



Civil Resolution Tribunal

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File: SC-2023-000822

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *De Meester v. VI MacLeod Inc.*, 2024 BCCRT 30

B E T W E E N :

RICHARD DE MEESTER and SARAH DE MEESTER

APPLICANTS

A N D :

VI MACLEOD INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about kennel services. The applicants, Richard and Sarah De Meester, kenneled their dog, Luxee, with the respondent, VI Macleod Inc. Unfortunately, during her stay at the respondent's kennels, Luxee became sick and was euthanized as a result.

2. The applicants claim the respondent was negligent in caring for Luxee and that its negligence resulted in Luxee's illness and death. They claim \$4,999 for the cost of their veterinary bill and for purchasing and training a new dog.
3. The respondent says it was not negligent in providing care for Luxee and is not responsible for her death. It asks me to dismiss the applicants' claim.
4. The applicants are both represented by Mr. De Meester. The respondent is represented by its president, Tara Macleod.
5. For the reasons that follow, I dismiss the applicants' claim.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate.
9. Tribunal documents incorrectly show the name of the respondent as Errington Pet Lodge, where the parties agree the respondent's correct legal name is VI Macleod Inc. Given the parties agreement about the respondent's correct legal name, I have

exercised my discretion under section 61 of the CRTA to direct the use of the respondent's correct legal name in these proceedings. I have amended the style of cause accordingly.

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.
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. During the submissions process, some of the applicants' evidence was uploaded incorrectly. Despite being past the deadline for evidence and argument, I allowed the applicants an opportunity to provide that evidence and the respondent an opportunity to respond. The respondent provided further evidence and argument. While I have reviewed all arguments and evidence submitted after the deadline, I note I have not relied on the respondent's argument or evidence in coming to my decision.

ISSUES

13. The issue in this dispute is whether the respondent acted negligently in providing kennel services for Luxee, and if so, whether the applicants are entitled to the claimed damages.

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. This means "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.
15. On November 10, 2022, the applicants delivered Luxee to the respondent for kenneling until November 26, 2022.

16. On November 24, 2022, the respondent called and emailed the applicants to say Luxee was sick and was being taken to the veterinarian. The respondent's email said Luxee seemed "lethargic" the evening before and did not want to play with other dogs but noted no other symptoms at that time. The email says by the morning, Luxee had thrown up bile and her stomach seemed bloated. The respondent decided to take her to the applicants' chosen veterinarian, who had been identified when the applicants brought Luxee to the respondent.
17. Once there, the veterinarian began assessing and treating Luxee. At some point soon after, the applicants contacted the veterinarian directly and spoke about Luxee's prognosis and treatment. Given her prognosis, the applicants made the decision to euthanize Luxee.
18. The applicants say Luxee developed gastric dilation volvulus (GDV), which is supported by the veterinarian's records. The applicants argue that GDV was caused by the respondent exercising Luxee to excess by allowing her to play with other animals. The applicants argue the respondent was negligent by not checking in on Luxee overnight after they had noted her lethargy during the evening. The applicants say had the respondent done so, Luxee could have been saved.
19. The respondent says it acted reasonably. It says Luxee's only symptom when she bedded down for the night was an unwillingness to play with other dogs, which it described as lethargy. The respondent says when it discovered the additional symptoms, being vomited bile and the swollen stomach, it acted promptly to take Luxee to her own veterinarian as soon as it opened. The respondent says it would have gone to the emergency veterinarian, if necessary, if Luxee was unable to see her own veterinarian promptly.
20. So, what is the applicable law for a negligence claim like this one?
21. It is uncontroversial that the general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that

standard could cause the applicant's damages, and the failure did cause the claimed damages. Here, the applicants must prove the respondent fell below a reasonable standard of care while kenneling Luxee, and that doing so caused the damage, in this case, Luxee's death.

22. I find the respondent owed the applicants a duty of care in kenneling Luxee. The issue is whether the applicants have proved the respondent breached the applicable standard of care and whether any such breach caused the claimed damages. As noted, the burden of proof rests with the applicant. I find they have not proved any breach.
23. Generally speaking, expert evidence is necessary where a matter is outside of the knowledge and experience of an ordinary person. See: *Bergen v. Guliker*, 2015 BCCA 283. Here, I find expert evidence is necessary to determine the relevant standard of care for kenneling dogs and to demonstrate how the respondent's conduct fell below that standard. For example, an ordinary person would not know what symptoms trigger a need to contact a veterinarian for urgent medical care.
24. In this case, the applicant did not provide any expert evidence about the standard of care for kenneling dogs. I find evidence about the standard of care is necessary to prove the respondent's actions were unreasonable. So, I find the applicants have not proven the respondent was negligent in its care of Luxee.
25. Even if I were to have found that the respondent was negligent, the applicants did not provide evidence to show that earlier intervention would have saved Luxee or that it was the respondent's negligence that led to Luxee developing GDV. While the applicants cite "multiple websites" and the veterinarian's own comments for the proposition that an earlier response could have saved Luxee, they did not provide any such evidence. Notably, there is nothing in the veterinarian's records that suggest earlier attendance would have saved Luxee.

DECISION AND ORDER

26. Given all the above, I dismiss the applicants' claims.

Christopher C. Rivers, Tribunal Member