



# Civil Resolution Tribunal

Date Issued: August 4, 2022

File: SC-2022-001020

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sethna v. Woof! Dog Shoppe Inc.*, 2022 BCCRT 887

B E T W E E N :

XERXES SETHNA

**APPLICANT**

A N D :

WOOF! DOG SHOPPE INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. Xerxes Sethna took his dog, Tara, to Woof! Dog Shoppe Inc. (Woof) to be groomed. Mr. Sethna alleges that Woof's groomer burnt Tara so badly that she required significant veterinary care. He says that Woof refunded the grooming fee, but this

was not enough to cover his costs. He claims \$2,600 for his vet bills. Mr. Sethna is self-represented.

2. Woof says that while its groomer bathed Tara, a “blackness” began forming under the skin. Woof says that Tara suffered from several chronic conditions, which made her susceptible to skin injuries. Woof admits to refunding the grooming cost as a customer service gesture but denies causing any harm. Woof also relies on a waiver that Mr. Sethna signed. Woof is represented by its owner.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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 sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.
5. 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.

6. 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.
7. I note that Mr. Sethna referred to an admission Woof's owner made during the facilitation phase of this dispute. I find that Mr. Sethna breached CRT rule 1.11, which prohibits parties from disclosing settlement discussions without all parties' consent. I therefore disregarded the alleged admission in making this decision.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did Mr. Sethna waive his right to claim against Woof for the injury?
  - b. Did Woof negligently cause Tara's injury?
  - c. If so, what are Mr. Sethna's damages?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, Mr. Sethna as the applicant must prove his claims on a balance of probabilities, which means "more likely than not". While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. Mr. Sethna brought Tara to Woof to be groomed on June 22, 2021. According to Woof, during the grooming process a black mark developed on Tara's left torso skin. Woof says that it stopped the grooming, called Mr. Sethna to pick Tara up, and suggested that he take Tara to the vet.
11. As it turned out, Tara had a vet appointment later that day at the Cypress Street Animal Hospital (CSAH) with Dr. Bhatia. The notes from that visit are in evidence and there is no mention of any skin injury or discolouration. However, Mr. Sethna

says that he asked about the black mark and Dr. Bhatia told him to monitor it. Mr. Sethna provided a photo from the day of the grooming. From this photo, it is possible to see slight dark discoloration on Tara's skin, although it is obscured somewhat by her short, white fur. It appears similar to a bruise.

12. In a June 24, 2021 text message exchange, Woof asked about Tara's health. Mr. Sethna said that the vet told him it could be clipper burn. Woof said that it was definitely not clipper burn. The parties then scheduled another appointment for June 29 to continue the grooming. At that appointment, Woof said that its groomer observed that the skin was beginning to break, but the parties went through with the grooming session.
13. Mr. Sethna provided a photo dated July 1, 2022, which shows 3 significant areas along Tara's left torso where the skin was breaking and peeling into open sores.
14. Mr. Sethna took Tara to CSAH again on July 2, 2021, to assess the skin issue. A different vet, Dr. Martinez, saw Tara. In their electronic clinical notes, Dr. Martinez said that it looked like a "possible" burn from hot water, a clipper, or hot dryer. In their handwritten notes, Dr. Martinez assessed Tara as having a "heat burn (clipper, hot hair, hot water...), endocrine (cushing)", which I find suggests that they diagnosed Tara with Cushing disease, an issue I return to below. The photos and notes indicate that the area along Tara's left side was so badly injured and infected that a 15 by 20 centimeter area of skin peeled away, leaving a Tara's skin "severely raw", bleeding, and inflamed. Dr. Martinez recommended a skin graft, but Mr. Sethna chose conservative treatment with manuka honey, regular bandage changes, antibiotics, and pain medication.
15. On July 3, 2021, Woof refunded the \$76.93 Mr. Sethna paid for the initial grooming appointment. Woof says this was a customer service gesture and not an admission of liability, which I accept.
16. Mr. Sethna took Tara to CSAH again on July 4, 2021. A third vet, Dr. Clark, assessed Tara this time. Dr. Clark said that the injuries were "consistent with

thermal injury”. Dr. Clark added that they “cannot think of any other cause consistent with injuries”. By July 6, 2021, the affected area had grown to 20 by 20 centimeters.

17. Mr. Sethna continued to take Tara to the vet every 2 to 4 days throughout July and August for bandage changes, wound cleaning, honey application, and monitoring. Her condition gradually improved as the skin healed and grew back. The last bandage change was on September 4, 2021. The photo from that visit showed significant scar tissue but no visible open wound. On September 10, 2021, Dr. Bhatia and Dr. Martinez both inspected the area and determined that no further treatment was required.

***Did Mr. Sethna waive his right to claim against Woof for the injury?***

18. Mr. Sethna first brought Tara to Woof for grooming in July 2020. On July 15, 2020, he signed a “Release and Hold Harmless Agreement”, which included a release and other terms about cancellation, additional costs, and Woof’s practices. The parties agree that this agreement applied to the June 22, 2021 grooming session.
19. Relevant to this dispute, the agreement informed Mr. Sethna that “grooming can expose a hidden medical problem or aggravate a current one”. Mr. Sethna agreed to “save and hold harmless Woof from any damage, loss or claims arising from a pre-existing condition of the animal either known or unknown”.
20. Woof says that this release is a full defence to Mr. Sethna’s claim because Tara’s injury was caused, at least in part, by a pre-existing endocrine condition. I agree that the release would prevent Mr. Sethna from bringing a claim against Woof if Tara had a pre-existing condition that caused or contributed to the injury, even if Woof’s grooming service also contributed to the injury. I see no other reasonable interpretation of the release. However, the parties disagree about whether Tara had a pre-existing condition that contributed to Tara’s injury.

21. I find that determining the cause (or causes) of Tara's injury must be proven with expert evidence. This is because medical causation is a technical matter outside the common knowledge of an ordinary person. See *Bergen v. Guliker*, 2015 BCCA 283.
22. There are 3 reports from veterinary doctors in evidence. None of them provided their qualifications, but there is no dispute that all 3 vets are qualified to provide expert evidence about Tara's injury. I note that Mr. Sethna says that Dr. Kramer's report is not admissible but does not say why. I accept the 3 reports as expert evidence.
23. CSAH provided a report dated March 25, 2022. It purports to be the opinion of all 3 vets who treated Tara but is only signed by Dr. Bhatia. I accept it as expert evidence from Dr. Bhatia only. In the brief report, Dr. Bhatia said that the wound was a "possible" burn from hot water or a blow dryer and was "not related" to "hormone imbalance/Cushing disease/hypothyroidism". Dr. Bhatia does not say explicitly whether or not Tara had a hormone imbalance, Cushing disease, or hypothyroidism.
24. On October 22, 2021, Mr. Sethna took Tara to a veterinary dermatologist, Jangi Bajwa. Dr. Bajwa said that Tara's left torso had an appearance "suggestive of thermal injury burn related healing" but later said that they were "unable to confirm or deny that Tara's skin changes" were from a burn. Dr. Bajwa also discussed the possibility of an underlying hormonal condition. Dr. Bajwa concluded that Tara likely had hypothyroidism, which is associated with poor skin health and increased risk of skin infections. Dr. Bajwa did not say anything specific about a link between hypothyroidism and Tara's injury.
25. Woof hired Dr. Kramer of the Vancouver Animal Wellness Hospital to provide an opinion based on a review of Tara's clinical records. Dr. Kramer provided a report dated September 5, 2021. Dr. Kramer said that Cushing disease, which is an endocrine disorder, causes skin to become extremely fragile and susceptible to "deep infection" from even minor injuries. While Dr. Kramer did not make a definitive diagnosis, they said that Tara likely had an underlying endocrine disease that made

her skin “very susceptible to even minor injuries”. Dr. Kramer said that it was impossible to know what caused the injury that ultimately developed into the large and severely infected wound.

26. I find based on these reports that Tara had pre-existing endocrine medical conditions. Dr. Bajwa said that Tara had hypothyroidism. Dr. Kramer said that she also had Cushing disease, which is consistent with Dr. Martinez’s handwritten notes.
27. Did these endocrine conditions contribute to Tara’s injury? I find that they likely did. I place little weight on Dr. Bhatia’s report on this point. Dr. Bhatia does not explain how or why they categorically ruled out that an endocrine disease contributed to the injury’s severity. This is somewhat puzzling given Dr. Martinez’s initial assessment that the injury was caused by a heat burn and an endocrine condition. Dr. Bhatia also does not explain how an injury that initially did not warrant any treatment at all developed into a serious wound. I ultimately find Dr. Bhatia’s report unhelpful because of its lack of detail and explanation.
28. Rather, and contrary to Mr. Sethna’s submissions, I find that both Dr. Kramer’s and Dr. Bajwa’s reports establish a likely link between Tara’s endocrine conditions and her injury. Both Cushing disease and hypothyroidism make the skin susceptible to serious skin infections from minor injuries. This appears to be exactly what happened to Tara. She initially presented with a minor, even superficial, injury. Ten days later, it was so severely infected that she lost most of the skin on the left side of her body. I find that the most likely explanation for this progression is that Tara’s endocrine conditions contributed to her injuries.
29. Given that Woof admits that the black mark began forming during grooming, I find that the grooming was the likely cause of the initial injury that became infected. It is unclear whether this initial injury was a burn, a bump, or something else. It is also unclear whether Woof’s groomer did anything negligent to cause the injury. Ultimately, I find that these facts are not important. I find that Tara’s underlying

endocrine disease aggravated the initial injury. In other words, I find that Tara's pre-existing medical condition contributed to how severe her injury became.

30. With that, I find that the release prevents Mr. Sethna from claiming compensation for his vet expenses. He waived his right to claim against Woof for Tara's injury because it arose from a pre-existing medical condition. On that basis, I dismiss Mr. Sethna's claim.
31. Having reached that conclusion, I find it unnecessary to consider the parties' other arguments.
32. 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. Mr. Sethna was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. Woof did not claim any dispute-related expenses and did not pay any CRT fees.

## **ORDER**

33. I dismiss Mr. Sethna's claims, and this dispute.

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Eric Regehr, Tribunal Member