



Civil Resolution Tribunal

Date Issued: January 23, 2023

File: SC-2022-003907

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ellis v. Thiel*, 2023 BCCRT 63

BETWEEN:

SUSAN ELLIS

APPLICANT

AND:

JACQUELINE THIEL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about the purchase of a British Shorthair cat named Winston. The applicant, Susan Ellis, bought Winston from the respondent breeder, Jacqueline Thiel. Ms. Ellis says Winston immediately showed signs of sickness when she received him. Ms. Ellis wants either a refund of Winston's \$2,500 purchase price, or for Mrs. Thiel to pay Winston's vet bills (totaling \$3,027.22).

2. Mrs. Thiel says Winston was healthy when Ms. Ellis received him, and that Ms. Ellis failed to follow the terms of the parties' contract. She denies owing Ms. Ellis a refund or reimbursement for vet bills.
3. The parties are each self-represented.

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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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 that 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 Ms. Ellis is entitled to a refund of Winston's purchase price or reimbursement for vet bills.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Ms. Ellis must prove her claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision.
10. The following facts are undisputed. On January 10, 2022, Ms. Ellis agreed to buy Winston, a bred kitten, from Mrs. Thiel, and the parties signed a written agreement. On January 19, 2022, Ms. Ellis paid Mrs. Thiel \$2,500 and took Winston home.
11. Ms. Ellis essentially argues that she was given an unhealthy kitten, contrary to the parties' agreement. Mrs. Thiel denies this.
12. The parties' signed contract contains the following relevant terms:
 - a. Buyer understands the risks associated with adopting a live animal. Buyer agrees to not hold seller responsible for illnesses that occur post adoption.
 - b. Seller agrees to only breed genetically sound cats free from deformities and illness.
 - c. To the best of the seller's knowledge, buyer is receiving a healthy cat/kitten and has been deemed of sound health by a veterinarian.
 - d. Seller is not responsible for any vet bills or repercussions that result from injury or infectious illness. These include but are not limited to ... feline coronavirus, ... and giardia.
 - e. Seller retains the right to corroborate any diagnosis made by a veterinarian.

- f. Seller assumes responsibility for death of cat/kitten due to disease, deformity, physical condition, illness or defect that a board certified veterinarian deems congenital or hereditary in nature.
 - g. In the event of death, a full necropsy of all organs and tissues must be performed by a pathologist, paid for by the buyer, to determine the cause of death.
13. Ms. Ellis says Winston started showing signs of illness immediately, specifically coughing fits. According to Facebook messages in evidence, she notified Mrs. Thiel of her concerns on January 24, 2022, 5 days after taking possession of Winston. The messages show that Mrs. Thiel was aware of some “sneezing” and advised she had informed her vet and they had no concerns. Pre-purchase vet records in evidence confirm Mrs. Thiel notified them of the sneezing, and further note Winston was “fit to vac” (vaccinate).
14. Ms. Ellis scheduled a vet appointment for January 28, 2022. At that appointment, the vet, Dr. Don Wilson, diagnosed Winston with an upper respiratory tract infection. A few days later Winston’s test results showed he was also positive for giardia.
15. Dr. Wilson’s clinical records show that between January 28 and May 20, 2022, Winston continued to suffer from some upper respiratory issues, including a positive PCR test for “mycoplasma”. Winston was treated for, and recovered from, the giardia. The records show that Winston was on medications that appeared to help with his respiratory symptoms. On April 6, 2022, Dr. Wilson noted Winston as “playing, growing, no coughing”. On May 20, 2022, Winston was neutered, and on May 24, 2022, Winston’s second PCR test showed he was negative for mycoplasma. On May 25, 2022, Dr. Wilson noted Winston was doing well and had recovered well.
16. Unfortunately, in June 29, 2022, Ms. Ellis brought Winston back to Dr. Wilson because he had “recently started coughing”. Winston continued to deteriorate and on July 14, 2022 Winston tested positive for feline coronavirus. Dr. Wilson advised Ms.

Ellis that Winston's test results and symptoms were consistent with feline infectious peritonitis (FIP), a fatal condition. Sadly, Winston was euthanized on July 20, 2022.

17. On the evidence before me, I accept that Winston suffered from an upper respiratory tract infection by January 28, 2022. Dr. Wilson provided a letter stating the respiratory infection was determined to be chronic lower airway disease due to mycoplasma. He said the only source for this infection was determined to be Winston's breeder's cattery. However, Dr. Wilson did not explain this opinion, or what else can cause mycoplasma infections. As noted, by the time of his neutering, Winston tested negative for mycoplasma. So, I find nothing turns on this.
18. To the extent Ms. Ellis seeks compensation due to giardia, I find the contract explicitly prohibits recovery for expenses related to giardia. Next, Ms. Ellis says Mrs. Thiel should be responsible for vet bills for Winston's respiratory issues. However, I note the contract says Mrs. Thiel retained the right to confirm any diagnosis by having the cat examined by her own vet. Ms. Ellis undisputedly declined to have Winston reviewed by Mrs. Thiel's vet. She argues it would have been too traumatizing for Winston to travel back to Mrs. Thiel's area, and says her vet is well-respected and his opinion should be good enough. While I accept that Dr. Wilson is a qualified and experienced vet, the contract states Mrs. Thiel had the right to request a second opinion and I find Ms. Ellis breached the contract by refusing to allow that second opinion. So, to the extent Ms. Ellis seeks reimbursement for vet bills or for a full refund of Winston's purchase price because of the above issues, I find she has not proven any entitlement to the same under the parties' signed contract.
19. Finally, the fatal diagnosis. Mrs. Thiel does not particularly dispute Winston had FIP, but says the parties' contract explicitly says the seller will not be responsible for any costs related to feline coronavirus. I agree. Additionally, Mrs. Thiel says the only way to properly confirm FIP is through a necropsy which Ms. Ellis failed to do, though required to by the contract.
20. Ms. Ellis provided a thorough report from Dr. Michele Martin, a Doctor of Veterinary Medicine and Associate Professor at the University of Victoria. I accept Dr. Martin is

qualified to give expert evidence about veterinary matters. In her report, Dr. Martin discusses the risk factors for FIP, whether Winston's medical history supports a presumptive clinical diagnosis of FIP, and how to minimize the risks of FIP.

21. Although I accept Winston had risk factors for FIP, I find there is nothing to indicate these factors caused Winston's FIP, nor does Dr. Martin say they did. Rather, Dr. Martin says there were a significant number of risk factors for Winston to develop FIP.
22. Additionally, Dr. Martin acknowledges the only way to truly diagnose FIP is through a post-mortem necropsy. However, she agrees with Dr. Wilson's presumptive diagnosis of FIP given Winston's medical records and presentation.
23. I accept Winston contracted FIP. The issue for Ms. Ellis is that there is no indication Winston had this condition before she took possession of him. Further, the contract specifically denies any reimbursement for costs related to feline coronavirus, the cause of FIP.
24. The contract states Mrs. Thiel would assume responsibility for Winston's death if due to illness or disease that a vet deems "congenital or hereditary", but I find Dr. Martin's expert opinion falls short of that opinion. Dr. Martin only stated cats who have direct relatives who die from FIP have an increased likelihood of developing FIP. I find there is simply no evidence Winston's FIP was congenital or hereditary. Additionally, as noted, the contract required a full necropsy in the event Winston passed away within the first year, which Ms. Ellis undisputedly did not have done.
25. Based on all of the above, I find Ms. Ellis has failed to prove Mrs. Thiel breached the parties' agreement such that Ms. Ellis would be entitled to a refund or reimbursement of vet bills. I acknowledge Ms. Ellis's submission that "a reputable breeder will compensate an owner, despite contract language, when a kitten has health issues". However, there is no legal requirement for Mrs. Thiel to do so. I find Mrs. Thiel complied with her obligations under the contract. I dismiss Ms. Ellis's claims.
26. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As Ms.

Ellis was not successful, I find she is not entitled to reimbursement of her paid tribunal fees, or claimed dispute-related expenses. Mrs. Thiel did not pay tribunal fees or claim any dispute-related expenses.

ORDER

27. I dismiss Ms. Ellis's claims, and this dispute.

Andrea Ritchie, Vice Chair