



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Braine v. Langen*, 2022 BCCRT 877

B E T W E E N :

SPENCER BRAINE and BRITTANY EWALD

APPLICANTS

A N D :

ANGELIKA LANGEN, TANJA LANGEN and MOUNTAIN VIEW
ADVENTURES

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The respondent Mountain View Adventures (MVA) is a registered partnership operating a horseback riding business. MVA's 2 partners are the individual respondents, Angelika Langen and Tanja Langen.
2. The applicants, Spencer Braine and Brittany Ewald, owned a horse named West. While in MVA's possession, West suffered a broken leg and had to be put down. The applicants say MVA breached the parties' agreement about West and breached its duty of care. The applicants seek \$5,000 to compensate them for the loss of West.
3. The respondents say West's injury was a tragic accident. They deny breaching the parties' agreement or any duty of care. They say the claim should be dismissed.
4. The applicants are represented by Ms. Ewald. The respondents are represented by Tanja Landry, who I infer from the evidence is Tanja Langen. For the reasons set out below, I dismiss the applicants' claim.

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.

ISSUES

9. The issues in this dispute are:
 - a. Did MVA breach the parties' contract?
 - b. What is the applicable standard of care?
 - c. Did MVA's conduct fall below the standard of care?
 - d. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
11. The undisputed background evidence is that in July 2021, the applicants owned 3 horses between them. Mr. Braine was injured and temporarily unable to ride West, so the applicants sought a place where West could stay and be ridden temporarily. Ms. Ewald reached out to MVA through Tanja Langen. MVA was interested in having West stay and work on its ranch.

12. Ms. Ewald drafted a “Free Lease Contract” for West. The contract described West as an Appaloosa 11-year-old gelding, which means a castrated male horse. Under the contract, MVA was to use West for “trail rides, possible gymkannahs and fun shows.” MVA was responsible for “any medical, dental, ferrier, or vet bills/problems that arise.”
13. The contract was signed by Ms. Ewald and Angelika Langen on July 25, 2021. I find from the text of the agreement that the contract was objectively intended to bind MVA. Section 7 of the *Partnership Act* says that a partner is an agent of the firm and the other partners, and binds the firm and the other partners when carrying on business in the usual way. So, I find all the respondents were bound by the agreement. Given that I dismiss the claim, nothing turns on this.
14. Ms. Ewald delivered West to MVA at the time the contract was signed. Two days later, on July 27, 2021, Angelika Langen called Ms. Ewald to report that West had a broken leg. Nobody directly observed how West’s leg was broken. Ms. Ewald rushed to MVA’s ranch, along with Mr. Braine. There, they applicants confirmed that West’s leg was broken and made the decision to put him down, which all parties agree was the humane decision.
15. Over the next few days, the parties negotiated about compensation but were unable to reach an agreement.

Did MVA breach the parties’ contract?

16. The applicants frame their claim, in part, as a breach of contract claim. I agree with the respondents that the contract did not address what would happen in the event of West’s death. I also agree that the contract contains no stipulations for West’s care.
17. The contract said MVA was responsible for any medical bills or problems that arose while West was under MVA’s care. The applicants argue that death is a medical problem. However, the “medical problem” clause in the contract is about costs arising from medical problems, not compensation for medical problems. Assuming this clause applied to West’s death, I find it would mean MVA was responsible for costs

such as burial or disposal of the body. There is no dispute that MVA paid to have West buried on their property.

18. I find there was no breach of contract except possibly for an implied term that MVA would take reasonable care of West. Whether MVA breached that term is essentially the same question as whether MVA failed to meet the applicable standard of care, which I address below.

What is the applicable standard of care?

19. Although Ms. Ewald does not use this exact term in her submissions, I find the law of bailment applies here. A bailment is a temporary transfer of property, where the personal property of one person, a “bailor”, is handed over to another person, a “bailee”. Although Ms. Ewald called her contract a “lease”, a lease is a contract of bailment (see *Smith Brothers Contracting Ltd. (Re) (Trustee of)*, 1998 CanLII 3844 (BC SC)).
20. As bailors, the applicants must only prove that the “goods” (in this case, West) were damaged, lost or destroyed while in the bailee’s (MVA’s) custody. That is undisputed here, so the onus shifts to MVA to disprove the presumption that their negligence caused the loss. This is because only MVA can know what actually happened to West.
21. The bailee’s standard of care that has emerged from BC court decisions is “reasonable care in all the circumstances.” A bailment for the sole benefit of the bailee may require the bailee to meet a heightened degree of care (sometimes called slight negligence). A bailment for the sole benefit of the bailor may require the bailee to meet a lowered degree of care (sometimes called gross negligence). Where there is a mutual benefit flowing between the parties, the degree of care is ordinary negligence (see Robert H Tanha, *The Law of Bailment*, (Toronto: Irwin Law, 2019) at page 216.) Here, I find MVA benefited from having West to use in its business, and the applicants equally benefited from having West fed, cared for, and exercised. So, I find the applicable standard of care is that of a reasonably prudent horse owner.

Did MVA meet the standard of care?

22. The applicants primarily argue that MVA did not meet the standard of care when it placed West into an unfamiliar pen with an unfamiliar herd of horses, and without giving him time to get familiar with his surroundings. It is undisputed that upon receiving West, MVA immediately introduced him to its herd of approximately 20 horses.
23. The applicants say, and the respondents do not dispute, that the herd included mares in heat. However, the significance of the presence of mares in heat was not explained.
24. The applicants also say West did not have steel shoes, while all the other horses in the herd did. The respondents provided evidence that not all horses had steel shoes, which I accept. However, the significance of steel shoes was not explained.
25. Ms. Ewald says when she attended on July 27, 2021, she observed scuffs and scrapes all over West's body from being bitten, kicked, and picked on by the other horses. There are no photos, but the respondents do not dispute that there were scuffs and scrapes. However, it is also undisputed that Angelika Langen advised Ms. Ewald to expect West to get "some scrapes and scratches". I find the applicants accepted that West would get some scrapes and scratches. I also find the scuffs and scratches are not evidence that MVA did not appropriately care for West.
26. The respondents say MVA regularly introduces new horses at its ranch. They say when a new horse is introduced, all the ranch volunteers come out to watch and ensure the horses' safety. The respondents say this usual procedure happened with West. They say the horses were excited and there was some running and nipping as West found his place in the hierarchy. This is natural behaviour, the respondents say, and will happen any time a horse enters an established group. They say MVA volunteers observed West and the herd until the excitement settled down.

27. Tanja Langen a detailed account of the rest of West's time at MVA. The applicants did not challenge this evidence and it was consistent with the other witnesses' evidence, so I accept it as an accurate account of West's 2 days on the ranch. I find Tanja Langen and others made multiple visual and physical checks on West each day. I accept that West appeared to be settling into the herd.
28. According to Tanja Langen, on July 27, at around 4 pm, she and 3 others took a break for dinner. They were eating on a deck directly overlooking the horse field. Tanja Langen watched West and a few other horses disappear over a small hill. She says this is normal horse behaviour and she did not think anything of it. However, when West returned into view, he was not using his right front leg. Tanja Langen and others ran to West and called Angelika Langen, who then called Ms.
29. Two of the three others who ate dinner with Tanja Langen provided written statements. CB said they have volunteered with MVA since 2009. CB said when West was released into the pasture on July 25, the other horses were curious and there was some chasing, but they quickly settled down and largely left West alone. Over the next few days, various volunteers and family members checked on West, who seemed to be finding his place in the hierarchy of the herd.
30. ES has been riding at MVA for 25 years and has seen many new horses introduced to the herd. ES says MVA introduced West the same way they introduced other new horses and treated West the same way they treat their own horses. On July 26, ES observed West grazing with some of the older retired horses and younger horses that are lower in standing in the herd. They all looked relaxed and content to be munching on grass. She said the next time she saw West was July 27, in the evening. She and Tanja Langen were watching the horses while they visited, and they both commented on how it was great to see that West was making some friends and starting to work his way into the herd and graze with the others. That was shortly before West's injury happened.

31. Based on this evidence, I find West appeared to be finding his place in the herd. I find the respondents had no reason to think West was in danger. I also find MVA introduced West into the herd as they did with other horses. A bailee's treatment of its own similar goods can be a relevant consideration where the bailor is aware of and implicitly or explicitly accepts the bailee's practices (see *MacDonald v. Pro-Line Trailers Ltd.*, 1996 CanLII 18197 (MB QB)). Ms. Ewald generally denies knowing that West would be put in with the herd right away. At the same time, there is no indication that Ms. Ewald advised MVA that they needed to take any special precautions when introducing West to the herd. Overall, I find the fact that MVA integrated West the same way they did with their own horses and other horses, suggests MVA acted reasonably.
32. Ms. Ewald provided screenshots of websites addressing how to integrate a new horse with an established herd. I give these screenshots little weight given the authors and their credentials are not provided. However, I find on the whole that the websites were equivocal, and provided about as much support for MVA's method of introduction as they did a more gradual introduction.
33. A bailee may also avoid liability by showing that any failure to take reasonable care did not contribute to the bailor's loss. The respondents' unchallenged evidence is that horses occasionally jostle for social standing even after the social order is established. West's broken leg was undisputedly a tragic accident. Bailees are not required to take every possible precaution to avoid accidents. I am not satisfied that a more gradual introduction would have prevented West's broken leg. Had the injury occurred immediately upon introduction, I might have reached a different conclusion.
34. For the above reasons, I find the respondents have shown that they exercised reasonable care in the circumstances. The result is that I dismiss the applicants' claim.

35. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. The respondents were successful but did not pay CRT fees or claim expenses. I dismiss the applicants' claim for reimbursement of CRT fees.

ORDER

36. I dismiss the applicants' claims and this dispute.

Micah Carmody, Tribunal Member