



Civil Resolution Tribunal

Original Date Issued: September 2, 2021

Amended Date Issued: September 7, 2021

File: SC-2021-001576

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *EA v. MC*, 2021 BCCRT 965

BETWEEN:

EA

APPLICANT

AND:

MC and ABC SOCIETY

RESPONDENTS

AMENDED REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, EA, gave 5 of his cats to the respondent cat rescue charity, ABC Society (ABC), to have them spayed or neutered. He says that contrary to their agreement, ABC refused to give him 1 of the cats, Emerald, back. The other respondent, MC, worked for ABC at the time.

2. EA asks for an order that the respondents return Emerald to him, or \$1,000 compensation. He also asks for \$3,000 in damages for mental distress.
3. The respondents say that EA agreed that he would only get 3 of his 5 cats back after they were spayed or neutered. They say that Emerald was not one of the cats that ABC agreed to give back to EA. They ask that I dismiss EA's claims.
4. In the published version of this decision, I have anonymized the parties' names to protect EA's privacy, due to their submissions about their mental health.
5. EA is represented by a lawyer. MC represents both respondents.

JURISDICTION AND PROCEDURE

6. 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.
7. 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 parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
8. 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.

9. 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

10. The issues in this dispute are:
 - a. Did EA agree to surrender Emerald to ABC?
 - b. If not, what remedy is appropriate?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, EA as the applicant must prove his 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.
12. The following facts are not disputed. On May 15, 2020, MC and LK, who I infer was a ABC employee or volunteer, were in Merritt BC to pick up cats from another animal rescue shelter. It says that when they were on the way back to Vancouver, they met EA's mother-in-law, who told them that EA was struggling to care for his cats. ABC says that they went to EA's home and agreed to spay and neuter 5 of his cats. ABC took 3 cats that day, including Emerald. Emerald and another of these cats were pregnant. ABC returned on May 27, 2020, to take 2 more cats.
13. Emerald and the other pregnant cat had kittens while in ABC's care. ABC kept the kittens and adopted them out for a fee. ABC returned 3 of EA's cats after they had recovered from their spay or neuter. EA does not claim the return of the other adult cat he gave ABC or any of the kittens.

Did EA Agree to surrender Emerald to ABC?

14. EA says that the law of gifts applies. I disagree. A gift is a voluntary transfer of property where the giver receives nothing in return from the recipient: see *Richert v. Stewards' Charitable Foundation*, 2005 BCSC 211, at paragraph 11. I find that the parties' arrangement was a contract because they both received something of value. EA had his cats spayed or neutered for free, while ABC kept 1 or 2 of the cats and the kittens. ABC says that it adopts out cats to help cover its costs. I therefore find that the proper approach is to determine what the parties agreed to.
15. ABC says that it typically requires owners to fill out and sign its "Owner Surrender Form", which sets out the conditions where owners surrender their pets to ABC. However, ABC admits that EA did not sign this form because the stop was spontaneous. ABC does not explain why it did not have EA sign the form the second time it visited his house, which was not spontaneous. In any event, there is no written contract between the parties.
16. The parties disagree about whether EA agreed to surrender Emerald. Both parties rely on their email correspondence over the summer of 2020. I note that the emails from ABC's email address do not say who the author is, although it is apparent from context that at least some of them are from MC.
17. EA primarily relies on the parties' May 21, 2020 email exchange where the parties arranged for MC to pick up the last 2 of EA's cats. During that exchange, ABC asked EA how many cats he wanted to keep. He responded that he wanted to keep Emerald and 3 other cats. ABC responded to arrange when it would come to pick up the remaining cats, but did not say anything about the cats EA said he wanted back.
18. EA also relies on a May 31, 2020 email he sent to LK asking when he would get Emerald back. LK responded that she did not have Emerald, so EA should email ABC.

19. ABC relies on the parties' June 25, 2020 email exchange. EA emailed ABC to ask when he would get 2 of the cats back. EA did not ask about Emerald at this time, I find because he knew that Emerald would not come home until after she finished nursing her kittens. ABC responded that the parties had agreed that ABC would only give back 3 of the 5 cats. ABC said that it could not afford to give 4 back. EA responded that all 5 cats belonged to him. ABC said that EA had surrendered 2 of the cats, including Emerald, and could not simply change his mind.
20. ABC also relies on a June 27, 2020 email that EA sent to LK. In that email, EA said that he had known that "a couple" of the cats would be adopted out. ABC says that EA admitted that ABC would keep 2 cats.
21. It is impossible to know with certainty what the parties verbally agreed to on May 15, 2020. On balance, I find that the best evidence of the parties' agreement is the May 21, 2020 email exchange. I say this because EA lists the 4 cats, by name, that he expected to get back. I find it significant that ABC's response to EA did not dispute that he would get 4 back cats, including Emerald. I also find it significant that this exchange happened before ABC picked the last 2 cats up. If ABC did not agree with EA that he would get 4 cats back, I find it would likely have said something or refused to pick up the remaining cats. I also find that EA's June 27, 2020 email is relatively informal. Given that ABC was adopting out several kittens, I find that his use of the word "a couple" does not necessarily refer to ABC keeping 2 adult cats. In other words, I find this email consistent with both parties' accounts of the terms of their agreement.
22. I therefore find that the parties agreed that EA would get 4 of the 5 adult cats back after they were spayed or neutered and that ABC would retain the other adult cat and all the kittens to be adopted out for a fee.
23. ABC makes 2 other arguments about why it was justified in keeping Emerald. First, it says that EA was not providing proper care for his cats. EA disputes this. I find that I do not need to decide whether EA was providing appropriate care to his cats. Under the *Prevention of Cruelty to Animals Act*, the BC Society for the Prevention of

Cruelty to Animals (SPCA) has the power to take custody of animals in distress. Even if ABC had good intentions in refusing to return Emerald, I find that it had no legal authority to do so.

24. Second, ABC argues that Merritt has a municipal bylaw restricting the number of pets EA may keep. ABC says that returning Emerald would put EA in breach of this bylaw. I agree with EA that it is not ABC's role to enforce a municipal bylaw.

25. I therefore find that ABC breached the parties' contract by refusing to give Emerald back to EA. I find that it had no legal authority to withhold Emerald.

What remedy is appropriate?

26. Through the CRT's staff, I asked ABC who is currently caring for Emerald and how much ABC had received for her if it had adopted Emerald out. ABC did not directly answer the first question but said that the adoption fee was \$200. I infer from this that ABC adopted Emerald out and no longer controls Emerald. ABC also included a list of its costs associated with Emerald, which included 3 months of food. I infer from this that ABC adopted out Emerald around August or September 2020. This is consistent with an email EA sent LK in August 2020 where he said he saw Emerald as a "pending adoption" on ABC's website. This means that I cannot order ABC to return Emerald to EA. Instead, I must determine what monetary damages will adequately compensate him for the loss of Emerald.

27. ABC says that while it receives adoption fees, it does not turn a profit on rescuing cats. ABC says that between medical care and food, it "lost" over \$1,200 caring for Emerald. I accept that this is true, given it is a charity with a mission of caring for cats. While ABC does not say so specifically, I find that its point in providing this evidence was for me to consider it as a set off when assessing damages. However, I find that the amount ABC spent on caring for Emerald is irrelevant. I say this because the proper measure of damages for a breach of contract is to put EA in the same position he would have been in if ABC had performed the contract according

to its terms. I find that If ABC had done so, it would have paid all the above costs because it had agreed to do so.

28. I find that Emerald's market value was \$200 based on the adoption fee. EA argues that I should award \$1,000 because even though cats are personal property, Emerald was worth more than her market value to EA. He also argues that he should receive a further \$3,000 in damages for mental distress. He relies on *Wilson v. Sooter Studios Ltd.*, 1988 CanLII 3100 (BC CA), which says that the court may award damages for mental distress if the contract was for "peace of mind".
29. So, the first question is whether the parties' contract was a peace of mind contract. In *Newell et al. v. Canadian Pacific Airlines, Ltd.*, 1976 CanLII 820 (ON SC), the court found that a contract to transport 2 dogs on an airplane was a peace of mind contract because the safety of the dogs was a central part of the parties' contract. One of the dogs died and the other became seriously ill. While Ontario cases are not binding on me, I find the reasoning of *Newell* persuasive. Here, the parties' contract included the transportation, medical care, and day-to-day care of EA's cats. I therefore find that it was a peace of mind contract. I find that it was reasonably foreseeable that EA would suffer mental distress if ABC failed to return Emerald. So, I find that EA is entitled to mental distress damages, not just damages for Emerald's market value.
30. EA provided a letter from his treating therapist, KS. The therapist said that they were treating EA for PTSD, depression, and anxiety. They said that EA's symptoms worsened in the fall of 2020 due to the loss of Emerald. I accept this letter as expert evidence under the CRT's rules. I find that the loss of Emerald made EA's his pre-existing mental health symptoms worse. EA says that his distress is ongoing, although the therapist's letter does not speak to any ongoing issues. I find it likely that the impact has lessened over time.
31. EA relies on several cases to support an award of \$3,000. None were about the loss of a pet. In *Newell*, the court awarded \$500 for mental distress, which is roughly \$2,300 today with inflation. I note that the plaintiffs in *Newell* suffered from

mental distress not just because they lost a dog, but also because they knew that the dog had died. There was also a second dog that survived but was severely ill for a time. In EA's case, he has lost contact with Emerald but knows that she is alive and well, which I find is a relevant consideration. On the other hand, I must account for the impact on EA's mental health. On a judgment basis, I find that EA is entitled to \$1,700 in damages for the loss of Emerald, which includes damages for mental distress.

32. As for EA's claim against MC, she is a ABC employee. Under common law, an employer is generally liable for the actions of employees performed in the course of their employment. EA did not identify any reason why MC should be personally liable for EA's damages. So, I dismiss EA's claims against MC.
33. The *Court Order Interest Act* (COIA) applies to the CRT. EA is entitled to pre-judgment interest on the award from September 1, 2020, a date I find reasonable in the circumstances, to the date of this decision. This equals \$7.67.
34. 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. However, EA did not pay any CRT fees or claim any dispute-related expenses.ⁱ

ORDERS

35. Within 30 days of the date of this order, I order ABC to pay EA a total of \$1,707.67, broken down as follows:
 - a. \$1,700 in damages, and
 - b. \$7.67 in pre-judgment interest under the COIA.
36. EA is entitled to post-judgment interest, as applicable.
37. I dismiss EA's claims against MC.

38. I dismiss EA's claim against ABC for Emerald's return.
39. 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 in effect until 90 days after June 30, 2021, which is the day that the state of emergency declared on March 18, 2020 ended, 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.
40. 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

ⁱ Amended under section 64(b) of the CRTA to correct an inadvertent error.