



Civil Resolution Tribunal

Date Issued: November 28, 2022

File: SC-2022-002084

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Scott v. Keypoint English Springer Spaniels*, 2022 BCCRT 1280

BETWEEN:

ALAN WILLIAM SCOTT and SHIRLEY ANN SCOTT

APPLICANTS

AND:

KEYPOINT ENGLISH SPRINGER SPANIELS and
JEANINE JORGENSEN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a dog. The applicants, Alan William Scott and Shirley Ann Scott, say they purchased the dog from the respondents, Keypoint English Springer Spaniels (Keypoint) and Jeanine Jorgensen. The Scotts say that the dog had temperament and behavioural issues, and so they returned the dog to the

respondents at Ms. Jorgensen's request. They seek a refund of \$3,100 for the dog plus \$352.75 as compensation for items sent along with the dog.

2. The respondents disagree. They say the Scotts contacted Ms. Jorgensen to return the dog, and she paid and arranged for the dog's return. She says the parties' contract specifies no refunds.
3. Mr. Scott represents the Scotts. Ms. Jorgensen represents the respondents.
4. For the reasons that follow, I dismiss the Scotts' claims.

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). 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.
6. 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.
7. 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.

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. In submissions, the Scotts asked for “proof of the puppy’s well being”. This is a moot issue for the reasons discussed below. In any event, I also find this is a request for injunctive relief that is outside the CRT’s small claims jurisdiction.
10. I also note that the parties’ contract had a term that said “any litigation” would be held in the jurisdictions of either Weyburn or Regina, Saskatchewan. The respondents are in Saskatchewan. However, no parties relied on this term, so I find they waived it to have the matter heard in the CRT.

ISSUE

11. The issue in this dispute is whether the Scotts are entitled to a refund or compensation for the dog or other items sent to the respondents.

BACKGROUND, EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the Scotts as applicants must prove their claims on a balance of probabilities. This means 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.
13. In March 2021, the Scotts became interested in obtaining an English Springer Spaniel puppy. As shown on a March 6, 2021 receipt, the Scotts gave the respondents a \$100 deposit to secure a puppy from the next available litter. The parties then documented their agreement by entering into a written contract dated April 9, 2021. The sellers are listed as Keypoint, Ms. Jorgensen, and another individual named Robert Jorgensen. Robert Jorgensen is not a named party to this dispute. Keypoint is also named as the “Breeder”. Based on the contract, I find that Keypoint is likely a sole

proprietorship that both Jorgensens do business under. The Scotts are noted as the buyers. Both of the Jorgensens and both of the Scotts signed the agreement.

14. The contract said that the sellers would provide an English Springer Spaniel born on March 21, 2021. The terms are important, so I have quoted some of them in full. Notably, section 3 said the following:

3) The Breeder guarantees that the dog at the time of delivery has a temperament that is typical of a normal English Springer Spaniel. Should temperament issues arise such as undue aggression or submission appear to develop the Breeder shall be notified immediately. Arrangements will be made to meet with the breeder or a trainer of breeder's choice to evaluate the dog to determinate the cause of temperament problems. As temperament can be influenced by many factors that we have no control over once the puppy leaves our home, ZERO refunds are given for temperament problems!! [Emphasis added.]

15. Section 4 said that the seller gave no other guarantees or warranties, and the buyer assumes all risks not specifically outlined in the contract.
16. The Scotts rely partly on section 11, which is under a section labelled the purchasers' obligations and conditions, rather than the sellers':

11) Should the Purchaser at any time for any reason be unable to keep the dog they are to contact the Breeder immediately and the dog shall be returned to the breeder with all applicable documents. The Breeder will evaluate and keep the dog until a suitable home is found. All refunds are at the discretion of the breeder and will come after care costs have been deducted until a new home is found...[Capitalization in original and emphasis added.]

17. The contract does not specify the dog's price. However, receipts show that the Scotts paid the respondents \$500 on April 10 and \$2,500 on May 19, 2021, for a total of \$3,100, inclusive of the \$100 deposit. Several weeks after the dog was born, the Scotts paid to have it flown to them in BC on May 22, 2021.
18. The Scotts took the dog to obedience class. The Scotts say that despite this, they were dissatisfied with the dogs' temperament as it aged. In particular, they say that by the age of 11 months, the dog engaged in the following behaviour: biting, resource guarding, marking in the house, rough play with grandchildren, excessive chewing,

not settling, hiding and stealing, and not complying with commands. Mrs. Scott also fell twice while walking the dog, suffering serious injuries. The Scotts say they made the difficult decision to return the dog because of these issues.

19. Electronic messages show that during their ownership, the Scotts discussed these issues with Ms. Jorgensen, and she replied with advice. On February 9 and 10, 2021, Ms. Jorgensen spoke to the Scotts on the phone. The parties agree that during the calls, the Scotts said they wished to return the dog, and Ms. Jorgensen agreed to arrange for and pay the cost of transporting the dog.
20. Ms. Jorgensen says that Mr. Scott asked about a refund, and she referred to sections 3 and 11 of the contract, cited above. I find this was likely the case, as the Scotts do not contradict her and there is no evidence to indicate otherwise. For example, no subsequent messages or emails show that Ms. Jorgensen made promises or representations about a refund. So, I find that Ms. Jorgensen did not say she would necessarily provide a refund.
21. Ms. Jorgensen arranged and paid for the dog's return as contemplated by the parties. The dog arrived in Calgary on February 15, 2022. The respondents' friend picked it up and returned it to the respondents on February 18, 2022. The parties agree that the Scotts asked the respondents again for a full or partial refund, and Ms. Jorgensen replied that refunds were at her discretion. The parties also agree Ms. Jorgensen contacted the dog's obedience trainer with the Scotts' permission.

22. In a March 11, 2022 message, Ms. Jorgensen denied the Scotts' request for a refund. She said that the dog suffered from anxiety due to inadequate training and that rehoming it would be impossible. She said the dog might have to be euthanized because of this. An August 31, 2022 veterinarian's letter shows that she had the dog euthanized on March 11, 2022. The veterinarian noted they had tried using anxiety medication to treat the dog near the end of February 2022, but Ms. Jorgensen reported no improvement. The veterinarian wrote, "In my professional opinion there was a serious risk in re-homing this dog and the concerns regarding his behaviour were valid."

Are the Scotts entitled to a refund for the returned dog or other items?

23. Much of the evidence and arguments in this dispute is about whether the Scotts inadequately trained the dog or whether the respondents picked the wrong dog for the Scotts. I find it unnecessary to make a finding on these issues for the reasons that follow.

24. As noted above, section 3 of the contract guaranteed that the dog had the typical temperament of a "normal English Springer Spaniel" at the time of delivery. Somewhat inconsistently, section 3 also says that buyers are entitled to "ZERO" refunds for temperament problems after the dog leaves the respondents' home.

25. I find that the most objectively reasonable interpretation of section 3 is that the respondents guaranteed that the dog had a typical temperament at the time of delivery and would provide a refund for temperament problems identified immediately. However, the respondents did not guarantee against any subsequent temperament problems. In other words, the Scotts agreed in the contract to bear the risk of the dog's temperament becoming unsuitable as it aged.

26. The respondents say the dog's issues were due to a growing anxiety disorder. I find that anxiety also fits under the broader umbrella of temperament problems as the term is used in the contract.

27. The Scotts' submissions and their messages to Ms. Jorgensen indicate that the dog's temperament issues developed as it aged. For example, the Scotts initially messaged Ms. Jorgensen that their dog was doing well.
28. Given the above, I find it unproven that the dog had an atypical temperament at the time of delivery. I find the respondents provided no guarantees or warranties about the dog's temperament after this.
29. As noted above, the Scotts also rely on section 11 of the contract. I find section 3 applies as it is specific to the Scotts' complaints about the dog. In any event, I find that section 11 would not assist the Scotts for the reasons that follow.
30. Section 11 states that all refunds are at Keypoint's discretion. I find this wording allowed Keypoint to refuse a refund entirely. The Scotts say that the respondents misled them into believing that they would provide a refund. In particular, they say the text and instant messenger messages support their position.
31. Under contract law, the respondents have a legal duty of honest performance. This means they cannot exercise their contractual rights in a way that misleads the respondents. See *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45.
32. Having reviewed the evidence, including the messages, I find it generally supports a conclusion that the respondents fulfilled their duty of honest performance. First, I find the respondents did not mislead the Scotts in any of the messages. In July 2021, Ms. Jorgensen noted she provided another dog owner a refund of half the cost of a dog. However, the dog had different issues and was eventually rehomed. The messages also occurred in the context of seemingly casual conversation, months before the Scotts decided to return their dog. In other messages, Ms. Jorgensen expressly said that a refund was contingent on her examining the dog, and no refund was guaranteed.
33. Further, Ms. Jorgensen contacted the dog's obedience trainer, tried medicating the dog while it was in her care, and subsequently instructed a veterinarian to euthanize the dog. I find these actions consistent with her submissions that she evaluated the

dog and reached the honestly held conclusion that it was inadequately trained and could not be rehomed. So, I find Ms. Jorgensen exercised her discretion to refuse a refund honestly and in good faith.

34. The Scotts cite *Dzenkiw v. Graham*, 2020 BCCRT 47 in support of their position. However, I find this decision irrelevant as it is about a contract with different terms. It does not have the same terms that specify no refunds for temperament problems or that refunds are at the seller's discretion.
35. Given the above, I must dismiss the Scotts' claim for a \$3,100 refund.
36. This leaves the issue of the \$352.75 claim for the items. The Scotts say these include the dog's custom name tag, custom crate pads, custom bath coat, head coverings, collar, leash, food, and supplements.
37. The parties exchanged messages about what items would accompany the dog. There is no indication that the respondents agreed to pay for any of them. There are no contract terms that show the Scotts are entitled to compensation for these items. Further, I find that the parties would have reasonably expected that, as part of the agreement, the Scotts would return the dog with some basic items. These include its collar, leash, customized items, food, and supplements, without charge. This is because many of these items, such as the customized ones, would have been of limited use or value to the Scotts, but helpful to the dog's caretaker or new owner. So, I dismiss the claim for the items as well.
38. 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. I dismiss the Scotts' claims for reimbursement. The respondents did not pay CRT fees and no party claims dispute-related expenses.

ORDER

39. I dismiss the Scotts' claims and this dispute.

David Jiang, Tribunal Member