



Civil Resolution Tribunal

Date Issued: August 10, 2023

File: SC-2022-007108

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Porter v. Loewen*, 2023 BCCRT 672

BETWEEN:

KATHRYN PORTER

APPLICANT

AND:

DAVID LOEWEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This dispute is about a dog breeding contract. The applicant, Kathryn Porter, and the respondent, David Loewen, agreed that Ms. Porter would act as a “guardian” for a Labradoodle named Pippa while Pippa underwent up to three breeding cycles. Pippa

undisputedly delivered one litter of puppies, after which Ms. Porter told Mr. Loewen she was no longer able to act as Pippa's guardian.

2. Ms. Porter claims \$2,000 for half of the purchase price of one puppy, which she says she is entitled to under the parties' contract. As discussed below, Mr. Loewen says that Ms. Porter did not fulfil the contract's terms and so she is not entitled to payment.
3. Both parties are 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, the parties in this dispute call into question the credibility, or truthfulness, of the other. 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 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.

ISSUES

8. The issues in this dispute are whether Ms. Porter breached the parties' contract and whether Mr. Loewen must pay Ms. Porter \$2,000 under its terms.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Ms. Porter must prove her claims on a balance of probabilities (meaning "more likely than not"). While I have read all the parties' submitted evidence and arguments, I have only referred to those necessary to explain my decision. I note Mr. Loewen did not submit documentary evidence or written arguments, despite having the opportunity to do so.
10. In late 2020, the parties entered into a "Puppy Purchasing Agreement" (contract). While the copy Ms. Porter submitted in evidence only shows her signature and not Mr. Loewen's, Mr. Loewen does not dispute that he agreed to the contract and I find that he did.
11. The contract refers to a puppy named Carly. Ms. Porter says that Mr. Loewen delivered her a different dog, named Poppy, which she renamed as Pippa. While the parties dispute the reason for the change to a different dog, they agree that the contract's terms apply to Ms. Porter's guardianship of Pippa. So, I have considered the contract to apply to Pippa's guardianship, even though it contains a different dog's name.
12. Ms. Porter argues that Mr. Loewen overcharged her for Pippa, and refers to several other Labradoodle guardianship arrangements that she found within BC. I find this information irrelevant, as Ms. Porter undisputedly agreed to the contractual terms

proposed by Mr. Loewen. So, in this decision I have only considered the terms set out in the contract.

13. I have summarized the contract's relevant terms below:

- a. Ms. Porter would pay Mr. Loewen a "supplemented purchase price" of \$4,000 for Pippa.
- b. Mr. Loewen would provide Pippa to Ms. Porter in a "guardianship capacity".
- c. Ms. Porter would accommodate and facilitate Mr. Loewen's desire to breed Pippa "up to a maximum of three times" before she reached 5 years old, and would support the successful breeding and whelping of up to 3 litters of puppies.
- d. Mr. Loewen would pay Ms. Porter half of the purchase price of one puppy per litter each time Pippa was bred.
- e. Once all terms of the agreement had "satisfactorily been met", Mr. Loewen would assign ownership of Pippa to Ms. Porter, and the guardianship relationship would be terminated.
- f. In the event of a breach of the contract, Ms. Porter would be required to return Pippa to Mr. Loewen immediately, without compensation, and without Mr. Loewen having to prove actual damages.

14. I find that Ms. Porter paid Mr. Loewen \$4,000 for Pippa as required by the contract, and Mr. Loewen delivered Pippa to Ms. Porter in mid-January 2021. Ms. Porter arranged for Pippa to mate with a male dog over several dates in May 2022, and Pippa delivered a litter of nine puppies on or around July 11, 2022 at Mr. Loewen's home. None of this is disputed.

15. After Pippa's first litter of puppies was born, Ms. Porter told Mr. Loewen that she could no longer care for Pippa. When a party indicates they no longer intend to be bound by a contract's terms, it is called repudiation. Here, I find that when Ms. Porter told

Mr. Loewen that she could not continue caring for Pippa, she repudiated the contract. While the parties disagree about Ms. Porter's reasons for doing so, I find the personal reason for the repudiation is irrelevant to the parties' contractual obligations and so I have not addressed those arguments in detail here.

16. When a contract is repudiated, the non-repudiating party (sometimes called the "innocent party") may either accept the repudiation, or treat the contract as still being in force and sue for damages for past or future breaches: see *Guarantee Co. of North America v. Gordon Capital Corp.*, 1999 CanLII 664 (SCC). I infer Ms. Porter argues Mr. Loewen accepted her repudiation, as he undisputedly retained custody of Pippa.
17. In his Dispute Response filed at the outset of this proceeding, Mr. Loewen said that Ms. Porter did not "fulfill the purpose and intent of her obligation as a guardian" and broke the agreement. However, significantly, there is no evidence before me that Mr. Loewen ever previously objected to the repudiation or otherwise conveyed an intention to treat the contract as still being in force. So, on the evidence before me I find Mr. Loewen accepted Ms. Porter's repudiation and the contract was terminated.
18. As noted above, the contract stated that in the event of a breach, Ms. Porter would be required to return Pippa to Mr. Loewen immediately and without compensation. Ms. Porter undisputedly returned Pippa to Mr. Loewen, and as noted had paid him \$4,000 for her. However, because I have found the parties mutually agreed to terminate the contract, Ms. Porter did not breach the contract by refusing to continue to care for Pippa for further breeding cycles. So, I find this term does not apply to disentitle Ms. Porter to compensation for Pippa's puppy litter.
19. Mr. Loewen did not file a counterclaim, but in his Dispute Response said the repudiation "caused a lot of work" for him, so I infer he requests a set-off against any amount I award to Ms. Porter. The burden of proving a set-off is on the party alleging it. As Mr. Loewen provided no evidence or additional arguments on this point, I find he has not proven he is entitled to any set-off.

20. While acceptance of a repudiation means that the parties do not have to perform future obligations under the contract, the parties are still obligated to fulfill any rights and obligations that have already matured. Rights and obligations that arise from the partial execution of the contract are not affected by the repudiation: see *Guarantee and Ascent One Properties Ltd. v. Liao*, 2020 BCCA 247.
21. The parties agree that Mr. Loewen has not paid Ms. Porter any amount under the contract. I find Mr. Loewen's obligation to pay Ms. Porter half of the value of one puppy matured at the time Pippa delivered her puppies. The contract did not stipulate the precise timing of the payment, but said that Mr. Loewen would pay Ms. Porter "half of the value of one puppy per litter" each time Pippa was bred. So, on a plain reading of the contract, I find that the parties agreed Mr. Loewen would make this payment for each litter Pippa delivered. In other words, the payment was not conditional upon Pippa delivering "up to" 3 litters as contemplated by the contract. This interpretation is also consistent with Mr. Loewen's Dispute Response, in which he says that he told Ms. Porter he would be "paying her **when I bred** for the inconvenience of taking her dog for up to 8 weeks" (my emphasis).
22. In summary, I find the contract required Mr. Loewen to pay Ms. Porter half of the value of one puppy for each litter Pippa delivered. For the first litter, this obligation crystallized when Pippa delivered the litter in July 2022, before Ms. Porter repudiated the contract. By not paying Ms. Porter, Mr. Loewen breached this obligation. While the contract does not specify the precise value of a puppy, I accept Ms. Porter's undisputed submission that the puppies cost \$4,000 each. So, I find Mr. Loewen owes her \$2,000 under the contract's terms, for half of the value of one puppy.
23. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Porter is entitled to pre-judgment interest on the \$2,000 from July 11, 2022, the approximate date of the puppies' birth, to the date of this decision. This equals \$71.46.
24. 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.

As the successful party, I find Ms. Porter is entitled to reimbursement of \$125 in CRT fees. Ms. Porter did not claim dispute-related expenses and so I make no order for them.

ORDERS

25. Within 21 days of this decision, I order Mr. Loewen to pay Ms. Porter a total of \$2,196.46, broken down as follows:

- a. \$2,000 in damages for breach of contract,
- b. \$71.46 in pre-judgment interest under the COIA, and
- c. \$125 in CRT fees.

26. Ms. Porter is entitled to post-judgment interest, as applicable.

27. 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.

Alison Wake, Tribunal Member