



Civil Resolution Tribunal

Date Issued: June 26, 2023

File: SC-2022-005719

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Molchanova v. Osadchaya*, 2023 BCCRT 532

BETWEEN:

NATALIA MOLCHANOVA and MIKHAIL MOLCHANOV

APPLICANT

AND:

DINA OSADCHAYA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about the purchase of a puppy named Kolya.
2. The applicants, Natalia Molchanova and Mikhail Molchanova, purchased Kolya from the respondent, Dina Osadchaya, for \$3,500. The applicants say that before purchasing Kolya, they told the respondent they needed a dog without any allergies,

and the respondent assured them that Kolya had none. The applicants say Kolya developed a severe allergy on his paws 4 days after purchase. The applicants say they returned Kolya to the respondent, but the respondent refused to provide a refund. The applicants ask for reimbursement of Kolya's \$3,500 purchase price.

3. The respondent says Kolya has no allergies and is healthy. The respondent says the applicants are not entitled to any refund.
4. The applicants are self-represented. The respondent is represented by their spouse, MO, who is not a lawyer.

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. 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.
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.

Evidence issues

9. The respondent's documentary evidence included several files that I infer are likely photographs and videos of Kolya based on the titles for each evidence item. However, I was unable to open or view this evidence. The respondent contacted the CRT when they had difficulty uploading some of their evidence, and CRT staff then uploaded 2 pieces of evidence for the respondent. CRT staff also advised me that many of the evidence files that could not be opened were re-uploaded by the respondent, but then removed by the respondent. Given this, and since I find in the respondent's favour in any event, I find there is no prejudice to the respondent in proceeding to decide this dispute without this evidence.
10. In short, bearing in mind the CRT's mandate which includes proportionality and the speedy resolution of disputes, I find it unnecessary to ask the respondent to resubmit their photographic and video evidence, or seek further submissions from the parties on this evidence, which would further delay this decision. Further, parties are told to contact the CRT if they cannot open or view any evidence submitted, and none did so. Finally, even if the photographs or videos show some visual issues with Kolya's health, it would not change my decision in the face of uncontradicted expert evidence that says Kolya was healthy, which I discuss below. So, I find there is no prejudice to either the applicants or the respondent in proceeding to decide this dispute without this evidence.

ISSUES

11. The issues in this dispute are:

- a. Did the respondent breach the parties' contract or misrepresent Kolya's health to the applicants at the time of purchase?
- b. If so, are the applicants entitled to a refund of Kolya's purchase price?

EVIDENCE AND ANALYSIS

12. In a civil claim like this one, the applicants must prove their claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.
13. The following facts are undisputed. The applicants purchased Kolya from the respondent on August 6, 2022 for \$3,500. Kolya is an American Hairless Terrier. The applicants returned Kolya to the respondent on August 10, 2022, 4 days later. The applicants asked the respondent for a refund, and the respondent refused.
14. There is no written contract between the parties. Although the respondent provided a written contract in evidence that they say is the same contract they used for all puppy sales, it is undisputed that the applicants did not see or sign this contract before purchasing Kolya, so I find it does not apply. There is little evidence before me about the parties' oral agreement. However, I find it undisputed that the sale included a term that Kolya would be healthy and free of allergies. The applicants do not allege that there was any agreement about being able to return Kolya to the respondents at any time for a full refund. I find the evidence does not show the parties agreed to any specified refund terms when the respondents purchased Kolya.
15. 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.
16. The starting point in a dispute about the sale of goods is that the law generally treats sales as final. 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.

17. 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.
18. Although the applicants do not use these words, I find the applicants allege that the respondent misrepresented Kolya's condition before purchase. The applicants also say that since they paid \$3,500 for Kolya, the respondent must guarantee the applicants are getting a healthy dog. The respondent does not dispute telling the applicants that Kolya was healthy and had no allergies at the time of purchase. So, the first question is whether this representation was false.
19. The applicants say when they picked up Kolya on August 6, 2022, he had a rash on his legs, and the respondent assured them it was from cuts from playing outside that would heal in time. The applicants say that after 4 days, Kolya developed a severe allergy on his paws. They say Kolya's paws were red with broken skin, and Kolya was constantly biting his paws. They also say Kolya refused to eat breakfast. The applicants submitted a photograph of one of Kolya's paws, that they say shows Kolya's paw irritation. I find the photograph shows some redness on the bottom of one of Kolya's paws, but I cannot tell from the photograph whether the redness is due to irritation, allergies, or something else. The applicants also submitted videos that show Kolya chewing on and scratching his paws. The applicants say this shows

symptoms of an ongoing allergic reaction, and proves that the respondent did not sell them a healthy puppy free of allergies. I find the video does not obviously show that Kolya was unhealthy or had an ongoing allergic reaction or allergy when purchased by the applicants. The documentary evidence does not show any rash or cuts on Kolya's legs.

20. I find that whether Kolya was unhealthy or had an ongoing allergic reaction or allergy at the time of purchase is a technical matter that requires expert evidence. See *Bergen v. Guliker*, 2015 BCCA 283. The problem for the applicants is that they have not provided expert evidence that shows Kolya had any allergies or allergic reaction, either short term or ongoing, or was otherwise unhealthy. The applicants did not provide evidence from a veterinarian or anyone else to confirm their alleged concerns with Kolya's health.
21. For their part, the respondent provided evidence from two veterinary animal hospitals. In an August 10, 2022 report from Urban Animal Hospital, Dr. Hayk Hakobyan examined Kolya on the date he was returned to the respondent for reportedly being unwell. Dr. Hakobyan observed "mild follicular rash as the dorsum, suspect sebaceous gland impaction" and noted that it was "not a concern" and "specific for the breed", and would resolve with age. Dr. Hakobyan also noted no irritation on the skin and assessed Kolya as being "apparently healthy". Dr. Hakobyan also noted that Kolya had been previously examined on July 6, 2022 and appeared healthy at that time with no noted issues.
22. CRT rule 8.3(2) says that an expert must state their qualification in any written expert opinion evidence. CRT rule 1.2(2) says that the CRT may waive or vary the application of a rule to facilitate the fair, affordable, and efficient resolution of disputes. Beyond the "Dr." title, Dr. Hakobyan's qualifications are not specifically stated in the August 10, 2022 report mentioned above. However, to the extent it falls short of CRT rule 8.3(2), I waive this requirement under CRT rule 1.2(2). The evidence makes it clear that this report is from a doctor at an animal hospital, who I find is a veterinarian. The applicants allege some personal connection between the respondent and Dr.

Hakobyan, so I infer they allege that Dr. Hakobyan is not neutral. However, they provided no evidence to support this allegation. I also note the evidence shows the respondent offered to have Kolya examined by a veterinary of the applicants' choice after Kolya was returned, but the applicants declined to do so. So, I place no weight on this allegation and I find Dr. Hakobyan is a neutral expert.

23. A later October 25, 2022 veterinary record from 108 Avenue Animal Hospital, indicated that Kolya had normal skin and coat with no rash. Together with the observations and findings in Dr. Hakobyan's earlier report, I find this evidence shows Kolya was healthy and allergy-free at the time of purchase, and continued to be healthy and allergy-free after being returned to the respondent.
24. As noted, the applicants bear the burden of proving their claims. Here, I find the evidence does not prove that Kolya was unhealthy or had any allergies at the time he was purchased by the applicants, or anytime thereafter. So, I find it unproven that the respondent misrepresented Kolya's health or sold the applicants' an unhealthy dog with allergies.
25. Given my findings above, this means I also find there was no breach of contract or breach of any implied warranty under the *Sale of Goods Act* (SGA).

Refund offer

26. The evidence shows that at some point after the applicants returned Kolya to the respondent, the respondent offered to refund the applicants 75% of Kolya's purchase price. However, based on the parties' submissions and text messages, I find the parties never agreed to the 75% refund. So, I find that offer is not binding on the respondent. It follows that I find the applicants are not entitled to a refund of a portion of Kolya's purchase price on that basis.
27. Given my conclusions above, I find the applicants have not proved the respondent misrepresented Kolya's health, nor breached the contract or SGA, or that they are entitled to any refund. So, I dismiss the applicants' claims.

CRT fees and expenses

28. 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. As the applicants were unsuccessful, I dismiss their fee claim. The respondent did not pay any CRT fees and neither party claimed any dispute-related expenses, so I award none.

ORDER

29. I dismiss the applicants' claims and this dispute.

Leah Volkers, Tribunal Member