



Civil Resolution Tribunal

Date Issued: August 30, 2022

Date of Amended Decision: September 1, 2022

File: SC-2021-008289

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hunter v. Adams*, 2022 BCCRT 969

B E T W E E N :

LLOYD HUNTER [i]

APPLICANT

A N D :

JESSE ADAMS and RAIN COAST DOG RESCUE SOCIETY

RESPONDENTS

AMENDED REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about dog possession. The applicant, Lloyd Hunter, adopted a dog, Luna, from the respondent, Rain Coast Dog Rescue Society (Rain Coast). The respondent Jesse Adams is Rain Coast's executive director. The respondents removed Luna from Mr. Hunter without his permission. In the Dispute Notice, Mr. Hunter claims the dog's return, which he values at \$400.

2. The respondents deny Mr. Hunter's claim. They say that they were entitled to remove Luna from Mr. Hunter's care because he had allegedly breached the adoption agreement.
3. Mr. Hunter is self-represented. Mr. Adams represented himself and Rain Coast, as its executive director.

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. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
6. 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.

Late evidence

7. The respondents submitted evidence late, consisting of online news articles, a video and a photograph. The video and photograph both appear to show 2 individuals

handling a dog, which I infer is Luna. I find that this evidence is relevant and Mr. Hunter was not prejudiced by this late evidence because he had an opportunity to respond. So, I have allowed the respondents' late evidence and I have considered it in my decision.

Additional remedies

8. In his submissions, Mr. Hunter requests additional remedies including a request for an order requiring the respondents to disclose Luna's location. I find that this is request for injunctive relief, meaning an order to do something. With limited exceptions that do not apply here, I have no jurisdiction under CRTA section 118 to provide the requested injunctive relief. So, I decline to grant this remedy and will not address it below.
9. Mr. Hunter also requests punitive damages in his submissions, which was not requested in the Dispute Notice. Though the CRTA and CRT rules permit applicants to request to amend the Dispute Notice to add new claims or remedies, Mr. Hunter did not do so. I find the purpose of a Dispute Notice is to define the issues and provide notice to the respondents of the claims against them. CRT rule 1.17 says that the Dispute Notice will only be amended after the dispute has entered the CRT decision process where exceptional circumstances apply. I find no exceptional circumstances here that would justify adding a new remedy request at this late stage in the CRT process. I also find it would undermine the purpose of the CRT's mandatory facilitation process to request additional remedies, without notice, after facilitation has ended: see the non-binding but persuasive decision *Graham v. The Owners, Strata Plan LMS 516*, 2021 BCCRT 1322. Therefore, I decline to address Mr. Hunter's new request for punitive damages.

ISSUE

10. The issue in this dispute is whether the respondents breached the pet adoption agreement by taking Luna.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant, Mr. Hunter must prove his claim on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. Mr. Hunter signed a pet adoption agreement with Rain Coast on July 1, 2021 and he received possession of Luna. The adoption agreement says that Rain Coast may immediately remove and take possession of Luna if it is neglected or abused.
13. The British Columbia Supreme Court considered pet adoption agreements in *Vallance v. Naaykens*, 2001 BCSC 656. The court held that pets are considered personal property that could be transferred with an adoption agreement. The court held such adoption agreements could be used by a humane society to protect the pet’s interest by keeping a limited property interest in the pet, or the right to regain possession, if the new owner violates the adoption agreement.
14. I find that the parties have entered a similar adoption agreement here and I find that Rain Coast was entitled under the contract to Luna’s return if Luna was neglected or abused. However, even if Luna had been neglected or abused, there is a further issue as to whether the respondents were entitled to unilaterally seize Luna from Mr. Hunter without a court or tribunal order. Generally, a party must obtain a court or tribunal order to recover property without permission under a contract.
15. It is undisputed that the respondents took Luna from Mr. Hunter’s home on October 10, 2021 without his permission. Rain Coast says that it was legally entitled to seize Luna because an individual, S.S., resided in Mr. Hunter’s home and S.S. allegedly has a lengthy history of alleged animal abuse. I discuss this below.
16. Under the common law, employers and principals are generally responsible for their employees’ and agents’ actions if those actions are sufficiently connected to the employment or agency relationship. This is called vicarious liability. Here, I find that Mr. Adams’ actions of seizing of Luna is sufficiently connected to his role as Rain

Coast's executive director. So, if Mr. Adams improperly seized Luna, then Rain Coast is responsible for this action, not Mr. Adams. So, I dismiss Mr. Hunter's the claim Mr. Adams. This leaves Mr. Hunter's claim against Rain Coast.

17. Rain Coast provided multiple online news articles saying that the British Columbia Society for the Prevention of Cruelty to Animals (BCSPCA) has seized numerous animals from S.S. under *The Prevention of Cruelty to Animals Act*. Specifically, the online news articles say that the BCSPA seized the following:
 - a. 68 animals from S.S. in June 2012.
 - b. 88 animals from S.S. in September 2016.
 - c. 17 animals from S.S. in March 2017.
 - d. 20 animals from S.S. in January 2020.
18. The respondents also say that a court order bans S.S. from owning animals. However, they did not provide a copy of this alleged order. In the absence of such evidence, I find that the respondents have not proved that S.S. was prohibited by court order from possessing or owning animals.
19. On balance, I find that the respondents have not proved that Mr. Hunter breached the adoption agreement by letting S.S. interact with Luna. Based on the online news articles, I am satisfied that the BCSPA has previously seized animals from S.S. However, there is no evidence before me showing that S.S. abused or neglected Luna. Similarly, the respondents did not provide evidence or submissions showing that Mr. Hunter abused or neglected Luna himself. Further, the respondents have not provided evidence showing that Luna was suffering from any health issues when they removed it. Based on the above, I find that the evidence does not show that Luna was neglected or abused. Further, even if Luna had been abused or neglected, I find that Rain Coast was not entitled to remove Luna from Mr. Hunter without his permission without a court or tribunal order authorizing it to do so.

20. Rain Coast also argues that the adoption contract was invalid because Mr. Hunter allegedly misrepresented his adoption plans. Rain Coast alleges that Mr. Hunter said that he was adopting Luna for himself, but he was allegedly actually adopting Luna for S.S. I find that Rain Coast is essentially arguing that Mr. Hunter committed a fraudulent misrepresentation, which is an intentionally false statement made to convince a party to enter a contract (*Ban v. Keleher*, 2017 BCSC 1132 (CanLII).)
21. In contrast, Mr. Hunter says that he provided truthful information during the adoption process. In the absence of additional evidence, I find Mr. Hunter's denial to be equally likely as Rain Coast's submissions. So, I find Rain Coast's allegation of fraudulent misrepresentation to be unproven. Further, even if Rain Coast had established this, the remedy for fraudulent misrepresentation is generally a court or tribunal order cancelling the contract, not a unilateral seizure without an order.
22. Based on the above, I find that Rain Coast was not entitled to seize Luna from Mr. Hunter. Further, by doing so, I find that Rain Coast breached the adoption agreement.
23. So, what remedy should I order?
24. Mr. Hunter asks for an order requiring the respondents to return Luna, which is called specific performance. This is a form of injunctive relief that is permitted by CRTA section 118 as an order for the return of personal property. This remedy will only be granted where monetary compensation is inadequate, generally because the subject matter of the contract is unique (*Semelhago v. Paramadevan*, 1996 CanLII 209 (SCC)). In *Vallance*, cited above, the court stated that specific performance is a discretionary remedy which may be refused where it would be unfair to third parties. The court in *Vallance* found that the subject dog was unique property but the court did not order specific performance because the dog had been transferred to a third party.
25. Similarly, here Rain Coast says that Luna has been placed with a new adoptive family, who is not a party in this dispute. Since there is no evidence refuting this submission, I accept it as accurate and find that Rain Coast does not have possession

of Luna. I find that I do not have jurisdiction to order the delivery of a pet possessed by a non-party. So, I find that it is not possible order Rain Coast to return Luna to Mr. Hunter.

26. Though the Dispute Notice requests Luna's return, Mr. Hunter values Luna at \$400. Based on the CRT's mandate to resolve disputes in a flexible manner under CRTA section 2(a), I find Mr. Hunter's \$400 valuation in the Dispute Notice is essentially a request for compensation in that amount.
27. There is no evidence supporting Luna's value and it is not clear how Mr. Hunter arrived at the claimed value. However, as Rain Coast does not dispute the claimed value, and there is nothing before me suggesting that is unreasonable or excessive, I find that \$400 is a fair estimate of Luna's value. Based on the above, I find that Rain Coast owes Mr. Hunter damages of \$400 for breaching the adoption agreement.

CRT fees, expenses and interest

28. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Hunter is entitled to pre-judgment interest from Rain Coast on the \$400 damages from the date it removed Luna on October 10, 2021, to the date of this decision. This equals \$2.42.
29. 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. I see no reason in this case not to follow that general rule. Since Mr. Hunter is generally successful in this dispute, I find that he is entitled to reimbursement of his CRT fees, being \$125. None of the parties claimed dispute-related expenses, so none are ordered.

ORDERS

30. Within 30 days of the date of this order, I order Rain Coast to pay Mr. Hunter a total of \$527.42, broken down as follows:
 - a. \$400 as damages,

- b. \$2.42 in pre-judgment COIA interest, and
- c. \$125 in CRT fees.

31. Mr. Hunter is entitled to post-judgment interest against Rain Coast, as applicable.

32. I dismiss Mr. Hunter's claims against Mr. Adams.

33. 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

Richard McAndrew, Tribunal Member

[i] Amended to correct a typographical error, under section 64(a) of the CRTA.