



Civil Resolution Tribunal

Date Issued: October 29, 2021

File: SC-2021-003105

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Coast To Coast Bully Rescue Society v. Rempel*, 2021 BCCRT 1150

B E T W E E N :

COAST TO COAST BULLY RESCUE SOCIETY

APPLICANT

A N D :

CYDNIE REMPEL and FELICIDADE DOMINGUES

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a missing dog. The applicant, Coast To Coast Bully Rescue Society (Coast) says the respondent, Cydnie Rempel, gave it her dog. Coast renamed the dog, Duggie, and placed it with the respondent, Felicidade Domingues for temporary foster care. Coast says that after it decided to euthanize Duggie, Ms. Domingues and Ms. Rempel improperly took the dog. Coast hired a pet detective

agency to search for Duggie. Coast claims \$2,200 for investigative costs and \$500 for the loss of Duggie. Coast also requests an order requiring the return of Duggie.

2. The respondents deny Coast's claims. Ms. Rempel says that she still owns Duggie. She says that she only temporarily placed Duggie in Coast's care and she did not surrender ownership.
3. Ms. Domingues says that she did not take Duggie. Rather, she says that Duggie escaped through a hole in her fence.
4. Coast is represented by its founder. Ms. Rempel and Ms. Domingues are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
7. 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.

8. 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.

Late evidence submitted by Ms. Domingues

9. Ms. Domingues submitted late evidence consisting of social media postings, text messages and fence photographs. I find that only the fence photographs were relevant, so I have not admitted the other documents as evidence. Since Coast had an opportunity to respond to the fence photographs, I find that it was not prejudiced by the late submission of this evidence and I will consider it in my decision.

Late evidence submitted by Coast

10. Coast submitted late evidence consisting of an email from Petsearchers Canada Pet Detectives (Petsearchers), a pet detective business. I find that this email is relevant to this dispute. Since the respondents had an opportunity to respond to this evidence, I find that they were not prejudiced by the late submission of this evidence and I will consider this email in my decision.

ISSUES

11. The issues in this dispute are:
 - a. Does Coast own Duggie?
 - b. Did Ms. Rempel improperly take Duggie? If so, what is the remedy?
 - c. Did Ms. Domingues improperly take Duggie? If so, what is the remedy?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, Coast, as the applicant, must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision. Ms. Rempel did not provide any evidence, though she had the opportunity to do so.

Does Coast own Duggie?

13. It is well established that the law considers pets to be personal property (see *Brown v. Larochelle*, 2017 BCPC 115). Both Coast and Ms. Rempel claim ownership of Duggie.

14. Coast says that Ms. Rempel gave it Duggie. In contrast, Ms. Rempel says that she did not permanently surrender Duggie. Rather, Ms. Rempel says that she only gave Duggie to Coast temporarily. She says that Coast told her that it was only going to take care of Duggie until she found housing that allowed dogs. This is discussed further below.

15. Coast provided an owner surrender agreement signed on October 12, 2020 by Cydnie Arryelle. Although the last name is different, Coast says that Ms. Rempel signed the agreement. Since Ms. Rempel does not dispute this, I find that she did so. The agreement says that Ms. Rempel surrenders all ownership rights to Duggie. Ms. Rempel also admits transferring the dog's microchip ownership records to Coast.

16. In general, when a party signs a contract, the signing party is bound even if the signing party may not have read or understood the contract. The exceptions to this include fraud, misrepresentation, where a party seeking to enforce the document knew or had reason to know of the other's mistake as to its terms, and *non est factum*. *Non est factum* is a legal principle that says a contract is not valid if the respondent is mistaken about the nature of the contract when signing it. This is discussed further below.

17. Since Ms. Rempel signed the contract, she has the burden of showing that an exception applies. Although she does not specifically say this, I find that Ms. Rempel is essentially arguing that Coast misrepresented its intentions relating to Duggie and that the contract did not accurately reflect their agreement.
18. A misrepresentation is a false statement of fact made during negotiations that has the effect of inducing a reasonable person to enter into a contract (see *O'Shaughnessy v. Sidhu*, 2016 BCPC 308). However, the contract says that Coast has not provided any “representations, considerations or promises of any kind” to Ms. Rempel. In *Bank of Montreal v. Bal*, 2012 BCSC 1505, the court held that such “no representations” clauses prevent parties from providing evidence of prior discussions that are inconsistent with the written contract. Here, the contract says that Ms. Rempel will “forever discharge” Coast from her ownership rights, which I find is not consistent with Ms. Rempel’s allegation that Coast said that it was only taking Duggie temporarily. So, based on the contract’s “no representations” clause, I find that Ms. Rempel is unable to avoid the contract based on the parties’ prior discussions.
19. As discussed above, I find that Ms. Rempel is also arguing that the doctrine of *non est factum* applies. To establish *non est factum*, a party must show that the document signed is fundamentally different from what they believed they were signing (see *Loychuk v. Cougar Mountain Adventures Ltd.*, 2011 BCSC 193 at paragraphs 27 to 28). Here Ms. Rempel says that she thought that Coast was only temporarily taking care of Duggie. I find that this is fundamentally different than permanently surrendering the dog. However, Ms. Rempel must also show that she took reasonable precautions to ensure the accuracy of the document before signing it (see *Araki v. Wlodyka*, 1983 CanLII 3631 (BC SC)). However, Ms. Rempel has not provided any evidence or submissions showing that she took any care to read the contract or make inquiries about the contract’s terms before signing it. So, I find that Ms. Rempel has failed to show that she took reasonable precautions before signing the contract. As such, I find that Ms. Rempel cannot rely on *non est factum* to avoid the contract.

20. Ms. Rempel also argues that she was coerced or forced to sign the contract under duress. Duress is a defence to the enforceability of an agreement. In other words, if Ms. Rempel signed the contract under duress, it will not be a binding agreement. To establish duress, Ms. Rempel must prove that Coast put her in a position where she had no realistic alternative to accept the offer (see *Dairy Queen Canada Inc., v. M.Y. Sundae*, 2017 BCCA 442). I do not find that to be the case here. Ms. Rempel has not explained how Coast forced her to surrender her dog rather than find alternate arrangements for Duggie's care. She also says that she was stressed and under the influence of drugs. However, she does not explain how these circumstances relate to her claim of duress. Further, the contract says that Duggie's surrender was completely voluntary. For the above reasons, I find that Ms. Rempel has not proved that she entered the contract under duress.
21. Based on the above, I find that Coast owned Duggie when Ms. Rempel signed the owner surrender agreement on October 12, 2020.
22. Coast placed Duggie with Ms. Domingues for foster care on October 12, 2020. In December 2020, Duggie was placed in a home for a trial adoption. However, Duggie bit one of the new potential owners. Ms. Domingues retrieved Duggie from the trial adoption on December 21, 2020 and Duggie bit her too.
23. Coast says that it contacted Ms. Rempel on December 21, 2020 to consider returning Duggie to her. However, Coast says that it decided not to place Duggie with her because she still did not have housing that allowed dogs, Duggie was dangerous and Ms. Rempel was allegedly not stable. Coast says that it was concerned that Ms. Rempel would send Duggie to MH, a person who Coast alleges had previously abused Duggie.
24. Veterinarian, Jeff Bowra sent Coast a December 22, 2020 email recommending that Duggie be euthanized based on his aggressive conduct. Coast decided to euthanize Duggie. Ms. Domingues called a veterinarian on December 22, 2020 and scheduled a December 30, 2020 appointment to euthanize Duggie.

25. Ms. Domingues says that Duggie escaped from her yard on December 26, 2020. She says she searched for Duggie but was unable to find it. Coast hired Petsearchers to find Duggie but it was unable to find it.
26. Coast claims that Duggie did not escape. Rather, Coast claims that Ms. Rempel and Ms. Domingues improperly took Duggie. I will discuss Coast's claims against Ms. Rempel and Ms. Domingues separately.

Did Ms. Rempel improperly take Duggie?

27. When a person wrongfully interferes with the property of another person in a way that is inconsistent with the owner's rights, the legal principle that applies is called conversion (see *Li v. Li*, 2017 BCSC 1312 at paragraph 213).
28. Coast says that Ms. Rempel improperly took Duggie, which Ms. Rempel does not dispute. Further, Ms. Rempel's housing manager, A, sent Coast an April 16, 2021 text message saying that Ms. Rempel tried to bring Duggie into her housing on December 26, 2020 but she was prevented from doing so. The text says that Ms. Rempel took the dog elsewhere. Also, Ms. Rempel sent Coast April 17, 2021 text message saying that she knew where Duggie was. Based on these text messages, and since Ms. Rempel does not deny taking Duggie, I find that she did take Duggie. I find that by doing so, Ms. Rempel wrongfully interfered with Coast's possession of Duggie and committed conversion.
29. The usual remedy for conversion is either a return of the property, or a monetary order of the property's market value. In its application for dispute resolution, Coast has requested both the return of Duggie and \$2,700 in damages. The CRT can order the return of personal property under section 118(1)(b) of the CRTA. However, I find that Coast has not proved that Ms. Rempel has possession of Duggie. Based on A's April 16, 2021 text message saying that Ms. Rempel was prevented from bringing the dog into the housing, I am not satisfied that Ms. Rempel still has Duggie. So, I deny Coast's request for an order requiring Ms. Rempel to return Duggie and I find that monetary damages are the appropriate remedy.

30. Conversion damages are based on the property's value at time that it was wrongfully taken plus any consequential loss (see *Kostiuk (Re)(Trustee of)*, 2002 BCCA 410 at para. 66). Coast claims \$500 for Duggie's value and \$2,200 for its investigation costs to search for Duggie.
31. The court may award nominal damages for the conversion of property that does not have a monetary value. (*Lepage v. Bowen Island Municipality*, 2021 BCSC 1077) Nominal damages are a symbolic award of money to acknowledge that a legal right was infringed even though there was no damage. For example, in *Han v. Cho*, 2009 BCSC 458, the court awarded nominal damages of \$10 for a slap that did not cause an injury. In this dispute, I find that Duggie did not have a monetary value for Coast since it was planning to euthanize it. So, I find that nominal damages of \$10 are appropriate.
32. Coast also claims \$2,200 in investigative costs. Conversion damages include the owner's costs to investigate their loss (*Canada Safeway Limited v. Brown*, 2007 BCSC 1619). Coast provided Petsearchers's December 29, 2020 invoice for \$1,600 and a December 29, 2020 electronic payment receipt showing payment of this invoice. Based on this evidence, I find that Ms. Rempel's conversion caused \$1,600 in investigative expenses. I find that Ms. Rempel is responsible for this expense.
33. Coast also claims \$600 in travel expenses for gas, ferry and hotel expenses to search for Duggie. Coast did not provide any receipts or itemization for its gas and ferry expenses. Coast provided an April 17, 2021 hotel receipt for \$183.99. However, Coast did not explain why it needed to incur a hotel expense to search for Duggie approximately 4 months after the dog went missing. I find that Coast has not proved that Ms. Rempel's conversion caused travel expenses and I deny this claim.
34. Based on the above, I find that Ms. Rempel must pay Coast \$1,610 in damages.

Did Ms. Domingues improperly take Duggie

35. Coast says that Ms. Domingues removed Duggie from her yard and gave it to Ms. Rempel. In contrast, Ms. Domingues says that Duggie escaped.
36. Ms. Domingues says that she left Duggie unattended in her yard on December 26, 2020 and the dog escaped through a broken fence panel. Ms. Domingues says that the fence is badly rotted and she had previously patched it after an earlier dog escape. Ms. Domingues says that she has asked her landlady to repair the fence. Ms. Domingues provided a photograph show a wood fence with a large, missing board.
37. Coast provided January 29, 2021 and July 28, 2021 emails from Al Maclellan, a Petsearchers's employee. As a pet investigator, I am satisfied that Mr. Maclellan has sufficient experience under CRT rule 8.3 to provide expert opinions about Duggie's disappearance. Mr. Maclellan's emails say that his investigation was inconclusive and Duggie could have been stolen. However, he did not believe that Duggie escaped through the fence because he would have expected sightings in the community if a dog of Duggie's breed and size had escaped. Also, Duggie's scent was not detected in the area. Based on Mr. MacLellan's undisputed opinions, I find that, more likely than not, that Duggie did not escape through the fence as Ms. Domingues says. However, this does not prove that Ms. Domingues took Duggie.
38. Coast argues that Ms. Domingues's cancellation of Duggie's euthanization appointment proves that she planned to take Duggie. Coast says that Ms. Domingues cancelled the euthanization appointment on December 22, 2020, before Duggie went missing on December 26, 2020. Coast provided a supporting recording of a telephone conversation with a veterinary employee who said that Ms. Domingues cancelled the appointment on December 22, 2020. Ms. Domingues denies this and says that she did not cancel the euthanization until the day before the appointment, on December 29, 2020. This is consistent with the veterinary office's April 19, 2021 email that Ms. Domingues that says Ms. Domingues scheduled the euthanization on December 22, 2020 and that she cancelled the appointment on December 29, 2020. Neither party

provided a statement from the veterinary office explaining the discrepancy between the telephone conversation and its email. In the absence of an explanation, I find it likely that the veterinary employee in the telephone recording was referring to the date of the appointment reservation on December 22, 2020, rather than the date of the appointment cancellation. So, I find that the veterinary office's email is more likely accurate and I find that Ms. Domingues cancelled the euthanization appointment on December 29, 2020. This is consistent with Ms. Domingues' submission that Duggie went missing on December 26, 2020.

39. Coast also relies on A's April 16, 2021 text message that says Ms. Domingues gave Duggie to Ms. Rempel on December 26, 2020. However, the text message does not explain how A was aware of this. For example, A did not say whether they saw Ms. Domingues give the dog to Ms. Rempel or whether someone told A this. In the absence of a statement from A explaining the basis for their text message, I am not satisfied that A's text message is reliable and do not give it any weight.
40. On balance, I find that Coast has failed to provide sufficient evidence to prove that Ms. Domingues took Duggie. So, I dismiss Coast's claims against Ms. Domingues.

Interest, CRT fees and dispute-related expenses

41. The *Court Order Interest Act* (COIA) applies to the CRT. Coast is entitled to pre-judgment interest from Ms. Rempel on the \$10 in damages from December 26, 2020, the date she took the dog. Coast is also entitled to pre-judgment interest from Ms. Rempel on the \$1,600 in investigative expense damages from December 29, 2020, the date of Petsearchers's invoice. This equals \$6.04.
42. 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. I see no reason in this case not to follow that general rule. Since Coast was partially successful in its claim against Ms. Rempel, I find that Coast is entitled to reimbursement of one-half of its CRT fees from Ms. Rempel. This is \$67.50. No party claimed reimbursement of dispute-related expenses.

ORDERS

43. Within 30 days of the date of this order, I order Ms. Rempel to pay Coast a total of \$1,683.54 broken down as follows:
 - a. \$1,610 in damages,
 - b. \$6.04 in pre-judgment COIA interest, and
 - c. \$67.50 in CRT fee.
44. Coast is entitled to post-judgment interest from Ms. Rempel, as applicable.
45. I dismiss Coast's request for an order requiring the return of Duggie.
46. I dismiss Coast's claims against Ms. Domingues.
47. 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.

48. 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.

Richard McAndrew, Tribunal Member