



Civil Resolution Tribunal

Date Issued: July 28, 2022

File: SC-2021-007227

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lewall v. Leggett*, 2022 BCCRT 860

BETWEEN:

DIANA LEWALL

APPLICANT

AND:

CRYSTAL LEGGETT

RESPONDENT

AND:

DIANA LEWALL

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Crystal Leggett boarded 2 horses at Diana Lewall's property. In the main claim in this dispute, Ms. Lewall says that Ms. Leggett removed her horses on July 20, 2021, without giving 30 days' notice as the parties' contract required. Ms. Lewall says that Ms. Leggett owes her for board from August 1 to 20, 2021, since Ms. Leggett had already paid for July. Ms. Lewall asks for an order that Ms. Leggett pay \$1,316, the pro-rated cost of board for this time period.
2. Ms. Leggett admits leaving without notice. However, she says that after Ms. Lewall fired Ms. Leggett's trainer, ER, the horses received inadequate care. Ms. Leggett says she had no choice but to remove her horses for their safety. Ms. Leggett asks me to dismiss Ms. Lewall's claim. She also counterclaims for \$1,392.20 for a partial refund of her July 2021 boarding fees, extra boarding fees she paid to another boarder, and compensation because she temporarily lost a leaser. Ms. Lewall denies breaching the parties' contract and asks me to dismiss Ms. Leggett's counterclaim.
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 the dispute's parties that will likely continue after the CRT process has ended.
5. 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.

6. 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.
7. 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 CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Did Ms. Lewall breach the parties' contract, and if so, was it a fundamental breach?
 - b. What remedy is appropriate?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Ms. Lewall as the applicant must prove her claims on a balance of probabilities. Ms. Leggett must prove her counterclaims to the same standard. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. The parties entered into a written contract for both of Ms. Leggett's horses. They are both dated October 13, 2019, and they are identical other than the details about

the individual horses. I note that the contract is between Ms. Leggett and “Oaklands Equestrian”. Ms. Lewall’s name does not appear anywhere in the contract. However, there is no indication that Oaklands Equestrian is an incorporated company. I infer from this that Ms. Lewall does business as Oaklands Equestrian as a sole proprietor.

11. There are 2 terms in the contract relevant to this dispute:

- Oaklands Equestrian would provide “normal and reasonable care and handling” for the horses.
- Either party may terminate the agreement on 30 days’ notice.

12. Shortly after Ms. Leggett began boarding her horses with Ms. Lewall, ER became the horses’ primary trainer and caregiver. Ms. Leggett says that she relied on ER to be at the barn every day to look after the horses.

13. On July 12, 2021, Ms. Lewall sent an email to all boarders advising that she and ER were “parting ways”. Ms. Lewall said that she and ER were “on good terms”. However, later that day during the middle of one of ER’s lessons, Ms. Lewall informed ER that ER had to leave immediately and was no longer allowed on the property.

14. As mentioned above, on July 20, 2021, Ms. Leggett removed her horses without giving Ms. Lewall any notice. She says that the horses were no longer safe, so she was entitled to terminate the contract.

15. While she does not use this language, I find that Ms. Leggett alleges that Ms. Lewall fundamentally breached the parties’ contract by failing to provide reasonable care for the horses. I say this because for most breaches of contract, the contract remains in force and the wronged party can claim any monetary losses arising from the breach. The wronged party can only terminate the contract immediately if there is a fundamental breach. See *Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BC CA).

16. A fundamental breach occurs when a party fails to perform a primary obligation of a contract in a way that deprives the other party of substantially the whole benefit of the contract. Put another way, a fundamental breach is a breach that destroys the whole purpose of the contract and makes further performance impossible. See *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC) and *Bhullar v. Dhanani*, 2008 BCSC 1202.
17. Ms. Leggett makes several allegations about the care her horses received, both before and after July 12, 2021. I find that I only need to address her allegations about what happened after July 12, 2021, because I agree that Ms. Lewall fundamentally breached the parties' contract between July 12 and 20, 2021. My reasons follow.
18. Ms. Leggett says that around the time ER left, the majority of Ms. Lewall's staff quit, leaving staffing levels very low. She says that between July 12 and 20, 2021, she took time off work each day to attend the property and make sure that the horses were being looked after. She says that on several occasions during this time, she found that her horses' water buckets needed to be filled. She also says that they did not get their hay at least twice.
19. Ms. Lewall does not specifically respond to the allegations about the level of care Ms. Leggett's horses received after ER left. She generally says she fulfilled the contract's terms. She also says that Ms. Leggett never brought her concerns to Ms. Lewall's attention. I find that Ms. Leggett had no obligation to tell Ms. Lewall that the horses were not getting enough food and water. Under the contract, it was Ms. Lewall's obligation to ensure that the horses received reasonable care.
20. In the absence of a denial or any contrary evidence, I accept that Ms. Leggett accurately described the level of care her horses received after ER was fired.
21. Ms. Leggett did not provide any expert evidence about whether the care Ms. Lewall provided fell below a reasonable standard. In general, when a party alleges that a professional (such as a horse boarder) acted negligently, there must be expert

evidence about the standard of care within that industry. This is because the standards expected of a person who boards horses is outside the common knowledge of an ordinary person. There are 2 exceptions to this general rule. First, there is no need for expert evidence when the alleged breach relates to something non-technical. Second, there is no need for expert evidence when the conduct is obviously below a reasonable standard. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.

22. I find that it is obvious and non-technical that horses need food and fresh water, and that a horse boarder's responsibilities include attending to these basic needs. I find that it was a fundamental breach of the parties' contract for Ms. Lewall to fail to provide adequate water and to miss feedings, because the entire purpose of the boarding contract was to provide a safe place for the horses to live.
23. Therefore, Ms. Leggett was entitled to terminate the contract when she did and leave without notice. For this reason, I dismiss Ms. Lewall's claim.
24. I turn then to Ms. Leggett's counterclaim. The usual measure of damages in breach of contract cases is the amount of money that would put the innocent party (here, Ms. Leggett) in the same position as if the contract had never been breached. Applying that principle, I find that Ms. Leggett is entitled to a refund of the boarding fees she paid to Ms. Lewall for July 20 to 31, 2021. I find that giving Ms. Leggett a partial refund and her replacement boarding costs would overcompensate her because she would end up with free boarding for several weeks.
25. In her claim, Ms. Lewall says that Ms. Leggett owed her \$1,316 for August 1 to 20 for both horses. I extrapolate from this that the monthly boarding fee for both horses, including GST, was \$2,039.80. I find that the pro-rated boarding fees from July 20 to 31, 2021, are \$789.60. I order Ms. Lewall to pay Ms. Leggett this amount.
26. I find that Ms. Leggett has not proven that she lost a leaser as a result of leaving Ms. Lewall's property. She provided no supporting evidence such as a statement from her leaser. So, I dismiss this aspect of her claim.

27. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Leggett is entitled to pre-judgment interest on the partial refund from July 20, 2021, to the date of this decision. This equals \$4.35.
28. 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. Ms. Lewall was unsuccessful in her claim, so I dismiss her claim for CRT fees. Ms. Leggett was partially successful in her counterclaim, so I find she is entitled to reimbursement of half of her \$75 in CRT fees, which is \$37.50. Neither party claimed any dispute-related expenses.

ORDERS

29. Within 30 days of the date of this order, I order Ms. Lewall to pay Ms. Leggett a total of \$831.45, broken down as follows:
- a. \$789.60 in damages,
 - b. \$4.35 in pre-judgment interest under the COIA, and
 - c. \$37.50 in CRT fees.
30. Ms. Leggett is entitled to post-judgment interest, as applicable.
31. I dismiss the parties' remaining claims.
32. 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. 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