



Civil Resolution Tribunal

Date Issued: March 7, 2022

File: SC-2021-006139

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yoo v. Burrows*, 2022 BCCRT 244

BETWEEN:

SUNG MIN YOO

APPLICANT

AND:

BARBARA BURROWS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This small claims dispute is about dog ownership.
2. The applicant, Sung Min Yoo, hired the respondent, Barbara Burrows, to dog-sit Ms. Yoo's dog Simba for 3 months. Ms. Yoo says she agreed to co-share Simba with Ms. Burrows, starting in June 2021 but Ms. Burrows breached the parties' co-ownership

agreement by refusing to let Ms. Yoo see Simba. Ms. Yoo says the contract is now void because of Ms. Burrows' breach and asks for an order that Ms. Burrows return Simba to Ms. Yoo, which she values at \$1,000.

3. Ms. Burrows denies any co-sharing or co-ownership agreement. She says Ms. Yoo transferred full ownership of Simba to her. Ms. Burrows says she only agreed to let Ms. Yoo see Simba under duress and says this is not in Simba's best interests. She acknowledges that she has not allowed Ms. Yoo to see Simba since June 2021.
4. Both parties 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. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
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.
9. Ms. Burrows submitted late evidence. Ms. Yoo did not object, or respond to the late evidence, although was provided an opportunity to do so. So, I find Ms. Yoo was not prejudiced by the late evidence. Keeping in mind the CRT's mandate, which includes flexibility, I accept the late evidence and have considered it below.

ISSUES

10. The issues in this dispute are:
 - a. Did the parties have a co-sharing or ownership agreement?
 - b. Did Ms. Burrow's refusal to let Ms. Yoo see Simba breach the parties' agreement and, if so, did it void the contract?
 - c. Must Ms. Burrows return Simba to Ms. Yoo?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Ms. Yoo must prove her claim on a balance of probabilities because she is the applicant. I have read all the parties' submissions and weighed the evidence other than the late evidence, but only refer to that which is relevant and necessary to explain my decision.
12. The parties agree that:
 - a. Ms. Yoo hired Ms. Burrows to dog sit Simba, starting on March 13, 2021.
 - b. Ms. Yoo paid Ms. Burrows \$35 per day and provided Simba's food and treats, until sometime in June 2021.
 - c. Simba has lived with Ms. Burrows since March 13, 2021.

- d. Around June 22, 2021 both parties signed a B.C. Pet Registry Ownership Transfer Form naming Ms. Burrows as Simba's new owner.
13. Ms. Yoo adopted Simba as a puppy in February 2020. Sometime in late 2020 or early 2021, Ms. Yoo developed allergies to Simba which she says were related to a temporary medical condition. Ms. Yoo hired Ms. Burrows in March 2021 to dog-sit Simba on a temporary basis. None of this is disputed.

The parties' agreement

14. Based on the parties' text and email communications and Ms. Burrows' Facebook postings in evidence, I find Ms. Yoo and Ms. Burrows discussed posting an advertisement to find Simba a permanent home around March 15, 2021 but that Ms. Yoo decided to keep Simba and so Ms. Burrows removed the ad. The evidence also shows that Ms. Yoo and Ms. Burrows discussed Ms. Burrows taking Simba permanently on June 8 and 9, 2021 but Ms. Yoo asked for more time to consider. I find Ms. Yoo verbally agreed to transfer Simba's ownership to Ms. Burrows on June 19, 2021. To determine what the parties agreed to, I turn to the written evidence.
15. I find the parties entered into a written agreement, consisting of a first page SPCA ownership transfer form, and a second "promises" page created and signed by Ms. Burrows. The SPCA form clearly transfers Simba's ownership from Ms. Yoo to Ms. Burrows and is signed by both parties. On the second page Ms. Burrows agrees that Ms. Yoo can visit Simba up to 3 times per week, for walks or hikes, and full day or overnight excursions 2 times each winter and 2 times each summer. Ms. Burrows also agreed not to move beyond a 45-minute drive from where Ms. Yoo lived.
16. Based on the parties' correspondence, I find Ms. Burrows signed the first page of the agreement (the transfer form) on June 19, 2021 then later inserted Ms. Yoo's personal information into the form. I also find Ms. Burrows originally drafted and signed a second page (the promises page) on June 19, 2021, to allow Ms. Yoo to visit Simba twice per week. However, she amended and signed the promises page on June 21, 2021 to allow for 3 visits per week, after text negotiations with Ms. Yoo.

I find Ms. Yoo signed the transfer form on June 22, 2021. Although there was no space for her to sign the promises page, I find she agreed to the amended promises based on the parties' text messages.

17. Contrary to Ms. Burrows' argument, I find the second page "promises" document is not a gratuitous promise separate from the transfer agreement. Rather, I find the promises page forms part of the parties' agreement. First, although Ms. Burrows signed the transfer document on June 19, 2021, I find the agreement was not fully executed until Ms. Yoo signed her agreement on June 22, 2021. Second, the promises page clearly states that Ms. Burrows agreed to those terms "in consideration of a transfer of ownership of Simba". Third, the parties' text messages show Ms. Yoo relied on Ms. Burrows' promises in signing the transfer form. So, I find Ms. Burrows agreed to allow Ms. Yoo visits with Simba in exchange for Ms. Yoo agreeing to transfer Simba's ownership to Ms. Burrows.
18. Both parties argue they signed the agreement under duress, which would render the agreement unenforceable. Duress is an unfair, excessive, or coercive use of force. To establish duress, the party must prove the other party put her in a position where she had no realistic alternative but to accept the other's offer (see *Dairy Queen Canada Inc. v. M.Y. Sundae*, 2017 BCCA 442). While I accept that both Ms. Yoo and Ms. Burrows cared for Simba and wanted to remain in his life, I find this does not amount to duress.
19. For her part, Ms. Burrows says she would have agreed to anything to avoid losing Simba. However, the parties' messages show Ms. Yoo clearly hired Ms. Burrows as Simba's temporary caregiver in March 2021. So, I find Ms. Burrows was aware from the beginning that she would not be able to keep Simba and that she had no ownership rights over the dog.
20. For her part, Ms. Yoo has not shown how Ms. Burrows forced her to agree to relinquish Simba's ownership, rather than find alternate arrangements for his care. Neither party suggests any coercion, threats, or use of force by the other. So, I find neither party has proven duress.

The Alleged Breach

21. It is undisputed that Ms. Yoo saw Simba on June 24, 2021 and Simba had scheduled surgery on June 25, 2021. Based on the parties' text messages, I find Ms. Burrows kept Ms. Yoo informed of Simba's recovery progress but asked Ms. Yoo not to visit while Simba was recovering, to avoid him jumping up and tearing his stitches, which Ms. Yoo agreed to. On July 1, 2021 Ms. Burrows invited Ms. Yoo to join her and Simba in their walks, which Ms. Yoo undisputedly did not do.
22. The parties' messages show Ms. Yoo asked to visit Simba on July 7, 12 and 13, 2021 but Ms. Burrows declined. In a July 13, 2021 email and a recorded telephone call that day, Ms. Burrows told Ms. Yoo she could not visit Simba for one year, so Simba could adjust to his new home. Ms. Burrows also sent Ms. Yoo articles on re-homing dogs. Although Ms. Yoo referred to the parties' signed agreement, Ms. Burrows refused to let Ms. Yoo see Simba.
23. By not allowing Ms. Yoo to visit or see Simba, I find Ms. Burrows breached the parties' agreement. I find this was a fundamental breach, as Ms. Yoo was deprived of substantially the whole benefit of the contract to her (see *Bhullar v. Dhanani*, 2008 BCSC 1202).
24. I also find Ms. Burrows clearly expressed her intention not to be bound by the agreement by July 13, 2021, based on her email and phone call. At law this is known as repudiation and allows the innocent party to terminate the agreement (see *Kuo v. Kuo*, 2017 BCCA 245). I find Ms. Yoo accepted Ms. Burrows' repudiation and considered the parties' agreement at an end, as she said so in the July 13, 2021 telephone conversation and her future attempts to contact Ms. Burrows.
25. Ms. Burrows says that, after she signed the agreement, she learned it was not good for Simba to continue seeing Ms. Yoo while he adjusted to his new home. The law considers pets as personal property, although there is a legal requirement that animals, and in particular dogs and cats, be treated "humanely" (see *Brown v. Larochelle*, 2017 BCPC 115). While I acknowledge Ms. Burrow's arguments that Ms.

Yoo's visits would confuse and upset Simba as he was adjusting to his new home, Ms. Burrows has not proven Ms. Yoo's visits to Simba would be inhumane. Specifically, Ms. Burrows provided internet articles on re-homing generally, and opinions about original owners visiting re-homed dogs from online question and answer forums.

26. I find whether or not visiting an original owner is inhuman, or even detrimental to a dog is beyond common understanding, and so requires expert evidence (see *Bergen v. Gulliker*, 2015 BCCA 283). I find Ms. Burrows' submitted article and answers are not expert evidence under the CRT rules because they do not set out who wrote them or how they were qualified to provide such an opinion. Further, I find the opinions are not based on the facts at issue in this particular dispute, so I would give them no weight in any event. On balance, I find Ms. Burrows has not proven that Ms. Yoo's visiting Simba would harm him or be inhumane to him. So, I find Ms. Burrows was not justified in refusing to allow Ms. Yoo to visit Simba, as stipulated in the parties' agreement.

Remedy

27. Contrary to Ms. Yoo's argument, Ms. Burrow's actions do not render the parties' agreement void or otherwise undo the contract. This is known at law as rescission *ab initio*, which means the contract is treated as never having existed. Rescission *ab initio* may arise where the contract arose from fraud, misrepresentation, mistake or lack of consent (see *Vanvic Enterprises Ltd. v. Mack* (1985), 1985 CanLII 588 (BC CA), cited in *Wang v. Shi*, 2020 BCSC 1774). I find there is no fraud, misrepresentation or lack of consent here. To the extent Ms. Yoo argues Ms. Burrows never intended to allow her to visit Simba once Ms. Yoo signed the transfer document, I find that does not constitute misrepresentation. In any event, I find such an argument is unsupported by the evidence, given Ms. Burrows invited Ms. Yoo to join her and Simba for walks in a July 1, 2021 text.
28. Although the word "rescission" is sometimes used to describe the consequences of an accepted repudiation, voiding the contract *ab initio* is not what occurs when a

fundamental breach or repudiation is accepted by the innocent party. Rather, the contract ends so that the parties are no longer bound to perform future obligations under the contract, but the already performed obligations remain (see *Karimi v. Gu*, 2016 BCSC 1060, referring to *Guarantee Co. of North America v. Gordon Capital Corp.*, 1999 CanLII 664 (SCC)). In other words, the contract is not considered never to have existed.

29. Whether Ms. Burrows' refusal to let Ms. Yoo see Simba was a fundamental breach or repudiation of the contract, the appropriate remedy for either situation is damages (see *Mantar Holdings Ltd. v. 0858360 B.C. Ltd.*, 2014 BCCA 361).
30. Damages for breach of contract are generally intended to put the innocent party in the position they would have been in if the contract had been carried out as agreed (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319). However, in the case of a repudiatory or fundamental breach, the innocent party may claim damages based on their out-of-pocket losses, rather than the ordinary measure of expected performance, particularly where the innocent party received no substantial benefit under the contract and the breach is substantial (see *Bhullar v. Dhanani*, 2008 BCSC 1202 at paragraphs 41 to 45 and *Karimi v. Gu*, 2016 BCSC 1060 at paragraphs 206 to 211).
31. Ms. Yoo asks that Simba be returned to her. I infer Ms. Yoo asks that damages be assessed based on what she lost (ownership of Simba) rather than what she stood to gain from the parties' agreement. I find no amount of money could put Ms. Yoo in the position she would have been in if the contract had been performed because it was a contract with a significantly emotional purpose. I find Ms. Yoo received no substantial benefit from the parties' agreement and Ms. Burrows' breach was substantial. In the circumstances, I find the fairest remedy is for Ms. Burrows to return Simba to Ms. Yoo.
32. CRTA section 118(1)(b) allows the CRT to order the return of personal property, which I find includes dogs. I order Ms. Burrows to return Simba to Ms. Yoo at a mutually agreeable time and place, within 21 days of the date of this decision.

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. However, Ms. Yoo paid no CRT fees in this dispute, and claimed no dispute-related expenses. So, she is not entitled to any reimbursement.

ORDERS

34. Within 21 days of the date of this order, I order Ms. Burrows to return Simba to Ms. Yoo, at her address on the Dispute Notice unless the parties agree to a different address in writing. Ms. Burrows must provide Ms. Yoo with at least 3 days' written notice of the day and time of delivery.

35. 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 the CRT's final decision.

36. 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.

Sherelle Goodwin, Tribunal Member