



Civil Resolution Tribunal

Date Issued: June 28, 2024

File: SC-2022-008739

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Courtney v. Mountain Remuda Horse Co.*, 2024 BCCRT 624

B E T W E E N :

KATHRYN JANE COURTNEY

APPLICANT

A N D :

MOUNTAIN REMUDA HORSE CO. AND BRADLEY WILLIAM PARK

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Amanda Binnie

INTRODUCTION

1. This dispute is about a deposit for a horse. The applicant, Kathryn Jane Courtney, says that she was pressured into making a \$2,500 deposit to purchase a horse, Nightshade, which was not returned when she chose not to buy Nightshade. The respondent partnership Mountain Remuda Horse Co. (MRHC) does not dispute the

applicant paid the deposit, but says the applicant signed a contract before paying the deposit, and so it is not obligated to return the deposit.

2. Brad Williams Park, who is one of MRHC's partners, did not file a Dispute Response and is technically in default.
3. The applicant is self-represented. MRHC is represented by its other partner, Bailey Park.

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.
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. 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. I find this because there is not a substantial credibility issue between the parties, who agree on most facts.
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 court.
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.

ISSUE

8. The issue in this dispute is whether Ms. Courtney is entitled to the return of her \$2,500 deposit.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. 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.

The Respondents

10. The respondent, MRHC, is a partnership with two partners, Bradley Park and Bailey Park. Sections 7 and 11 of the *Partnership Act* say that each partner is liable for a partnership's debts and obligations. Section 12 says that a partnership is liable for the acts or omissions of any of its partners acting in the ordinary course of business. So, I find the named respondents MRHC and Bradley Park are jointly and severally liable for the applicant's claim, to the extent it is proven as discussed below. Bailey Park is not personally named as a party in this dispute.
11. As mentioned above, Bradley Park did not file a Dispute Response and is technically in default. However, their name appears as the "organizational contact" on the Dispute Response filed by MRHC. Although MRHC does not explicitly say so, I find this Dispute Response and MRHC's submissions were intended to apply to MRHC and Bradley Park. So, I accept these submissions were made on behalf of Bradley Park and exercise my discretion not to assume liability against Bradley Park despite his default status.
12. The parties agree on the main facts of this dispute:
 - a. Ms. Courtney flew to Cranbrook to view Nightshade.
 - b. Ms. Courtney spent time riding and viewing Nightshade while in Cranbrook.

- c. Before returning to the airport, Ms. Courtney decided she wanted to purchase Nightshade and told the respondents this.
- d. For some reason, the parties failed to sign the contract before Ms. Courtney left. Instead, Bailey Park took it to the airport for Ms. Courtney's signature, where they both signed it.
- e. According to the contract, the sale price was \$12,500 plus GST, with a \$3,000 deposit. \$10,125 balance was due after a positive pre purchase veterinary equine examination (PPEV)
- f. Ms. Courtney paid \$2,500 of the \$3,000. This was because Ms. Courtney's maximum daily e-transfer limit was \$2,500.
- g. Ms. Courtney advised the respondents on July 13 she was not proceeding with purchasing the horse after "deep thinking" and talking with her friends and family.
- h. A PPVE was scheduled to take place on July 14. However, the vet gave this appointment to another potential buyer for Nightshade when the respondents advised the vet that Ms. Courtney was not buying Nightshade. The vet's office told Ms. Courtney this when she called to cancel.

Duress

- 13. Ms. Courtney says she felt pressured to sign the contract because she needed to catch her flight and because there was another buyer ready to purchase that day. She says she discussed concerns about Nightshade not "picking up his right lead" and that Brad Park and Bailey Park agreed with this. However, this was before the contract was signed.
- 14. While Ms. Courtney does not use the specific wording, I find she is arguing duress. Duress is a defense to the enforceability of a contract, meaning if a party signs a contract under duress, the agreement is not valid. To establish duress, she must show the respondents put her in a position she had no realistic alternative but to sign

the contract (see *Dairy Queen Canada, Inc. v. M.Y. Sundae*, 2017 BCCA 442). It is not duress for a party to simply take advantage of a superior bargaining position. There must be unfair, excessive, or coercive pressure that overrides the other party's free will.

15. Ms. Courtney says she has 40 years' experience purchasing and selling horses. The contract is two pages long and I find it is not overly complex. Ms. Courtney does not say she had no time to read the contract or understand what it said. While I accept that Ms. Courtney felt rushed because she had to catch her flight and because there was another interested buyer, I do not find she signed it under duress as she had the option of simply not buying Nightshade. So, I find the contract is a valid agreement.

Is Ms. Courtney entitled to return of her \$2,500 deposit?

16. Ms. Courtney says the deposit is refundable because the contract does not say it's non-refundable. However, this position is not consistent with the law on deposits. There is no legal authority says that a deposit is refundable unless the parties specifically agree that it is non-refundable
17. When a contract does not explicitly say whether a deposit is refundable or not, courts have said that whether the deposit is refundable or not depends on whether it is a "true deposit" or a "partial payment". A true deposit is a payment designed to motivate contracting parties to carry out contracts they have agreed to. A buyer who refuses to purchase what they have bargained for generally forfeits (gives up) the deposit. This is called "repudiation".
18. In contrast, a partial payment is made with the intention of completing a transaction. For example, a homeowner may give a contractor a partial payment to cover materials to be used in a contract to rebuild a deck. For a seller to keep a partial payment, the seller must prove actual loss to justify keeping the money received (see *Tang v. Zhang*, 2013 BCCA 52 at paragraph 30).

19. Ms. Courtney says that she made the deposit to secure Nightshade because she knew there was another buyer. I find this confirms the parties viewed this as a true deposit, rather than partial payment, and I find that it was.
20. I turn now to the effect of the PPEV. As mentioned above, payment of the remaining purchase price was due “upon confirmation of positive pre purchase veterinary equine examination”. I find, and the respondents acknowledge in their submissions, that the deposit would have been refunded if Nightshade failed the PPEV. However, that is not what happened.
21. I find the terms of the contract do not allow Ms. Courtney the refund of her deposit for any reason other than a failed PPEV. It is undisputed that Ms. Courtney texted Bradley Park that she was no longer interested in buying Nightshade, and so the PPEV did not occur. I find this means Ms. Courtney repudiated the contract before the PPEV and is not entitled to the return of her deposit. So, I dismiss her claim for the return of the deposit.
22. 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. Courtney was unsuccessful, I dismiss her claim for reimbursement. Though she uploaded an invoice from her lawyer, she did not claim legal fees on her Dispute Notice and explicitly said she was not claiming them in submissions.
23. While the respondents were successful, the only fee they paid was the \$50 to set the default notice aside. However, they do not make a claim for this \$50, so I make no order for fees. The respondents make no claim for dispute related expenses.

ORDER

24. I dismiss Ms. Courtney’s claims and this dispute.

