



Civil Resolution Tribunal

Date Issued: April 22, 2022

File: SC-2021-007759

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Redford v. Ensign*, 2022 BCCRT 473

B E T W E E N :

CATHRYN REDFORD

APPLICANT

A N D :

SANDRA ENSIGN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about the purchase of a dog named Dusty.
2. The applicant, Cathryn Redford, purchased Dusty from the respondent, Sandra Ensign. Ms. Redford says Mrs. Ensign told her that Dusty was 7/8th Australian Shepard and 1/8th Border Collie, and the parties' contract reflects this. Ms. Redford

says after purchasing Dusty, it became apparent that Dusty is not the breed advertised by Mrs. Ensign or listed in the parties' contract. Ms. Redford claims \$2,000 as a partial refund of Dusty's purchase price.

3. Mrs. Ensign disputes Ms. Redford's claims. She says Dusty is a crossbred dog and she did not guarantee Dusty's size, colour or appearance when purchased.
4. The parties are each 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.

ISSUE

9. The issue in this dispute is whether Mrs. Ensign breached any contractual warranty, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Ms. Redford must prove her claims on a balance of probabilities (meaning “more likely than not”). I have reviewed the parties’ evidence and submissions but refer only to what I find is necessary to provide context for my decision.
11. Ms. Redford purchased Dusty from Mrs. Ensign on June 26, 2021. Ms. Redford says she paid \$2,500 for Dusty. I accept she did, as Mrs. Ensign does not dispute this.
12. Ms. Redford says Mrs. Ensign sold her a dog that was not the breed described on both the advertisement and the parties’ non-breeding and sale contract. The advertisement in evidence stated that the dogs for sale were 7/8th Australian Shepard and 1/8th “B.C.”, which I find means Border Collie, as Mrs. Ensign does not dispute it. Mrs. Ensign says that she never guaranteed Dusty was purebred or registered. I agree. However, Ms. Redford does not allege that she did so. Rather, Ms. Redford alleges that Mrs. Ensign sold her a dog that was 1/2 Australian Shepard, contrary to what was advertised and stated in the parties’ contract. Although she does not use these words, I find Ms. Redford alleges that Mrs. Ensign breached an express warranty in the parties’ contract.
13. Ms. Redford submitted the parties’ 2-page contract in evidence, which Mrs. Ensign signed and emailed to Ms. Redford. Ms. Redford’s contract describes Dusty as a 7/8th Australian Shepard and 1/8th Border Collie puppy. Mrs. Ensign also submitted what she says is a copy of the parties’ contract in evidence. In submissions, Ms. Redford says the contract submitted by Mrs. Ensign is not the original contract the parties’ agreed to. Mrs. Ensign did not address this allegation in her response submissions. Each page of Mrs. Ensign’s 2-page contract was submitted in evidence separately.

Unlike the first page of Ms. Redford's contract, the first page of Mrs. Ensign's contract does not describe Dusty as a 7/8th Australian Shepard and 1/8th Border Collie. Instead, it says only "Australian Shepard/Border Collie". Other wording in the first page of Mrs. Ensign's contract is also slightly different than in Ms. Redford's contract. The second page of Mrs. Ensign's contract is signed by both parties, but is otherwise the same as the second page of Ms. Redford's contract. I also note that in the Dispute Response, Mrs. Ensign said that Ms. Redford signed a contract with her stating that Dusty was 7/8th Australian Shepard and 1/8th Border Collie. Given the above, I accept that Ms. Redford's submitted contract is the contract the parties' agreed to when Ms. Redford purchased Dusty. Therefore, I find the parties' contract included an express warranty that Dusty was 7/8th Australian Shepard and 1/8th Border Collie. Ms. Redford was entitled to rely on this express warranty when she purchased Dusty.

14. Ms. Redford submitted DNA test results in evidence that say Dusty is 50.7% Australian Shepherd, 33.7% Border Collie, and 15.5% Collie. Mrs. Ensign did not dispute this evidence, and I accept that it shows Dusty is not 7/8th Australian Shepard and 1/8th Border Collie, as expressly warranted by Mrs. Ensign in the parties' contract. Therefore, I find Mrs. Ensign breached the express warranty in the parties' contract by providing Ms. Redford with a dog that was not 7/8th Australian Shepard and 1/8th Border Collie. Given that I have found that Mrs. Ensign breached an express warranty in the parties' contract, I find it is not necessary to also consider whether Mrs. Ensign misrepresented Dusty's breed, or whether Ms. Redford reasonably relied on it.
15. Ms. Redford says she cannot return Dusty now because she has bonded with Dusty, and he is part of her family now. As a remedy, Ms. Redford asks for \$2,000 as a partial refund of Dusty's \$2,500 purchase price. She says she only agreed to pay \$2,500 because she thought that Dusty was "close to a purebred dog". She says she would not have agreed to purchase an Australian Shepard mix for \$2,500 and it was not apparent at the time of purchase that Dusty was a "mixed 3 breed dog". It is undisputed that Dusty was not a purebred Australian Shepard. However, given the express warranty that Dusty was 7/8th Australian Shepard, I find it reasonable that Ms. Redford thought she was paying for a dog that was close to a purebred dog. I

find it appropriate to order Mrs. Ensign to reimburse Ms. Redford part of Dusty's purchase price as damages for breach of contract.

16. Ms. Redford says Dusty's appropriate value, based on the range of costs of mixed breed dogs for sale is between \$500 and \$1200. In support of this, she submitted two recent advertisements she says were posted by Mrs. Ensign. One advertisement offers Australian Shepard puppies for \$2,000. The other advertisement offers an "Australian Shepherd with a bit of Border Collie" puppy for \$1,500. Mrs. Ensign did not address these advertisements in her response submissions. I accept that a dog that is 7/8th Australian Shepard will attract a higher price than a dog that is one-half Australian Shepard and one-half other breeds. The two recent advertisements in evidence support this. Given this, I find that Ms. Redford overpaid for Dusty. However, I do not accept that she overpaid by \$2,000. The advertisements submitted in evidence by Ms. Redford support a finding that she overpaid by \$1,000, at most. However, I find that one advertisement for a mixed breed puppy is not sufficient to show that an Australian Shepard/Border Collie puppy's price range is \$500 to \$1,200, as Ms. Redford submits. On a judgment basis, I find Ms. Redford is entitled to a \$500 refund for part of Dusty's purchase price as damages for breach of contract.
17. The *Court Order Interest Act* applies to the CRT. Ms. Redford is entitled to pre-judgment interest on the \$500 refund from June 26, 2021, the date she purchased Dusty the date of this decision. This equals \$1.85.
18. 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. Redford was only partially successful in her claim. Given this, I find Ms. Redford is only entitled to reimbursement of \$62.50 for half of her paid CRT fees. Ms. Redford did not claim any dispute-related expenses and so I award none.

ORDERS

19. Within 30 days of the date of this order, I order Mrs. Ensign to pay Ms. Redford a total of \$564.35, broken down as follows:
 - a. \$500 in damages for breach of contract,
 - b. \$1.85 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
20. Ms. Redford is entitled to post-judgment interest, as applicable.
21. 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.
22. 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.

Leah Volkens, Tribunal Member