



# Civil Resolution Tribunal

Date Issued: August 31, 2022

File: SC-2022-001122

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Geary v. Lewis*, 2022 BCCRT 973

B E T W E E N :

DEREK GEARY

**APPLICANT**

A N D :

GAIL LEWIS

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. The applicant, Derek Geary, bought a puppy named Winston from the respondent, Gail Lewis, for \$3,500. Mr. Geary says that Winston died from a genetic disorder when he was 11 months old. Mr. Geary says Mrs. Lewis offered to provide him with either a full refund of Winston's purchase price, or a replacement puppy from a future litter. He says she later refused to provide him with a new puppy, and she has paid

him only \$1,500 so far. Mr. Geary seeks a total of \$4,759.75, which includes \$2,000 for the outstanding purchase price refund, \$1,759.75 for Winston's medical expenses, and \$1,000 in "moral damages".

2. Mrs. Lewis says she initially made the offer for a full refund or a new puppy on the understanding that Winston died from a genetic disorder. She says she later changed her mind because she learned Winston was not diagnosed with any genetic disorder. Mrs. Lewis says she paid Mr. Geary \$1,500 as a goodwill gesture because she felt badly about his loss, but she says that she owes him no further compensation.
3. Mr. Geary is self-represented. Mrs. Lewis is represented by a family member, who is not a lawyer.

## **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. 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.
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 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 Mrs. Lewis breached the parties' agreement such that she must pay Mr. Geary the claimed \$4,759.75?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicant Mr. Geary must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all of the parties' evidence and arguments, but I refer only to what is necessary to explain my decision.
10. The background facts are generally undisputed. Mrs. Lewis breeds Yorkshire Terrier puppies in her home, and a litter was born on September 9, 2020. Mr. Geary bought the last puppy from that litter on November 7, 2020 for \$3,500 and named him Winston. The parties did not have a written contract for Winston's purchase and there is no indication that Mrs. Lewis gave any express warranties or guarantees about Winston's health.
11. The veterinarian records in evidence show that Winston experienced sudden difficulty walking on about April 29, 2021. The records indicate that Winston was diagnosed with a patellar luxation (kneecap dislocation), but the severity of the condition was undetermined. On June 2, 2021, Winston's hips were x-rayed, which confirmed bilateral grade 2 medial patellar luxation. The records also noted suspected Legg-Calve-Perthes disease (degeneration in the hind leg bones).

12. On July 26, 2021, Mr. Geary noticed that Winston was very wobbly and could barely walk. Mr. Geary took Winston to a veterinarian, Dr. Michael Lavroff, whose physical examination revealed Winston's vision was "not normal", and he seemed ataxic and unsteady on his front and back legs. The records note that Dr. Lavroff queried several possible causes of the symptoms to be investigated, including a neurological problem, a liver problem, an inflammatory condition, or a congenital defect involving the central nervous system or vertebrae.
13. After conducting a blood panel and liver test, Dr. Lavroff diagnosed Winston with a liver condition and prescribed medication on July 29, 2021. More on the liver condition's cause below. Unfortunately, Winston's condition did not improve, and he was euthanized on August 11, 2021.
14. It is undisputed that shortly before Mr. Geary euthanized Winston, Mr. Geary's father, BG, visited Mrs. Lewis to advise her that Winston had a genetic disorder that had caused liver failure. Mrs. Lewis and her husband told BG they would replace the puppy or refund Winston's purchase price. It is also undisputed that Mr. Geary spoke to Mrs. Lewis on August 14, 2021, and she confirmed her offer. Mr. Geary told her that he would accept a replacement puppy, as Mrs. Lewis anticipated a new litter would be born in November.
15. The evidence shows Mr. Geary texted Mrs. Lewis on November 8, 2021 to check that she was still expecting a litter, and Mrs. Lewis responded that it should be born around November 18. Mrs. Lewis confirmed that she would keep him posted. It is undisputed that on November 25, 2021, Mrs. Lewis called Mr. Geary to advise that she had changed her mind and would not be providing him with a new puppy. Mrs. Lewis ultimately offered Mr. Geary \$1,500, which Mr. Geary accepted.
16. Mr. Geary then sent Mrs. Lewis a November 29, 2021 letter, demanding an additional \$2,000 for the full refund she had previously agreed to. The letter stated that if she failed to pay that amount, Mr. Geary would seek additional compensation for Winston's medical expenses and "moral damages". Mrs. Lewis responded in a

December 4, 2021 letter, in which she stated that Mr. Geary had accepted the \$1,500 offered, so no further discussion was warranted.

17. Essentially, Mr. Geary argues that Mrs. Lewis breached their agreement to provide a refund or a replacement puppy. He also argues that Mrs. Lewis sold him a defective puppy with numerous health issues, so it was not reasonably durable as required under the *Sale of Goods Act* (SGA).
18. Mrs. Lewis says she changed her mind about giving Mr. Geary a replacement puppy because Dr. Lavroff told her that he had not determined a definitive cause of Winston's liver failure. Mrs. Lewis argues that Mr. Geary and BG misrepresented that Winston had a genetic condition, which she had relied on in making the offer for the replacement puppy or a full refund. Mrs. Lewis says due to the lack of proof of any genetic disorder, she was entitled to rescind her offer.
19. The parties provided extensive evidence and submissions about whether Winston's death resulted from a genetic condition or some other cause. Mr. Geary used the CRT's expert evidence form to request from Dr. Lavroff, his opinion about Winston's medical condition. Dr. Lavroff stated that Winston's symptoms were likely secondary to a liver condition, and while the cause was not fully determined, it was most likely due to a "stunted liver" that he described as a congenital condition.
20. However, I find it is unnecessary to determine whether Mr. Geary misrepresented Winston's condition or Mrs. Lewis breached the parties' agreement to compensate Mr. Geary with money or a new puppy. This is because I find the parties entered into a binding settlement agreement on November 25, 2021. My reasons follow.
21. Mr. Geary says that when Mrs. Lewis called to tell him she would not be giving him a puppy, she initially said she would not be offering any monetary compensation either. However, after some discussion, he says she offered him \$1,750, which he said he would think about. Mr. Geary says he later called Mrs. Lewis back and she reduced her offer to \$1,500. He says she refused to offer anything more, so he accepted it

“without signing a full and final release”. Mrs. Lewis agrees that they went “back and forth” about the amount, and Mr. Geary ultimately agreed to accept \$1,500.

22. A settlement agreement is a contract where parties in a dispute agree to a resolution. For a binding settlement agreement to exist, there must be an offer and acceptance of that offer, without qualification. The agreement does not have to be signed, or even written, to be enforceable. Whether the parties had a consensus, or a “meeting of the minds”, on the contract’s essential terms is determined from the perspective of an objective reasonable bystander and not the parties’ subjective intentions. See *Salminen v. Garvie*, 2011 BCSC 339, at paragraphs 24 to 27.
23. Mr. Geary says he was unhappy with Mrs. Lewis’ \$1,500 offer, and that he did not intend that accepting it would end the matter. However, Mr. Geary’s subjective intention is not the test. I find that a reasonable person in Mrs. Lewis’ position would not likely agree to pay \$1,500 if they expected Mr. Geary would pursue them for more later. Overall, I find that an objective reasonable bystander would understand and believe that after having engaged in a negotiation, the parties agreed to \$1,500 as a final settlement of their dispute about compensation for Winston’s death.
24. In conclusion, I find the parties entered into a binding settlement agreement, which I find included settlement of Mr. Geary’s claim that Winston was not reasonably durable under the SGA. Given that Mrs. Lewis has already paid Mr. Geary the agreed \$1,500, I find he is not entitled to more. Therefore, I dismiss Mr. Geary’s claim for further compensation.
25. 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. As Mr. Geary was not successful, I dismiss his claim for CRT fees and dispute-related expenses, including the \$91.35 he claimed for Dr. Lavroff’s expert report. Mrs. Lewis did not pay CRT fees or claim expenses.

## **ORDER**

26. I dismiss Mr. Geary's claims, and this dispute.

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Kristin Gardner, Tribunal Member