



# Civil Resolution Tribunal

Date Issued: March 21, 2024

File: SC-2022-009846  
and SC-CC-2023-005182

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1186889 BC Ltd. (dba Van Isle Aussies) v. Southern*, 2024 BCCRT 301

**B E T W E E N :**

1186889 B.C. LTD. (Doing Business As VAN ISLE AUSSIES) and  
MICHAEL SNEDDEN

**APPLICANTS**

**A N D :**

KIMBERLY DIANA SOUTHERN

**RESPONDENT**

**A N D :**

1186889 B.C. LTD. (Doing Business As VAN ISLE AUSSIES) and  
MICHAEL SNEDDEN

**RESPONDENTS BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Megan Stewart

## **INTRODUCTION**

1. This dispute is about a dog breeding contract.
2. The applicants and counterclaim respondents, 1186889 B.C. Ltd. (Doing Business As Van Isle Aussies) and Michael Snedden, say they had a contract with the respondent and counterclaim applicant, Kimberly Diana Southern, where the respondent paid a reduced rate for a puppy that the applicants could then breed temporarily. The applicants say the respondent breached the contract. They say she cut off communication with them and failed to allow them access to the puppy (Yuna) for testing to determine whether she could be bred, as required. In SC-2022-009846, the applicants claim \$5,000 for the expense of a replacement breeding dog.
3. The respondent denies the applicants' claims. She says the applicants are the ones who breached the contract by not providing a healthy puppy as promised, and being untruthful about it. She also says the applicants were negligent in breeding Yuna's parents. In SC-CC-2023-005182, the respondent claims \$5,000 for emergency vet care, lost income, special dog food, and fencing to protect against the applicants removing Yuna from her property.
4. Van Isle Aussies is represented by its owner, Kirsten Snedden. Michael Snedden is self-represented. Kimberly Diana Southern is also self-represented.

## **JURISDICTION AND PROCEDURE**

5. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. CRTA section 2 states 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.
6. CRTA section 39 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, without an oral hearing.

7. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
8. Where permitted by CRTA section 118, 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**

9. The issues in this dispute are:
  - a. Did either party breach the contract?
  - b. If so, what is the appropriate remedy?
  - c. Were the applicants negligent in breeding Yuna's parents?

## **EVIDENCE AND ANALYSIS**

10. The applicants in this civil proceeding must prove their claims on a balance of probabilities, meaning more likely than not. The respondent must prove her counterclaim to the same standard. I have read all the parties' submissions and evidence but refer only to the information I find necessary to explain my decision. In coming to my decision, I have considered the submissions and evidence submitted by the parties collectively in both disputes.

### ***The contract***

11. On May 13, 2020, Van Isle Aussies, a company, entered into a breeding contract with the respondent for Yuna. Kirsten Snedden signed the contract for Van Isle Aussies. Michael Snedden, an individual, is not a party to the contract. So, I find Michael

Snedden lacks standing (the legal right) to bring a breach of contract claim. I dismiss Michael Snedden's claim.

12. The relevant terms of the contract are summarized as follows:

- a. The respondent agreed to pay \$787.50 including tax for Yuna,
- b. Van Isle Aussies agreed, to the best of its knowledge, that Yuna was free from communicable diseases and was of sound body, stable temperament, and generally in good health,
- c. Van Isle Aussies provided a 2 year health guarantee against hereditary health defects (as documented by a certified veterinarian), causing loss of quality of life,
- d. The respondent agreed to tell Van Isle Aussies each time Yuna went into heat, and to make Yuna available to Van Isle Aussies during heat cycles for mating or any other reason,
- e. Van Isle Aussies could breed Yuna at its discretion any time after her first heat, but Yuna would not whelp more than 5 litters, and
- f. If the respondent changed her mind or was no longer able to care for Yuna, then she was to return Yuna to Van Isle Aussies, without compensation.

13. I note the contract also said any disputes would be dealt with in a particular town. However, none of the parties objected to CRT's jurisdiction, and all of them made claims and counterclaims, which I find means they agreed to the CRT deciding this dispute. So, I find the CRT has jurisdiction to adjudicate this dispute.

14. In an email exchange with Kirsten Snedden, the respondent described the contract as "predatory", by which I find she was suggesting it was unconscionable, and so unenforceable.

15. To establish unconscionability, the respondent must prove she was in a weaker position than Van Isle Aussies due to ignorance, need, or distress, and that the agreement was substantially unfair to her (see *Loychuk v. Cougar Mountain Adventures Ltd.*, 2012 BCCA 122 at paragraphs 29-31). In submissions, the respondent says the contract she signed was not what she had discussed with Kirsten Snedden when she contacted her about a puppy. However, she also says she received the contract in the mail a couple of weeks before picking Yuna up. I find the respondent had time to consider the contract and decide if she wanted to proceed. The respondent does not say she did not understand the contract. So, I find the respondent was not in a weaker position, and the contract is not void for unconscionability.

### **Background**

16. On June 4, 2020, the respondent paid for Yuna, and took her home on June 6. It is undisputed that towards the end of June, Yuna began to develop a series of urinary tract infections (UTIs) that the respondent treated with vet-prescribed antibiotics. She also told Van Isle Aussies about the UTIs. They stopped in September 2020. None of this is disputed.

17. In January 2021, Yuna went into her first heat, and the respondent reported it to Van Isle Aussies. However, around the same time the respondent exchanged emails with Kirsten Snedden regarding a post the respondent had made on social media about not trusting Van Isle Aussies to truthfully report test results. The respondent says her concerns arose in November 2020, after she started corresponding with a person who adopted one of Yuna's litter mates that had significant health problems. The respondent says Van Isle Aussies knew about the other dog's medical issues before Yuna's UTIs, but did not tell the respondent about them. The respondent also says Yuna began developing fear aggression and other behavioural issues. So, after Yuna's first heat, the respondent says she began "focusing on Yuna alone". This included having Yuna spayed in October 2021 after 2 more heat cycles.

18. Van Isle Aussies says the respondent did not contact it again after Yuna's first heat, so the Sneddens emailed the respondent in January 2022. In early February, the Sneddens attempted to call the respondent, but the respondent undisputedly hung up on them and refused to take their calls. The Sneddens emailed the respondent again on February 2, 2022, advising her that if she could no longer comply with the contract, she was to return Yuna. The respondent replied that they would have to resolve their dispute in court. The applicants filed their application for dispute resolution in December 2022.

***Alleged contract breaches – main claim and counterclaim***

19. First, the respondent's breach of contract allegation. The respondent says she was given an unhealthy puppy. She also says Kirsten Snedden lied by not telling her about the other puppy's health problems and not arranging testing for Yuna.

20. I find the fact that Yuna developed UTIs after going home with the respondent is insufficient to prove she was generally unhealthy when the respondent adopted her without expert evidence to confirm this. Further, I find medical conditions Yuna's litter mates may have had are irrelevant to determining whether Van Isle Aussies breached its contract to provide the respondent with a healthy puppy. While litter mates may share hereditary health defects, it is not guaranteed the others will share it. I find a hereditary health defect is something that requires diagnosis by a veterinarian or other qualified animal care provider on a case-by-case basis. There is no evidence Yuna was diagnosed with a hereditary health defect.

21. To the extent the respondent says Van Isle Aussies' failure to tell her about the other puppy's medical issues caused her not to get Yuna tested, I disagree. Veterinary bills in evidence show the respondent took Yuna to the vet to have her UTIs diagnosed and treated based on her symptoms. Although the respondent says she suspected Yuna might also have allergies, there is no evidence she followed up on her suspicions with the vet, though it was in her control to do so.

22. The respondent says Kirsten Snedden failed to arrange testing for Yuna as promised. Kirsten Snedden and the respondent discussed testing by email during Yuna's UTIs, when Kirsten Snedden indicated that if the UTIs continued, they could be a sign of Cushing's disease. She advised the respondent to discuss this with her vet. If the vet recommended testing, Van Isle Aussies would reimburse the respondent for that expense, as a positive test for that disease would have excluded Yuna from breeding. There is no evidence the respondent's vet recommended testing for Cushing's disease or any other conditions. Otherwise, the only mention of testing was when Van Isle Aussies emailed the respondent in January 2022 to discuss pre-breeding testing.
23. Finally, the respondent does not say Yuna had an unstable temperament from the time she took her home. Rather, she says this developed over time.
24. Based on all of the above, I find Van Isle Aussies did not breach its contract with the respondent to provide her with a healthy puppy, free from diagnosed hereditary health defects. I dismiss the respondent's counterclaim for breach of contract.
25. I turn to Van Isle Aussies' claim. By having Yuna spayed in October 2021, I find the respondent fundamentally breached the contract. Where a party fails to fulfill a primary obligation of a contract in a way that deprives the other party of substantially the whole benefit of the contract, it is a fundamental breach (see *Hunter Engineering Co. v. Syncrude Canada Ltd.*, [1989] 1 SCR 426). Put another way, a fundamental breach is one that destroys the contract's whole purpose and makes its further performance impossible (see *Bhullar v. Dhanani*, 2008 BCSC 1202).
26. The test for whether a breach of contract is a fundamental breach is an objective one. Here, I find a reasonable person would consider that having Yuna, a dog under a breeding contract, spayed deprived Van Isle Aussies of the contract's whole benefit, particularly since Yuna had not yet had a litter.
27. In the case of a fundamental breach, the innocent party may claim damages based on their out-of-pocket losses (see *Bhullar* at paragraphs 41 to 45 and *Karimi v. Gu*, 2016 BCSC 1060 at paragraphs 206 to 211). In other words, "put me in the

position I was in before the contract was made.” This is what Van Isle Aussies seeks by claiming the cost of a new breeding dog. I find this is an appropriate basis to award damages on.

28. Van Isle Aussies claim \$5,000 for a new breeding dog. But, it also says a new breeding dog costs around double what a pet dog costs. The respondent does not dispute this. The only evidence of the cost of a pet dog is the price paid by the person who adopted Yuna’s litter mate, which is \$1,890. So, I find Van Isle Aussies is entitled to damages of \$3,780. I order the respondent to pay Van Isle Aussies this amount, subject to any deduction based on my negligence analysis below.

### ***Alleged negligence – counterclaim***

29. The respondent also says the applicants were negligent in breeding Yuna’s parents. To prove negligence the respondent must show: 1) the applicants owed the respondent a duty of care, 2) the applicants breached the standard of care, 3) the respondent sustained a loss, and 4) the loss was caused by the applicants’ breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
30. First, I find that Michael Snedden did not owe the respondent a duty of care, as there is no evidence he had any relationship, contractual or otherwise, with the respondent. I dismiss the respondent’s negligence claim against Michael Snedden.
31. Next, I find even if the respondent proves Van Isle Aussies owed her a duty of care and breached the standard of care, she has not proven her claimed damages or that they were caused by the breach. She has not shown she lost income due to Yuna’s behavioural or medical issues, and she has not provided receipts for the cost of special dog food. While the claim for fencing is supported by a paid invoice, I find it is unrelated to this negligence claim. Finally, the respondent provided 1 invoice for emergency veterinary care related to Yuna’s UTIs. However, there is no documentary evidence the UTIs were caused by mis-breeding Yuna’s parents. So, I dismiss the respondent’s negligence claim.



## INTEREST, CRT FEES, AND EXPENSES

32. The *Court Order Interest Act* applies to the CRT. Van Isle Aussies is entitled to pre-judgment interest on the \$3,780 damages award from October 19, 2021, the date of Yuna's spay, to the date of this decision. This equals \$249.79.
33. 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 Van Isle Aussies was largely successful, I find it is entitled to reimbursement of \$175 in CRT fees. I dismiss the respondent's fees claim. Neither party claimed dispute-related expenses, so I award none.

## ORDERS

34. Within 30 days of the date of this order, I order Kimberly Diana Southern to pay Van Isle Aussies a total of \$4,204.79, broken down as follows:
- a. \$3,780 in damages for breach of contract,
  - b. \$249.79 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.
35. I dismiss the applicant Michael Snedden's claim.
36. I dismiss Kimberly Diana Southern's counterclaim.
37. Van Isle Aussies is entitled to post-judgment interest, as applicable.
38. This is a validated decision and order. 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.

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Megan Stewart, Tribunal Member