. On January 12, 2021, Ms. Forrester took Bruno to a scheduled vet appointment for a checkup and vaccines. According to a letter written by this veterinarian, Dr. Webb, they raised concerns about Bruno's eye at the checkup. They said that Bruno had glaucoma that was causing him pain and recommended removing the eye. Dr. Webb did not say what caused the glaucoma. Bruno's eye was removed on January 21, 2021.
16. Ms. Forrester says that the Roberts misrepresented Bruno's condition because they did not disclose the nip until the day before Ms. Forrester was to pick Bruno up. The Roberts say that they told Ms. Forrester verbally about the nip on December 5, 2020. I find that I do not need to address whether the Roberts mentioned the eye on December 5, 2020, because either way they told Ms. Forrester about the eye before

the sale completed. Ms. Forrester did not have to buy Bruno if the nip or eye fogginess was a concern for her.

17. In order to prove either negligent or fraudulent misrepresentation, Ms. Forrester must prove that the Roberts made an inaccurate or untrue statement. I find that they did not. I find that Ms. Roberts's December 22, 2020 message reasonably summarized what Dr. Holling said about Bruno's eye. I find that it was an accurate statement. I find that Ms. Forrester chose to buy Bruno knowing about the nip and eye cloudiness.
18. Ms. Forrester also says that the Roberts should "take responsibility" for Bruno because they should have known that his eye could have become a bigger problem. The Roberts say that they delivered a healthy puppy to the Roberts and there is no evidence that the nip caused the glaucoma that ultimately led to Bruno's eye's removal. They say that they should not be responsible for an issue that could have arisen after Ms. Forrester took possession of Bruno.
19. The parties did not have a formal written contract. I find that the terms of their contract are contained in their written correspondence. I agree with the Roberts that they did not provide an express warranty about Bruno's health.
20. However, this does not end the matter. Under section 18(c) of the *Sale of Goods Act*, there is an implied warranty that goods will be durable for a reasonable period of time, taking into consideration the surrounding circumstances of the sale. Although not binding on me, other CRT decisions have applied this implied warranty to the sale of pets, such as *Mackenzie v. Bolshoy dba Siberian Cattery Bolshoy Dom*, 2021 BCCRT 144 and *Davy v. Kidwai*, 2020 BCCRT 442. In particular, in *Mackenzie*, the CRT found that a medical condition in a pet was not necessarily a flaw in the "durability" of a pet unless it was a pre-existing condition or defect. I agree with this reasoning.
21. With that, I find that Ms. Forrester must first prove that the glaucoma was a pre-existing condition or defect in the pet. The cause of a medical issue is generally

something that requires expert evidence because it is outside of the common knowledge of an ordinary person (*Bergen v. Guliker*, 2015 BCCA 283). Neither Dr. Holling nor Dr. Webb said anything about what caused Bruno's glaucoma. In the absence of any expert evidence, I find that I cannot conclude that the glaucoma was a pre-existing condition or defect. On that basis alone, I find that Ms. Forrester has not proven that the Roberts breached the implied warranty.

22. For these reasons, I dismiss Ms. Forrester's claims.
23. 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. Forrester was unsuccessful so I dismiss her claim for CRT fees and dispute-related expenses. I order Ms. Forrester to reimburse the Roberts \$50 in CRT fees. The Roberts did not claim any dispute-related expenses.

ORDERS

24. Within 30 days of the date of this order, I order Ms. Forrester to pay the Roberts \$50 in CRT fees.
25. The Roberts are entitled to post-judgment interest, as applicable.
26. I dismiss Ms. Forrester's claims.
27. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they

want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

28. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Eric Regehr, Tribunal Member