



Civil Resolution Tribunal

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Files: SC-2022-003647
SC-CC-2022-006247

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chung v. Ninos*, 2023 BCCRT 476

B E T W E E N :

SERGE CHUNG LAM CHUNG and SUSAN CHUNG LAM CHUNG

APPLICANTS

A N D :

ANNA ISAK NINOS and GEORGE NINOS

RESPONDENTS

A N D :

SERGE CHUNG LAM CHUNG and SUSAN CHUNG LAM CHUNG

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about dogs in a breeding program. The applicants and respondents by counterclaim SC-CC-2022-006247 are Serge Chung Lam Chung and Susan Chung Lam Chung. The respondent and applicant by counterclaim is Anna Isak Ninos. The other respondent is George Ninos.
2. The Chungs and Ms. Ninos signed a contract under which the Chungs acted as guardians of a Mini-Goldendoodle named Noodle during Noodle's participation in Ms. Ninos' breeding program. Under the contract, after Noodle produced 4 successful litters the Chungs were to take ownership of Noodle and receive one of Noodle's puppies from the fourth litter. Noodle produced 4 successful litters and the Ninos' returned Noodle to the Chungs, but the Chungs did not receive any of Noodle's puppies. None of this is disputed.
3. The Chungs say the Ninos pressured them to agree to share the proceeds of their puppy's sale instead of keeping the puppy. They say they agreed to this under duress, but in any event the Ninos did not pay them any proceeds from the puppy's sale. The Chungs say the Ninos breached the original contract and the new agreement by failing to provide them with their puppy or the sale proceeds from their puppy, by failing to pay for the cost of spaying and grooming Noodle, and by failing to return their security deposit. The Chungs claim a total of \$5,000 in damages for these alleged breaches of contract.
4. The Ninos deny the Chungs' claims. They say the Chungs instructed them to sell the puppy because they were unable to care for it, and that under the contract the Chungs are not entitled to any sale proceeds from the puppy. The Ninos say the Chungs breached the contract by failing to take proper care of Noodle and by not cooperating with the Ninos' efforts to have Noodle spayed. They say they do not owe the Chungs anything.

5. In her counterclaim, Ms. Ninos claims \$5,000 in damages for loss of reputation and clients, the time and energy she spent to find an alternate home for the puppy and draft a new adoption agreement, and for “extreuous effort and anguish”.
6. The Chungs say Ms. Ninos’ claims are not credible and they do not owe her anything.
7. All parties are self-represented in this dispute.

JURISDICTION AND PROCEDURE

8. 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.
9. 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.
10. 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.
11. 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.

12. While Ms. Ninos does not explicitly say so in her Dispute Notice, I find her claim for loss of reputation is a defamation claim. She says in her submissions that the Chung's defamed or threatened to defame her. Under section 119 of the CRTA the CRT does not have jurisdiction over defamation claims. So, I refuse to resolve Ms. Ninos' claim for loss of reputation. It is unclear whether Ms. Ninos' claim for loss of clients is a claim for damages from her alleged loss of reputation, or from some other alleged legal wrong. To the extent that her claim for loss of clients stems from her claim for loss of reputation, I refuse to resolve it for the reasons explained above.

ISSUES

13. The issues in this dispute are:

- a. Are the Chung's entitled to \$4,000 for the sale proceeds of their puppy?
- b. Are the Chung's entitled to compensation for the cost of spaying Noodle?
- c. Are the Chung's entitled to the return of their \$500 security deposit?
- d. Are the Chung's entitled to compensation for grooming Noodle?
- e. Is Ms. Ninos entitled to \$5,000 in damages?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, as the applicants the Chung's must prove their claims on a balance of probabilities. Likewise, Ms. Ninos must prove her counterclaim to the same standard. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.

15. At the outset, I address the Chung's claims against Mr. Ninos. Though the Ninos did not raise this, I find there is no basis for the Chung's claims against Mr. Ninos. He is undisputedly not a party to the written contract in evidence, and, as explained below, I find the parties did not make a new agreement to share the proceeds of the puppy's sale. I find that all of the Chung's claims are based on alleged breaches of contract,

except for the grooming claim, which I dismiss below. So, I dismiss the Chungs' claims against Mr. Ninos.

Are the Chungs entitled to \$4,000 for the sale proceeds of the puppy?

16. On June 16, 2018, the Chungs signed the contract with Ms. Ninos which says Ms. Ninos would offer the Chungs first pick of the puppies from Noodle's final litter at no cost to the Chungs. However, the contract requires the Chungs to keep the puppy for their "personal family unit" and does not permit them to resell it. Noodle undisputedly had her fourth litter on December 2 and 3, 2021.
17. During a phone call on December 23, 2021, Ms. Ninos undisputedly asked the Chungs if they had considered how the new puppy would change their lifestyle and family dynamics. The Chungs say Ms. Ninos was trying to discourage them from taking the puppy, but I find the issues Ms. Ninos raised are reasonable considerations when welcoming a new dog into a home. During this phone call the Chungs undisputedly proposed having Ms. Ninos sell their puppy and share the sale proceeds with them.
18. In a December 31, 2021 text to Mr. Chung, Ms. Ninos offered to pay them \$1,200 from the puppy's sale proceeds, provided they helped to find the puppy a good home. In a January 3, 2021 text to Ms. Ninos, Mr. Chung said they would accept \$2,000 as payment from the puppy's sale proceeds, otherwise they would like to keep the puppy. Ms. Ninos did not immediately respond.
19. The litter picks were undisputedly scheduled for January 8, 2022. In a January 7, 2022 text, Ms. Ninos told Mr. Chung she was working on their puppy adoption agreement and she needed 2 things from them. First, she said she needed a letter from their strata confirming that they were permitted to have 2 dogs reside in their unit. Second, she said she needed a statutory declaration signed by a notary confirming that the Chungs' new puppy would reside only with them. These documents are undisputedly not required in the parties' contract. She also said the pick-up date for Noodle and the new puppy would be January 15, 2022.

20. Mr. Chung responded to Ms. Ninos on January 7, 2022, saying “we decided maybe it’s better for us to accept your initial offer of \$1200 for the sales of our 1st pick litter...Please let us know.” Ms. Ninos responded,

If you find a family it is 1200. Profit. My time to locate another family at this point, as mentioned previously will come out of that 1200...If it is quick and easy we don’t worry about and will extend 1200. But if it is a challenge and takes days of phone calls and rearranging?? Let’s hope it works out quickly and no problems to find a family.

Mr. Chung responded, “If it’s going to be hard for you and cost me lots of money then it may not be worth it. I’ll like to know exactly what I’m getting. Let me know.” Ms. Ninos responded, “working on it.” All quotes are reproduced as written.

21. Later on January 7, 2022, Mr. Chung asked in a text, “Do we pick tomorrow at 9am if you don’t find someone to take my pick by then?” Ms. Ninos responded, “No you are not picking tomorrow...No I haven’t secured a family yet.” The next day, on January 8, 2022, Ms. Ninos told Mr. Chung she found a family to take the puppy. He responded, “We’re glad you found a good family for the puppy. Thank you”.

22. The Chungs say Ms. Ninos unilaterally changed the contract on January 7, 2022, by requiring them to immediately provide the strata letter and statutory declaration, and by moving up the pick-up date for the dogs, which they say was 2 weeks early. They say they agreed to accept \$1,200 for the puppy’s sale under duress because of Ms. Ninos’ unilateral changes to the contract. Ms. Ninos says only that the new puppy adoption contract required documentation.

23. As noted above, the contract undisputedly does not require the Chungs to provide the documents Ms. Ninos requested. The contract also does not state the puppy pick-up date. However, there is no evidence that the Chungs communicated to Ms. Ninos their unwillingness to comply with her requests. There is also no evidence the parties ever discussed the requests again or that Ms. Ninos withheld the Chungs’ puppy because of their failure to comply with her requests. So, I find Ms. Ninos’ requests in

her January 7, 2022 text message did not change the contract, unilaterally, or otherwise. Rather, I find they were simply requests Ms. Ninos made which the parties did not address further because the circumstances changed and the Chungs did not end up keeping the puppy.

24. Based on the text messages in evidence, I find the parties did not come to an agreement about selling the puppy and sharing the proceeds. For a contract to exist, there must be a “meeting of the minds”. This means the parties must agree to all the essential terms of the contract. In determining whether there is a contract, the parties’ subjective intentions or beliefs about what they agreed to are not relevant. Rather, the question is whether an objective bystander, knowing the material facts, would believe the parties reached an agreement (see *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.*, 2009 BCSC 1303, at paragraphs 322 to 325).
25. I find an objective bystander reading the text messages in evidence would not know what amount, if any, the Chungs were to receive for the puppy’s sale. Ms. Ninos says the Chungs instructed her to sell the puppy because they were unable to care for it. However, to the contrary, I find the evidence shows the Chungs were ready and willing to take the puppy if the parties could not reach an agreement about the sale proceeds, which I find they did not. Having found there was no agreement, I find it is unnecessary for me to determine whether the Chungs were under duress in the discussions about the \$1,200 payment.
26. Having found the parties did not reach an enforceable agreement about selling the puppy and sharing the proceeds, I find the original contract applies to the Chungs’ claim. Ms. Ninos says offering the puppy to the Chungs was a “kind gift”, and their rejection of her gift should not come at her expense. However, I find the puppy was not a gift, but a clear term of the contract.
27. Ms. Ninos also says the Chungs were non-compliant with the contract by failing to make timely appointments for Noodle’s vaccines and medications and failing to pay for some of these expenses. However, Ms. Ninos does not request a remedy for these alleged breaches. Though she does not explicitly say so, I infer Ms. Ninos says the

Chungs' non-compliance was a repudiation of the contract. However, the Chungs' alleged repudiation occurred in late 2020 and early 2021, and there is no evidence Ms. Ninos accepted the Chungs' alleged repudiation at that time. To the contrary, I find the evidence shows the parties continued to carry out their responsibilities under the contract until their relationship broke down in early 2022. So, even if the Chungs were non-compliant with the contract in 2020 or early 2021, I find there was no accepted repudiation, and I find the parties continued to be bound by the contract.

28. I find that by failing to provide the Chungs with a puppy from Noodle's fourth litter, Ms. Ninos breached the contract, and the Chungs are entitled to damages. The Chungs claim \$4,000 in damages. They say that was the minimum amount Ms. Ninos received for each of Noodle's puppies, but they provided no evidence to support this allegation. Ms. Ninos denies that she received \$4,000 per puppy. She says that under the terms of the contract, the puppy has no value, but is simply an additional family member, so she does not owe the Chungs anything. However, since the Chungs did not get what they bargained for, I find they are entitled to be compensated.
29. The only evidence of the puppy's market value is the text messages between the parties indicating they would be sharing the proceeds of the sale if the Chungs received \$1,200. I infer from these texts that sharing meant splitting the proceeds evenly. So, without more, on a judgment basis I find the Chungs are entitled to \$2,400 in damages for Ms. Ninos' breach of contract.

Are the Chungs entitled to compensation for the cost of spaying Noodle?

30. The Ninos undisputedly returned Noodle to the Chungs on January 20, 2022, at which point she had not been spayed. The contract says Noodle would be spayed at Ms. Ninos' expense at the completion of the contract. The contract is silent about when and where the spaying and payment for it would occur, and it does not appear from the evidence that Noodle has yet been spayed. Ms. Ninos has undisputedly not paid the Chungs any amount for Noodle's spaying procedure.

31. The Chungs claim an unspecified amount for the spaying expense, but in their final reply submissions they say they received quotes between \$650 and \$850. They did not provide those quotes in evidence, and so I place no weight on them. Ms. Ninos undisputedly agreed to pay a maximum of \$239.99, based on Noodle being spayed at a specific animal hospital where Ms. Ninos receives a discount. She submitted a quote from the hospital for that amount.
32. I find that under the contract Ms. Ninos is required to pay for the cost of having Noodle spayed. I find the only evidence of the procedure's cost is Ms. Ninos' \$239.99 quote. So, I order Ms. Ninos to pay the Chungs \$239.99 for Noodle's spaying procedure.

Are the Chungs entitled to the return of their \$500 security deposit?

33. The Chungs undisputedly paid Ms. Ninos a \$500 security deposit as part of the contract. The contract says the security deposit would be returned to the Chungs at the contract's completion. The Chungs want Ms. Ninos to return their deposit.
34. Ms. Ninos said she would return the Chungs' \$500 deposit by deducting it from the \$1,200 sale proceeds from the puppy. She said deducting the \$500 security deposit from the sale proceeds was factored into her decision when making the offer to the Chungs, but I find this was never communicated to the Chungs at the time. In any event, I have found the parties did not reach an agreement about selling the puppy. So, I find Ms. Ninos has no valid reason to keep the security deposit.
35. I find that under the contract Ms. Ninos was required to return the Chungs' deposit on December 3, 2021, after Noodle undisputedly produced her fourth successful litter, not after Noodle was spayed. I find Ms. Ninos' failure to return the \$500 deposit to the Chungs is in breach of the contract. So, I order Ms. Ninos to return the Chungs' \$500 security deposit.

Are the Chungs entitled to compensation for the cost of grooming Noodle?

36. In the Dispute Notice the Chungs claim \$50 for the cost of grooming Noodle, but in their submissions they increased the claim to \$150. However, the Chungs did not

amend the Dispute Notice to reflect the increased amount, so I find they are limited to the \$50 claimed in the Dispute Notice.

37. The Chung's grooming claim is based on a screenshot of Ms. Ninos' website that offered grooming services. The parties disagree about when that offer was available, but I find nothing turns on this. Grooming costs are undisputedly not included in the contract and there is no evidence Ms. Ninos ever represented that the website's terms were part of the contract. The Chung's also provided no evidence of the cost of grooming. I dismiss this claim.

Is Ms. Ninos entitled to \$5,000 in damages?

38. Ms. Ninos claims \$5,000 in damages for loss of clients, for her time spent finding a suitable home for the Chung's puppy and drafting a new puppy adoption agreement, and for mental distress.
39. As explained above, to the extent that Ms. Ninos' claim for loss of clients is a damages claim flowing from her alleged loss of reputation, I refuse to resolve it. To the extent that her claim for loss of clients is a legal claim separate from her defamation claim, I dismiss it. Ms. Ninos says she lost many clients over an 8-month period, but she provided no evidence to support her claim.
40. Ms. Ninos also claims damages for her time spent finding a new home for the puppy and drafting a new puppy adoption agreement. However, I have already found the parties did not reach an agreement about selling the puppy, and that Ms. Ninos breached the original contract by failing to provide the Chung's with a puppy. So, I find there is no legal basis entitling Ms. Ninos to compensation for her time spent finding the puppy a home or drafting its adoption agreement. I dismiss this claim.
41. Ms. Ninos also claims damages for mental distress. She says caring for Noodle and her new puppies was all-consuming and exhausting, and that she simultaneously suffered many family losses during that time. She says her dispute with the Chung's at that time caused her overwhelming anxiety. However, the BC Court of Appeal has held that there must be some evidentiary basis for awarding damages for mental

distress. See *Lau v. Royal Bank of Canada*, 2017 BCCA 253. Since Ms. Ninos did not submit any medical or other evidence of her mental distress, I find she has not proven she is entitled to damages. I dismiss this claim.

42. The *Court Order Interest Act* applies to the CRT. However, in the Dispute Notice the Chungs said they do not want to claim interest. So, I find they are not entitled to interest on the amounts owing.

43. 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. Since the Chungs were generally successful, I find they are entitled to reimbursement of \$175 in CRT fees.

44. Ms. Ninos claims \$125 in CRT fees and says that under the contract the Chungs are required to pay her legal costs. However, I find the contract refers only to legal costs Ms. Ninos incurs to repossess Noodle or to seek damages if the Chungs have Noodle spayed without Ms. Ninos' written consent. I find Ms. Ninos' CRT fees were not incurred for either of these purposes. In any event, since Ms. Ninos was unsuccessful in her counterclaim, I find she is not entitled to reimbursement of her CRT fees. I dismiss her claim for legal fees.

45. Neither party claimed any dispute-related expenses so I make no order for them.

ORDERS

46. Within 30 days of the date of this order, I order Ms. Ninos to pay the Chungs a total of \$3,314.99, broken down as follows:

- a. \$2,400 in damages,
- b. \$239.99 for the cost of spaying Noodle,
- c. \$500 for the return of the security deposit, and

d. \$175 in CRT fees.

47. The Chungs are entitled to post-judgment interest, as applicable.

48. I dismiss the Chungs' claims against Mr. Ninos.

49. I refuse to resolve Ms. Ninos' claim for loss of reputation.

50. I dismiss the remainder of Ms. Ninos' counterclaim.

51. 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.

Sarah Orr, Tribunal Member