



Civil Resolution Tribunal

Date Issued: September 1, 2022

File: SC-2022-000165

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wong v. Yummy Foodies Mobile Food Ltd.*, 2022 BCCRT 984

B E T W E E N :

BRANDON WONG and CAROLYN WONG

APPLICANTS

A N D :

YUMMY FOODIES MOBILE FOOD LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about compensation for emergency veterinary services. The applicant dog owners are Brandon Wong and Carolyn Wong. The respondent, Yummy Foodies

Mobile Food Ltd. (Yummy), operated as Haxen Haus at the December 2021 Vancouver Christmas Market. At the market, Yummy was selling pork hocks and had a sign saying they were selling bones for dogs as treats.

2. The Wongs bought their dog a bone and their dog undisputedly fell ill and was diagnosed with bone fragments in its small intestine. The Wongs say their veterinarian said a pork bone was not safe for dogs. The Wongs claim \$1,510.63 for emergency veterinary treatment and \$500 for their family and dog's emotional and physical distress and inconvenience. The Wongs say Yummy was negligent and falsely advertised the bone was safe for dogs. They also seek an order that Yummy stop advertising cooked pork hock bones as dog treats.
3. Yummy submits that, based on past requests for the bones for dogs, that it understood it was safe to sell the bones as dog bones. However, Yummy says the onus was on the dog's owners to ensure its food is safe for its consumption, although it agrees it will no longer sell pork hocks as dog bones.
4. Mr. Wong represents the applicants. Yummy is represented by its owner, Donna Evren.

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). CRTA section 2 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. CRTA section 39 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. 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. CRTA section 42 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.
9. As noted, the Wongs seek an order that Yummy stop advertising cooked pork hock bones as dog treats. This is an order for injunctive relief, which is an order to do or stop doing something. With limited exceptions that do not apply here, CRTA section 118 does not give the CRT jurisdiction (legal authority) to make the requested injunctive relief order. So, I decline to grant that remedy, although as noted Yummy voluntarily says it will no longer sell the hocks as dog bones.
10. Next, in their submissions Yummy says it was not "able to add any evidence for this". Yet, Yummy did upload documentary evidence. In any event, given my conclusion below dismissing the Wongs' claim, I find it unnecessary to ask Yummy if it has any further evidence in support of its position.

ISSUES

11. The issue are a) whether Yummy was negligent or in breach of contract for selling the Wongs a bone that was allegedly unsafe for dogs, and b) if so, whether the Wongs are entitled to \$2,010.63 in damages.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicants the Wongs must prove their claims on a balance of probabilities (meaning “more likely than not”). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.

13. The following background facts are undisputed. As noted, in December 2021 Yummy operated a food stall at the Vancouver Christmas Market. Among other things, Yummy sold roasted pork hocks and also sold the leftover bones. Yummy displayed a sign that, along with a caricature of a smiling dog with a bone in its mouth, read:

Do you want to see your dog this happy?

If your answer is YES

Take a doggie bone home

\$2.50

14. Based on the signage, I find Yummy advertised the leftover pork bones as being suitable for dogs. As noted, in its submissions Yummy admits this, and says it did so mistakenly based on its past experience of receiving many customer requests for the bones for their dogs. However, I do not find the ad went so far as to expressly advertise the bones were safe for dogs, as the Wongs allege. Nothing turns on this, given my conclusions below.

15. Based on the submitted veterinary records, I accept that the Wongs’ dog became ill and required emergency treatment as a result of ingesting fragments or splinters of the pork bone. However, that does not necessarily mean the Wongs have proven negligence or a breach of contract. My reasons follow.

16. I turn to the applicable law. I will address negligence first. To prove negligence, the Wongs must show Yummy owed them a duty of care, Yummy failed to meet the

applicable standard of care, and that failure caused the Wongs' reasonably foreseeable damages (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

17. I find Yummy undisputedly owed its customers a duty of care with respect to the products Yummy sold. The central issue is the standard of care.
18. Here, I find to establish a breach of the standard of care the Wongs must prove it was wrong for Yummy to sell pork bones as dog treats. First, I find the Wongs must prove the pork bone was in fact inherently unsafe for dogs, as opposed to their dog's injuries being the result of an unfortunate accident. Second, I find the Wongs must prove that Yummy knew or ought to have known the pork bones were unsafe for dogs, or ought to have determined their safety, before selling them as bones for dogs.
19. The difficulty for the Wongs is that while they say their veterinarian stated that the pork bone was not safe for dogs, none of the invoices or veterinarian notes in evidence say this. I accept that the pork bone fragmented and the splinters caused the dog's internal injuries. However, I am unable to conclude from the veterinarian records that pork bones are unsafe for dogs just because the Wongs' dog sustained an injury from chewing on such a bone. Yummy submitted a witness statement from one of its customers who says her dog has often enjoyed the pork bones without issue. The fact that Yummy has since agreed not to sell the bones for dogs is not determinative. Similarly, in context I find Yummy's submission that it "mistakenly" believed the bones were safe is simply its acceptance of the Wongs' assertion about the bones' safety.
20. I find whether pork bones are unsafe for dogs is a technical issue that falls outside ordinary knowledge and so it requires expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). Here, there is none because, again, the veterinarian records do not say pork bones are unsafe for dogs to consume. In other words, it may be that pork bones are unsafe for dogs, but expert evidence is required to establish that and the Wongs have not provided any.

21. In short, I find the Wongs have not proved that Yummy breached the standard of care because they have not proved the bone was unsafe for dogs. So, I do not need to address if Yummy ought to have known it should not sell the bones as dog treats.
22. I turn then to whether Yummy breached the parties' contract for the bone's sale, even though the Wongs did not expressly argue breach of contract. There is no written agreement for the bone's purchase nor any receipt in evidence, which is not surprising given its \$2.50 sale price. The *Sale of Goods Act* has 3 implied warranties that apply to this sale by a commercial supplier to a consumer: saleability or merchantability (quality), fitness for purpose, and reasonable durability. There is no issue raised about the bone's quality or durability. The issue is whether the bone was fit for its purpose, namely something for a dog to chew on. My conclusion here is the same as above. Again, the Wongs have not proved the bone was unsafe or unfit for their dog, rather than the dog's injuries being simply an unfortunate event. So, I find it unproven the bone was not fit for its purpose. Given the above, I dismiss the Wongs' claim and so I do not need to address the claimed damages.
23. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As the Wongs were unsuccessful, I dismiss their claim for reimbursement of CRT fees. Yummy did not pay fees and neither party claimed dispute-related expenses.

ORDER

24. I dismiss the Wongs' claim and this dispute.

Shelley Lopez, Vice Chair