



Civil Resolution Tribunal

Date Issued: July 4, 2023

File: SC-2022-006090

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lancelyn v. Kennedy*, 2023 BCCRT 560

B E T W E E N :

TRUDY LANCELYN

APPLICANT

A N D :

REBEKA KENNEDY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a horse purchase.
2. The applicant, Trudy Lancelyn, purchased a 9-year-old thoroughbred mare, Leading Lady (referred to as Lady), from the respondent, Rebeka Kennedy, for \$6,500. Unfortunately, Lady suddenly suffered colic and was euthanized only 2 days after Ms.

Lancelyn accepted her delivery. Ms. Lancelyn says Ms. Kennedy misrepresented Lady as healthy and breached the *Sale of Goods Act*. Ms. Lancelyn says that in addition to Lady's purchase price, she incurred \$2,000 in transportation costs and vet bills. However, Ms. Lancelyn expressly limits her claim to \$5,000 to fit within the small claims monetary limit at the Civil Resolution Tribunal (CRT).

3. Ms. Kennedy denies misrepresenting Lady's health and says she had no knowledge of the medical condition that ultimately led to Lady's death. In any event, Ms. Kennedy says that Ms. Lancelyn bought Lady "as is" and declined a pre-purchase vet inspection, so she says Ms. Lancelyn is not entitled to a refund or other damages.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
7. 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.

ISSUE

9. The issue in this dispute is whether Ms. Lancelyn is entitled to a refund for Lady's purchase or reimbursement of transportation and vet expenses.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Ms. Lancelyn as the applicant must prove her claim on a balance of probabilities (meaning "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.
11. The background facts are undisputed. Ms. Kennedy advertised Lady for sale on Facebook, and Ms. Lancelyn responded to the ad on July 28, 2022. In the parties' Facebook Messenger exchange, Ms. Lancelyn noted that Lady appeared thin in the photos and asked about any health issues. Ms. Kennedy confirmed that Lady had no health problems, and that Lady was just a "harder keeper", which the parties agree means "picky eater". Ms. Kennedy also advised Ms. Lancelyn that Lady's feet had been very neglected by her prior owner, though they had improved significantly in the 2 years she had owned Lady.
12. Ms. Lancelyn travelled from the Lower Mainland to the Okanagan to see and ride Lady on August 8, 2022. She gave Ms. Kennedy \$650 as a 10% deposit on Lady's purchase price during that visit. Ms. Kennedy drafted an Equine Bill of Sale (contract) dated August 12, 2022, which the parties exchanged electronically and each

undisputedly signed on August 17. That same day, Ms. Lancelyn also completed payment of the agreed \$6,500 purchase price.

13. The parties' contract expressly stated that the buyer (Ms. Lancelyn) did not need a health check and was purchasing Lady "as is". It also stated that Ms. Lancelyn waived her right to inspect the horse and would not hold Ms. Kennedy liable for any claims after the date of sale.
14. The parties arranged for Lady to be transported by a third party to the Lower Mainland on August 19, 2022. Ms. Lancelyn texted Ms. Kennedy that Lady arrived at about 3 pm, came off the trailer "calm and relaxed" and settled in well. Ms. Lancelyn says Lady ate and drank water that evening and the following morning. However, by about 1 pm on August 20, Ms. Lancelyn says Lady showed signs of discomfort.
15. Ms. Lancelyn texted Ms. Kennedy at about 8:30 pm on August 20 that Lady had "colicked" and asked if there was anything in Lady's history that might explain her condition. Ms. Kennedy responded that Lady had never had colic or any other gut issues. It is undisputed that Lady was euthanized the following morning, at about 9:30 am on August 21 after her condition failed to improve.
16. As noted, Ms. Lancelyn says that Ms. Kennedy breached the *Sale of Goods Act* (SGA). Section 18 of the SGA sets out several implied warranties that apply to the sale of goods, including that the good was reasonably fit for its purpose, was of saleable quality, and would be reasonably durable considering the use to which it would normally be put and all the sale's surrounding circumstances.
17. However, SGA section 18(e) says that an express warranty (like the good is being sold "as is") overrides the implied SGA warranties if the express warranty is inconsistent with the SGA. I find that the "as is" sale condition in the parties' contract is inconsistent with the SGA's implied warranties. In other words, I find the parties contracted out of the implied warranties in the SGA. Therefore, I find the implied warranties in the SGA do not apply to Lady's sale.
18. Ms. Lancelyn also says that Ms. Kennedy misrepresented that Lady was healthy.

19. A “misrepresentation” is a false statement of fact made during negotiations or in an advertisement. If the 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 buyer must have suffered damages as a result of the reliance. See *Queen v. Cognos Inc.*, [1993] 1 SCR 87 at paragraph 10.
20. Ms. Lancelyn relies on a report from the veterinarian who treated Lady on August 20 and 21, Dr. Kerstin Schwichtenberg. Dr. Schwichtenberg stated she has held an exclusively equine practice since graduating with her Doctor of Veterinary Medicine in 1998. Noting that Ms. Kennedy does not take issue with Dr. Schwichtenberg’s qualifications, I accept her report as expert evidence.
21. Dr. Schwichtenberg stated that during a basic post-mortem examination, she found Lady had a twisted small intestine, which she stated was a fatal condition without surgery. Dr. Schwichtenberg stated her examination also revealed numerous adhesions between the loops of intestines and between other abdominal organs, which indicated a prior abdominal accident or an “inflammatory process” at some time in the past. Dr. Schwichtenberg said the significance of that finding was unclear, but it pointed to chronic problems.
22. I accept that the cause of Lady’s observed “profound discomfort” was a twisted small intestine, which is not disputed. While Dr. Schwichtenberg’s report states that Lady also had signs of poor nutrition and very poor foot health, I find Ms. Lancelyn was aware of those issues before the purchase, and that they did not likely contribute to the decision to euthanize Lady.
23. The difficulty is that Dr. Schwichtenberg did not explain what caused the twisted intestine condition or say that signs of this condition would or should have been evident to Ms. Kennedy before Ms. Lancelyn purchased Lady. I also find Dr. Schwichtenberg’s comments that Lady had likely experienced previous gut inflammation, or an abdominal accident, are insufficient to establish that Lady had an

obvious chronic health condition that Ms. Kennedy should have been aware of in the 2 years she owned Lady. Further, Dr. Schwichtenberg specifically stated it was unclear whether the prior intestine condition contributed to the twisted intestine that led to Lady's death.

24. Ms. Kennedy provided a report from Dr. Janice Posnikoff, who has been an equine veterinarian since graduating with her Doctor of Veterinary Medicine in 1994. I am satisfied that Dr. Posnikoff is qualified to provide expert opinion in this dispute, and I accept her report as expert evidence. Dr. Posnikoff did not examine or treat Lady. Rather, she provided her opinion on Dr. Schwichtenberg's observations and conclusions about Lady's condition.
25. Dr. Posnikoff stated that when colic originates in the small intestine, she considers it an "intestinal accident" that is random, unpredictable, and unavoidable. She said that she found no peer-reviewed research in the veterinary community that linked malnutrition with twisted intestines. Dr. Posnikoff also stated that the adhesions and intestine inflammation Dr. Schwichtenberg identified could have been caused by the colic Lady suffered for more than 24 hours before she was euthanized. Dr. Posnikoff noted that a pathologist would have to examine a bowel sample to determine the chronicity of the intestinal condition.
26. Given that Dr. Schwichtenberg physically examined Lady, I find her opinion that the observed internal adhesions likely indicated a prior intestine condition or injury to be more persuasive than Dr. Posnikoff's opinion that the adhesions could have been caused by the recent colic incident. Nevertheless, I find Dr. Schwichtenberg's opinion falls short of establishing that Lady had any chronic health condition, other than being a picky eater and having poor foot health, both of which Ms. Kennedy undisputedly disclosed to Ms. Lancelyn before the sale. I find that Dr. Schwichtenberg's comments about the adhesions are inconclusive about whether they were from an obvious chronic intestinal issue, and they leave open the possibility that Lady had a prior acute injury or condition from which she had fully recovered or was in remission.

27. Even if Lady did have a chronic intestinal condition, I find the evidence before me is insufficient to establish that Ms. Kennedy knew or ought to have known about it. I also find Ms. Lancelyn's submission that Ms. Kennedy provided only the "bare minimum" in terms of Lady's care and that Lady did not have the physical strength and health to survive the change of environment resulting from the sale, is purely speculative.
28. As for the twisted intestine condition in particular, Ms. Lancelyn admits that Ms. Kennedy was likely unaware of it and that a pre-sale veterinary examination would not have revealed that issue. Overall, I find the twisted small intestine condition was likely a sudden and unpredictable ailment that was unrelated to any alleged prior condition and could have occurred at any time.
29. For all these reasons, I find that Ms. Kennedy did not misrepresent Lady's condition as healthy before Ms. Lancelyn purchased her. So, I find that Ms. Lancelyn has not established that Ms. Kennedy is responsible for providing her with any refund or expense reimbursement. I dismiss Ms. Lancelyn's claim.
30. 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 Ms. Lancelyn was unsuccessful, I dismiss her claim for CRT fees. Ms. Kennedy did not pay any fees and neither party claims any dispute-related expenses.

ORDER

31. I dismiss Ms. Lancelyn's claims and this dispute.

Kristin Gardner, Tribunal Member