



Civil Resolution Tribunal

Date Issued: July 15, 2022

File: SC-2021-008367

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Studer v. Smith dba Whiskey Heath Kennels*, 2022 BCCRT 816

BETWEEN:

DALLAS STUDER

APPLICANT

AND:

LIESA SMITH (Doing Business As Whiskey Heath Kennels)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. The applicant, Dallas Studer, bought a puppy, Bastiaan, from the respondent, Liesa Smith (doing business as Whiskey Heath Kennels). Ms. Studer says Bastiaan suffers from a genetic eye condition and seeks a 50% refund of the dog's purchase price.
2. Ms. Smith says Bastiaan has not been properly diagnosed with any genetic eye condition, and says Ms. Studer breached the parties' contract by failing to have

Bastiaan examined by a vet within 72 hours of receiving him. Ms. Smith denies Ms. Studer is entitled to any refund.

3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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.
6. Section 42 of the CRTA says that 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 do or stop doing something, pay money, or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether Ms. Smith must pay Ms. Studer \$1,414 for an allegedly defective puppy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Ms. Studer must prove her claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
10. Most of the background facts are undisputed. On November 10, 2020 Ms. Studer agreed to purchase Bastiaan and paid a \$500 deposit. Ms. Studer paid the remaining balance for Bastiaan on December 31, 2020, for a total purchase price of \$2,828 including tax. On January 2, 2021, Bastiaan was delivered to Ms. Studer. Sometime in March or April of 2021 Ms. Studer notified Ms. Smith of an eye issue Bastiaan was experiencing.
11. There are two contracts in evidence, both signed by Ms. Studer, only one signed by Ms. Smith. Ms. Studer argues the first, undated, contract applies. Ms. Studer says she signed the second contract (dated December 31, 2020) “thinking it was the same” as she had already signed. The problem for Ms. Studer is that a party who signs a contract is generally bound by its terms, even if the signing party may not have read or understood the contract. There are certain exceptions to this, such as fraud, misrepresentation, or mistake, none of which are alleged here. Another exception is *non est factum*, where a party must show that the document signed is fundamentally different from what the person believed they were signing (see: *Loychuk v. Cougar Mountain Adventures Ltd.*, 2011 BCSC 193 at paragraphs 27 to 28).
12. As Ms. Studer signed the contract, she has the burden to show an exception applies. As noted, Ms. Studer does not allege fraud, misrepresentation, or mistake. Although Ms. Studer says she believed she was just signing the same copy of the contract she

previously signed, I find this is not a case of *non est factum*. First, the initial contract Ms. Studer signed was not complete. There were numerous pieces of information that needed to be filled out, such as the puppy's birthdate, parents, vaccination schedule, even the price and purchaser's information. Second, Ms. Studer knew, in general terms, the contract she signed when Bastiaan was delivered to her would determine the parties' rights as they related to the dog. So, I find Ms. Studer has not shown she should not be bound by the parties' contract, and the terms of the December 31, 2020 contract apply to the parties.

13. The contract states Ms. Smith provides a 72 hour "health guarantee", meaning that Ms. Smith guaranteed the puppy's good health for the first 72 hours in the new owner's possession. It further states that Ms. Smith would "not be responsible for any illness, temperament, or health problems, genetic or otherwise which are diagnosed after the 72 hour guarantee".
14. Here, it is undisputed Ms. Studer did not investigate Bastiaan's eye issue until March or April 2021. Although Ms. Studer says the issue was present from the day she received him, there is no evidence in support of that assertion. As a result, I find Bastiaan's condition was diagnosed after the 72 hour health guarantee, and pursuant to the parties' agreement, Ms. Studer is not entitled to any refund. So, I dismiss Ms. Studer's claims.
15. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. Ms. Studer was unsuccessful, so I dismiss her claim for reimbursement of tribunal fees. Ms. Smith did not pay tribunal fees or claim any dispute-related expenses.

ORDER

16. I order Ms. Studer's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair