



Civil Resolution Tribunal

Date Issued: November 24, 2022

File: SC-2022-002761

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Couchman v. Furbaby Rescues Society*, 2022 BCCRT 1269

B E T W E E N :

KELSEY COUCHMAN

APPLICANT

A N D :

FURBABY RESCUES SOCIETY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Kelsey Couchman adopted a dog, Kyra, from Furbaby Rescues Society. It is undisputed that Kyra required considerable vet care after the adoption. Mrs. Couchman alleges that Furbaby knew that Kyra was in poor health and misrepresented her condition before the adoption. Mrs. Couchman claims a total of \$4,981.64, broken down as follows:

- a. \$1,781.64 for vet bills since Kyra's adoption,
 - b. \$2,000 for dental surgery, and
 - c. \$1,200 for a refund of her adoption fee.
2. Furbaby says that Kyra was in good health when she left Furbaby's care. Furbaby asks me to dismiss Mrs. Couchman's claims.
3. Mrs. Couchman is self-represented. Furbaby is represented by Krystle Jores, who Furbaby's sole employee.

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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
8. I note that in her submissions, Mrs. Couchman asks for orders against Dr. Jores personally. She did not name Dr. Jores as a respondent in the Dispute Notice. So, I find that Mrs. Couchman did not make any claims against Dr. Jores. I therefore only consider Mrs. Couchman's claims against Furbaby.
9. Also in her submissions, Mrs. Couchman asks for \$500 for a test to confirm whether Kyra was vaccinated. This claim is not in the Dispute Notice. I find that it would be procedurally unfair to Furbaby to add this claim so late in the process, so I decline to consider it.

ISSUES

10. The issues in this dispute are:
 - a. Did Furbaby breach the parties' contract by misleading Mrs. Couchman about Kyra's health?
 - b. If so, what compensation is appropriate?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mrs. Couchman as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
12. Before turning to the relevant chronology, I note that the dog was named Shasta when Furbaby first took her in. Furbaby renamed her Possum. Mrs. Couchman

renamed her Kyra. For clarity, I will refer to her as Kyra throughout, even though many of the relevant documents refer to her by other names.

13. I will also say here that both parties refer to various clinical records from the 2 vets who saw Kyra before the adoption. Dr. Jores does not dispute the accuracy of these records, so I find that they accurately summarize her conversations with the vets.
14. Kyra is a Chihuahua. A California-based rescue society took her in on November 4, 2021. Furbaby took her to BC on November 14, 2021.
15. On November 10, 2021, Mrs. Couchman contacted Furbaby on Facebook Messenger about potentially adopting a rescue Chihuahua. All the parties' relevant communications were via Facebook Messenger. It is undisputed that Dr. Jores is the only person who communicated with Mrs. Couchman on Furbaby's behalf.
16. On November 14, 2021, Mrs. Couchman told Dr. Jores she was interested in Kyra. On November 19, Dr. Jores told Mrs. Couchman that the adoption fee was \$1,200, which included, among other things, pre-adoption bloodwork.
17. On November 20, 2021, Mrs. Couchman asked about Kyra's dental health because "Chihuahuas are notorious for bad teeth". Dr. Jores responded that Kyra would get "a full dental anything she needs" when she was spayed.
18. On November 24, 2021, Dr. Jores took Kyra to a vet, Dr. Gurmeet Bhullar, at 108 Avenue Animal Hospital (108 Avenue). Dr. Jores told Mrs. Couchman that Kyra had a scratch on her eye "but she's fine otherwise".
19. According to the clinical notes of that vet visit, Kyra had been coughing for several days. Dr. Bhullar recommended x-rays and bloodwork. Dr. Jores declined both. She did not tell Mrs. Couchman about the cough or that she had rejected Dr. Bhullar's advice. Dr. Bhullar also diagnosed Kyra with a corneal scratch.
20. On November 25, 2021, the parties agreed that Mrs. Couchman would pick Kyra up from 108 Avenue on November 30, 2021, right after the spay procedure that was scheduled for the same day.

21. On November 28, 2021, Dr. Jores took Kyra to a different vet, Cheam View Veterinary Hospital (Cheam View). The clinical records refer to the treating vet only as “Dr. KC”. Kyra stayed overnight at Cheam View on an IV drip. According to Cheam View’s clinical records, Dr. KC diagnosed Kyra with “probable” kennel cough. Dr. KC recommended bloodwork and an x-ray, but Dr. Jores declined. On November 29, Dr. KC reiterated these recommendations and suggested further treatment, but Dr. Jores refused and took Kyra home.
22. On November 29, Mrs. Couchman sent a \$200 deposit. The same day, Dr. Jores told Mrs. Couchman about Kyra’s overnight stay at Cheam View. Dr. Jores said Kyra was on IV fluids to make sure she was “100% healthy for a spay”. Dr. Jores said that she did that “for all the small dogs” and that Kyra was “totally fine”. Mrs. Couchman asked if the vet would remove any teeth during the spay, and Dr. Jores said that “if she needs any dental at all it gets done” and it would be “up to the vet”.
23. About an hour before Mrs. Couchman picked Kyra up, Dr. Jores told her that Cheam View had given Kyra a “a prescription for her cough”. This was the first time Dr. Jores mentioned Kyra’s cough.
24. Kyra was spayed at 108 Avenue on November 30, 2021. According to the clinical records, Dr. Jores declined pre-operation bloodwork. In an email to Mrs. Couchman, Dr. Bhullar said that she always recommends pre-spay bloodwork, but Dr. Jores “usually” declines it.
25. According to the clinical records, Dr. Jores told Dr. Bhullar about Kyra’s recent overnight vet stay, which she said was to address lethargy. Dr. Jores reported that the cough was improving. Dr. Bhullar performed no dental work during the spay.
26. Furbaby says that when Mrs. Couchman picked Kyra up, Dr. Bhullar told her that Kyra was “in perfect health”. There is a statement from Dr. Jores’s sibling that they overheard this statement. Mrs. Couchman denies it. I find it unlikely that Dr. Bhullar told Mrs. Couchman that Kyra’s health was “perfect” when they knew that Kyra had

just spent 2 days with an IV drip and still had a cough. I note there is no statement from Dr. Bhullar in evidence about this alleged statement.

27. Mrs. Couchman then paid the outstanding \$1,000 adoption fee.
28. On December 3, 2021, Mrs. Couchman told Furbaby that she had taken Kyra to her vet (Dr. Alexandra Kirkham) because Kyra had “never snapped out of the anesthetic” and had a very bad cough. Mrs. Couchman said that Dr. Kirkham ordered bloodwork, which “came back really bad”. According to Dr. Kirkham’s notes, Kyra was lethargic and weak, had worn incisors and a missing tooth, pneumonia, and a corneal ulcer. Mrs. Couchman says that Kyra could not stand, eat, or drink, and barely opened her eyes.
29. According to Mrs. Couchman, Kyra gradually improved in December 2021. Dr. Kirkham’s records confirm this. On December 31, 2021, the vet provided a \$1,435.14 to \$1,669.03 estimate for dental surgery. Kyra had the surgery, which included 13 extractions, on August 30, 2022, at a total cost of \$1,425.23.
30. I turn to the applicable law. Even though pets occupy a unique place in people’s lives, the law generally treats them as personal property. So, while people often use the term “adoption”, pet sales are subject to the law governing the sale of goods. See, for example, *Mackenzie v. Bolshoy dba Siberian Cattery Bolshoy Dom*, 2021 BCCRT 144.
31. The starting point in a dispute about the sale of goods is that the law generally treats sales as final. This is sometimes called the “buyer beware” principle. However, there are several exceptions to this rule. One exception is if there is a contractual warranty, which is a representation that a party promises is true as part of the contract. If the representation ends up being untrue or inaccurate, the party has breached the contract even if the misrepresentation was innocent, accidental, or outside their control. See John D. McManus, *The Law of Contracts*, 3rd ed (Toronto: Irwin Law, 2020), at page 785 to 786. There are other exceptions, such as

negligent and fraudulent misrepresentations or implied warranties under the *Sale of Goods Act*, but given my conclusion below, I do not need to consider these.

32. The parties had no formal written contract. I find that the terms of their agreement are contained in their written correspondence. As described above, Furbaby made 3 relevant representations about Kyra's health: that Kyra would have bloodwork done, that Kyra would have any necessary dental work done during the spay surgery, and that Kyra's vets had assessed her as being in good overall health. Were these representations warranties? To answer this question, I must determine what a reasonable bystander would think the parties agreed to. This is based on the parties' actual communications, not their subjective beliefs. See *Aubrey v. Teck Highland Valley Copper Partnership*, 2017 BCCA 144, at paragraphs 47 and 48.
33. Given Mrs. Couchman's repeated questions about Kyra's health, I find that Dr. Jores's reassurances were fundamental to her decision to adopt Kyra. I find that the representations described above were unambiguous and clear. I find that a reasonable bystander would conclude that the parties agreed that these representations would be contractual warranties. In other words, I find that Furbaby promised they were true and accurate as part of the parties' contract. I will address each in turn.
34. With respect to bloodwork, Furbaby says that it only gets bloodwork before a spay if the vet recommends it. This submission is inconsistent with its unqualified statement to Mrs. Couchman that Kyra would get bloodwork done. In any event, Dr. Jores declined 4 bloodwork recommendations from 2 different vets. I find that Furbaby breached this warranty.
35. With respect to dental work, Dr. Bhullar said in an email to Mrs. Couchman that they never do extractions during a spay surgery. They said they will do a cleaning, if requested, but Dr. Jores did not request one. I accept this evidence, because Dr. Bhullar is an independent witness and Dr. Jores did not specifically dispute it. I find that Dr. Jores misrepresented that Dr. Bhullar would perform any necessary dental work during the spay. I find that Furbaby breached this warranty.

36. Finally, I find that it was inaccurate for Dr. Jores to tell Mrs. Couchman that Kyra's vets considered her to be in good health before her spay. She failed to mention that Kyra had been lethargic and coughing. I find it particularly noteworthy that Dr. KC thought these issues were concerning enough that they twice recommended further investigation. Furbaby did not provide any evidence to support its assertion that it takes all small dogs to the vet for an IV drip before spay surgery. I find that Dr. Jores likely took Kyra to Cheam View because she was lethargic, coughing, and seemed unwell. I find that it was untrue that Kyra was "totally fine" after that visit when Dr. Jores had rejected Dr. KC's advice about further investigation and treatment.
37. Furbaby argues that if Kyra had been unhealthy, Dr. Bhullar would have refused to spay her. She does not provide any expert evidence to support her allegation that the spay procedure itself had any impact on Kyra's deterioration. In any event, Dr. Jores had rejected Dr. Bhullar's advice for bloodwork (twice) and an x-ray, so I find that Dr. Bhullar did not have enough information to fully assess Kyra's health. I find that Furbaby knew that Kyra was unwell and that Kyra's vets were concerned about her health. In summary, I find that Furbaby breached this warranty.
38. I turn then to damages. The measure of damages for a breach of contract is the amount of money it would take to put the innocent party in the financial position they would be in if the contract had been performed according to its terms. This is a somewhat difficult question in this dispute because we cannot know with certainty what Mrs. Couchman hypothetically would have done if Furbaby had provided accurate information about Kyra's health. I find that the most likely outcome would have been a delay in the adoption until Kyra was healthy. In other words, I find that if Furbaby had performed the contract, Mrs. Couchman would have received a healthy dog.
39. Mrs. Couchman claims \$1,781.64 in vet bills but provided receipts totaling only \$1,614.88. I find that she is entitled to be reimbursed this amount.

40. As for the dental surgery, Furbaby notes that there are no pre-adoption clinical records to suggest Kyra needed dental surgery. However, I agree with Mrs. Couchman that there is no evidence either vet did a full dental assessment. Furbaby also questions whether the surgery was necessary given the long delay. Mrs. Couchman says that the vet wanted to wait until Kyra's health had stabilized before doing the surgery, and that she could not immediately afford it anyway because of the unexpected vet costs. I accept these explanations for the delay. In any event, I find that the December 31 estimate for extensive dental surgery shows it is more likely than not that Kyra had these dental issues before the adoption. In other words, I find that if a vet had fully assessed Kyra's dental health before the adoption, they would have discovered the need for surgery. I find that Mrs. Couchman is entitled to be reimbursed \$1,425.23 for the dental surgery.
41. Finally, I will address Mrs. Couchman's \$1,200 claim. She frames it as a "refund" on the adoption fee, but I find that it is essentially a claim for mental distress. I say this because she says she wants compensation for the "mental cost" of dealing with the adoption of a sick dog. Generally, when a party breaches a contract, the other party is not entitled to compensation for mental distress. However, an exception to this general rule is when part of the contract's purpose was to provide a "psychological benefit". In those cases, the innocent party may receive modest compensation for inconvenience and discomfort that goes beyond mere frustration or disappointment. See *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30.
42. I find that purchasing a pet is a contract that is intended to provide a psychological benefit. Witness statements in evidence confirm that Mrs. Couchman went to great lengths to care for Kyra, including force feeding her with a syringe many times a day because she refused food. I accept that the experience was stressful, burdensome, and worrisome for Mrs. Couchman beyond mere frustration or disappointment. I find that \$500 is appropriate compensation for mental distress.
43. In summary, I order Furbaby to pay Mrs. Couchman a total of \$3,540.11

44. The *Court Order Interest Act* (COIA) applies to the CRT. The COIA treats “general damages” and “special damages” differently. Special damages are specific, measurable past losses that arise from the particular circumstances of a dispute. General damages are losses that are presumed to flow from every breach of contract, or losses that cannot be calculated with precision. See *William P. Crooks Consultants Ltd v. Cantree Plywood Corp.*, 1985 CanLII 434 (BC SC).
45. I find that Mrs. Couchman’s vet bills are special damages. Under section 1(2) of the COIA, interest on special damages must be calculated from the end of each 6-month period after the cause of action arose (in this dispute, the November 30, 2021 adoption date). So, the interest on the \$1,614.88 in vet expenses from December 2021 must be calculated from May 30, 2022. The remaining \$1,425.23 in vet bills are from less than 6 months before this decision. Under section 1(3) of the COIA, interest must be calculated from the day Mrs. Couchman incurred these expenses. I find that the damages for mental distress are general damages. Under section 1(1) of the COIA, she is entitled to interest on general damages from November 30, 2021. Together, this equals \$22.33.
46. 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. While I did not award Mrs. Couchman everything she asked for, I find that she was the successful party in this dispute. I find she is entitled to reimbursement of \$175 in CRT fees. She did not claim any dispute-related expenses.

ORDERS

47. Within 30 days of the date of this order, I order Furbaby to pay Mrs. Couchman a total of \$3,737.44, broken down as follows:
- a. \$3,540.11 in damages,
 - b. \$22.33 in pre-judgment interest under the COIA, and

c. \$175 in CRT fees.

48. Mrs. Couchman is entitled to post-judgment interest, as applicable.

49. 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.

Eric Regehr, Tribunal Member