



# Civil Resolution Tribunal

Date Issued: February 9, 2023

File: SC-2022-005002

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Van Tunen v. MacMillan*, 2023 BCCRT 121

BETWEEN:

ANNA VAN TUNEN

**APPLICANT**

AND:

JULIE MACMILLAN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about a horse. The applicant, Anna Van Tunen, adopted a horse from the respondent, Julie MacMillan, who the parties agree operates J&M Acres Horse Rescue (J&M). Ms. Van Tunen says she discovered the horse had a heart murmur about 2 months after the adoption. Ms. Van Tunen says Mrs. MacMillan misrepresented the horse's condition by saying it was a sound trail riding horse. She

also says Mrs. MacMillan initially offered to refund the \$1,400 adoption fee, but only if Ms. Van Tunen hauled the horse back at her own expense, which Ms. Van Tunen says was unfair. Ms. Van Tunen claims a total of \$3,347.18 as reimbursement for the adoption fee, hauling fee, vet costs, and boarding fees.

2. Mrs. MacMillan denies any misrepresentation, and says she is not responsible for any of the claimed amounts under the parties' agreement.
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 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 in this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the

CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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 Ms. Van Tunen is entitled to a refund for the horse or any other reimbursement for her alleged costs to transport and care for the horse.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Ms. Van Tunen must prove her claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.
10. The parties agree to the following facts. Mrs. MacMillan operates J&M. Ms. Van Tunen adopted the horse from Mrs. MacMillan and paid a \$1,400 adoption fee. Around 2 months after adopting the horse, Ms. Van Tunen told Mrs. MacMillan that her veterinarian found a heart murmur. Mrs. MacMillan offered to refund the \$1,400 adoption fee but would not pay for the cost of transporting the horse back to them.

### ***The parties' agreement***

11. As noted, Mrs. MacMillan says she is not responsible for any of the claimed amounts under the parties' agreement. She says the agreement gave Ms. Van Tunen 2 weeks

to return the horse at her own expense for a full refund of the adoption fee. Mrs. MacMillan says despite not being advised of the horse's heart murmur until 2 months after the adoption, they twice offered to refund the \$1,400 adoption fee once Ms. Van Tunen returned the horse at her own cost. Ms. Van Tunen undisputedly refused to do so. Mrs. MacMillan also says Ms. Van Tunen later refused to allow another person to pick up the horse unless Mrs. MacMillan refunded her first. Ms. Van Tunen does not dispute this. Mrs. MacMillan says she eventually paid to transport the horse back to her at her own expense, and is no longer offering any refund.

12. Ms. Van Tunen submitted an "adoption application and agreement" that she signed when applying to adopt the horse. The agreement is not signed by Mrs. MacMillan, and the listed parties to the agreement are Ms. Van Tunen and J&M. The parties expressly agree that Mrs. MacMillan operates J&M, and there is no evidence that J&M is a corporate entity. Therefore, I find the unsigned agreement is between Ms. Van Tunen and Mrs. MacMillan.
13. Among other things, the adoption application and agreement provided a 2 week "trial-adoption period" where the adopter (here, Ms. Van Tunen) could determine if they wanted to go through with the adoption, and if not, the adopter would return the horse "at adopter's expense". The agreement said the \$1,400 adoption fee was non-refundable at the end of the successful trial adoption period. The agreement also said the adopter understood that J&M is a rescue service and was not responsible for the accuracy of information about, among other things, the physical condition of the animal being adopted. Under the agreement, the adopter was also responsible for adequate shelter and veterinary care for the horse, among other things.
14. Despite signing the agreement, Ms. Van Tunen says there was no contract because the parties did not sign any subsequent agreement after she was selected as the successful applicant to adopt the horse. I disagree. I find the adoption application and agreement undisputedly signed by Ms. Van Tunen shows that she received notice of the adoption's terms and expressly agreed to them prior to adopting the horse.

## **Misrepresentation**

15. As noted, Ms. Van Tunen also says Mrs. MacMillan misrepresented the horse's condition by saying the horse was sound before the adoption. I find she alleges she is entitled to reimbursement of the adoption fee, hauling fee, vet costs, and boarding fees on that basis.
16. 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.
17. In a private sale of used goods, a purchaser is expected to reasonably assess the used goods' condition before purchase. This is because a seller is not obligated to tell a buyer about patent or obvious defects. The applicable principle is referred to as the doctrine of caveat emptor or "buyer beware". See *Connors v. McMillan*, 2020 BCPC 230. However, sellers cannot purposely conceal an otherwise obvious defect, and they cannot misrepresent the goods to induce the buyer to purchase them.
18. A "misrepresentation" is a false statement of fact made during negotiations or in an advertisement. If a seller misrepresents a good's condition, the buyer may be entitled to compensation for losses arising from that misrepresentation. However, the seller must have acted negligently or fraudulently in making the misrepresentation, the buyer must have reasonably relied on the misrepresentation to enter into the contract, and the reliance "must have been detrimental in the sense that damages resulted". See *Queen v. Cognos Inc.*, [1993] 1 SCR 87 at paragraph 110.
19. Here, the issue is whether Mrs. MacMillan misrepresented the horse's condition when she said the horse was "sound" before the adoption.
20. It is undisputed that Ms. Van Tunen did not view the horse in person or have the horse examined by a veterinary before adopting it. Ms. Van Tunen says she assumed Mrs. MacMillan would have had the horse examined by a veterinarian before adopting it out, and says this would have immediately identified the heart murmur. Ms. Van

Tunen says Mrs. MacMillan should not have said the horse was sound without doing so. However, the evidence does not show that Mrs. MacMillan ever represented that the horse had been or would be examined by a veterinarian before the adoption. The evidence also does not show that the horse appeared lame or otherwise showed any signs of a heart murmur when Ms. Van Tunen adopted it. The heart murmur was not identified until Ms. Van Tunen had the horse examined by a veterinarian for an unrelated eye issue about 2 months after the adoption. I find the evidence does not show that Mrs. MacMillan knew or ought to have known about the heart murmur. So, I find Mrs. MacMillan did not negligently or fraudulently misrepresent the horse's condition.

21. Even if Mrs. MacMillan did misrepresent the horse's condition, which I find unproven, I find it was unreasonable for Ms. Van Tunen to rely on the alleged misrepresentation. I say this because Ms. Van Tunen expressly acknowledged in the parties' agreement that J&M was a rescue service and was not responsible for the accuracy of information about the physical condition of the animal being adopted.
22. I find the 2 week trial adoption period had expired when Ms. Van Tunen advised Mrs. MacMillan of the heart murmur around 2 months after she adopted the horse. Therefore, under the agreement, I find Ms. Van Tunen is not entitled to any adoption fee refund. Based on the agreement's other terms listed above, I also find Ms. Van Tunen is not entitled to reimbursement of any of the alleged costs incurred to provide veterinary care, or transport or board the horse.

### ***Refund offer***

23. The parties agree that after learning of the heart murmur 2 months after the adoption, Mrs. MacMillan offered to refund the \$1,400 adoption fee if Ms. Van Tunen returned the horse at her own expense. However, Ms. Van Tunen undisputedly did not do so. Ms. Van Tunen says it was unfair for her to pay to return the horse when she has already paid \$550 to transport the horse to her home when she adopted it. However, I find Mrs. MacMillan only offered to refund the adoption fee if Ms. Van Tunen returned the horse to them. I find the emails and text messages show the parties could not

agree about how to resolve the situation once Mrs. MacMillan offered to refund the \$1,400 adoption fee. Ms. Van Tunen did not agree to return the horse at her own expense, and also later refused to allow Mrs. MacMillan to pick up the horse without first being refunded the adoption fee. I find the evidence does not show the parties agreed to the terms of any refund after the 2-week return window in the parties' agreement had expired. Therefore, I find Ms. Van Tunen is not entitled to a refund of the adoption fee on that basis.

24. Given my conclusions above, I find that Ms. Van Tunen has not proved she is entitled to any reimbursement of the adoption fee, or any of the alleged costs incurred to transport and board the horse, or provide veterinary care.
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. However, neither party paid any CRT fees or claimed any dispute-related expenses, so I award none.

## **ORDER**

26. I dismiss Ms. Van Tunen's claims and this dispute.

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Leah Volkers, Tribunal Member