



Civil Resolution Tribunal

Date Issued: July 10, 2024

File: SC-2023-007442

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Molloy v. Elliott*, 2024 BCCRT 657

BETWEEN:

KELLY MOLLOY

APPLICANT

AND:

CANDACE ELLIOTT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Candace Elliott bought a dog, Kookbie, from Kelly Molloy for \$2,000. Ms. Elliott stopped making payments because Kookbie required surgery for a tail issue. Ms. Molloy says that she provided no warranty for the tail defect, so she asks for an order that Ms. Elliott pay the \$835 still owing under the parties' contract. The parties are each self-represented.

JURISDICTION AND PROCEDURE

2. 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 says 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.
3. 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. In some respects, both parties of this dispute question the credibility, or truthfulness, of the other, specifically about when or whether they each noticed the tail deformity. This is an important issue in this dispute. However, in *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I am properly able to make the necessary credibility findings based on the documentary evidence before me, as explained below. Considering the CRT's mandate to provide proportional and speedy dispute resolution and the low monetary value of this dispute, I decided to hear this dispute through written submissions.
4. CRTA section 42 says the CRT may accept as evidence any information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
5. I note that the contract at issue says has a title at the top: "Kelly's Bostons and Bulldogs Inc. Sale Contract". There is no registered corporation called Kelly's Bostons and Bulldogs Inc., but there is a Kelly's Bostons and Bulldogs Ltd. Ms. Molloy is the sole director of this corporation. However, in the body of the contract, the "seller" is defined as Ms. Molloy personally. So, on balance, and despite the title, I find that the contract was between Ms. Elliott and Ms. Molloy, not a corporation.

ISSUE

6. The issue in this dispute is whether Ms. Molloy is entitled to payment of the remaining \$835 owed under the parties' contract despite Kookbie's tail issue.

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, Ms. Molloy as the applicant must prove her claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
8. Ms. Elliott first contacted Ms. Molloy via Facebook Messenger on February 20, 2023. She had previously bought a puppy from Ms. Molloy and wanted another one. Ms. Molloy told Ms. Elliott she had a male puppy available immediately. At that point, the dog, who Ms. Elliott later named Kookbie, was about three months old. Ms. Elliott agreed to pay \$2,000 for Kookbie on a payment plan. Ms. Molloy sent her a contract to sign, which she did on February 22, 2023. Ms. Elliott picked Kookbie up the next day. I address the contract's relevant terms below.
9. Ms. Elliott first brought up Kookbie's tail on June 14, 2023, in a Facebook message. By then she had made \$1,000 in payments. I note that Ms. Molloy only claims \$835 in this dispute because the parties have agreed that Ms. Elliott should be credited with \$165 in vaccination costs.
10. In her Facebook message, Ms. Elliott told Ms. Molloy that Kookbie could not lift his tail when he needed to defecate, which meant that each time he went there was smeared feces on his backside and tail. She said she had to bathe Kookbie every time he defecated. She said her vet, Dr. Stefan Lerche, recommended removing his tail. Ms. Elliott said she had noticed the issue right away but had waited for a vet's opinion before raising the issue with Ms. Molloy. She says she wanted to know if it was something Kookbie would grow out of or learn to deal with. I accept this explanation because she sent the Facebook message the same day Dr. Lerche first

examined Kookbie. I find that Ms. Elliott likely noticed immediately after buying Kookbie that there was something potentially wrong with his tail.

11. Ms. Elliott provided Ms. Molloy with a June 14, 2023 letter from Dr. Lerche describing Kookbie's tail as "abnormally formed". They said that Kookbie was unable to defecate properly and it was causing hygienic issues. They said the condition appeared to be inherited, and not from trauma. I accept Dr. Lerche's letter as expert evidence under the CRT's rules. Ms. Molloy did not provide any expert evidence, and since Dr. Lerche's opinion is from a physical examination, I accept it as accurate.
12. The parties' relationship deteriorated from there. Ms. Elliott provided a \$901.63 quote for the recommended tail amputation, which she felt was close enough to the \$835 she owed that the parties should simply call it even. Ms. Molloy refused, relying on the terms of the parties' contract. Ms. Elliott did not make any further payments. Dr. Lerche amputated Kookbie's tail in August 2023.
13. Ms. Molloy essentially makes two arguments. The first is that there was nothing truly wrong with Kookbie's tail. She admits it had an abnormality but denies that it impacted his ability to function normally. She says that bathing is part of the routine care of a puppy. I do not accept this argument. First, Dr. Lerche's letter says otherwise. I also find it unlikely that Dr. Lerche would recommend and perform a tail amputation without a compelling medical reason, especially given that British Columbia's College of Veterinarians bans tail amputations unless necessary to treat and injury or disease. Finally, and contrary to Ms. Molloy's assertions, I find that the photos and videos in evidence obviously confirm Dr. Lerche's opinion about the tail deformity's impact on Kookbie's function.
14. Ms. Molloy's main argument is that the warranty in the parties' contract about Kookbie's health does not apply to the tail deformity. I find that the contract's warranties are not straightforward or clear. First, the contract says, without qualification, that Ms. Molloy "guarantees puppy to appear in excellent health and condition when purchased". Then, under the heading "A word about your health

guarantee”, the contract provides advice about how to avoid dysplasia and other orthopedic injuries or conditions by limiting a puppy’s activity while growing.

15. Later, the contract outlines a specific “One Year Limited Health Guarantee”, which applies only to three life-threatening congenital health conditions: heart defects, neurological disorders, and liver shunts. The contract then says “If Puppy is found to be unfit for sale due to illness, which is clearly attributable to the Seller, or should the puppy develop a life threatening, congenital disorder”, Ms. Molloy would provide either a new puppy or a full refund. Later, the contract provides a long list of conditions that are not covered under the warranty, which includes “kinked, crooked, or inverted tails”.
16. Ms. Molloy essentially argues that the only parts of the contract’s warranty that matter are those that support her position. First, the tail deformity is not a heart defect, neurological disorder, or liver shunt, and therefore not covered. Second, the tail deformity is a kinked, crooked, or inverted tail, and so it is excluded from coverage anyway.
17. I do not agree with Ms. Molloy’s interpretation of the contract. If, as Ms. Molloy says, the contract only covered the three listed conditions, why does it have a list of exclusions that includes many conditions clearly unrelated to those conditions, like dry and flakey skin? Why discuss orthopedic issues under a “word about your health guarantee” if no orthopedic issues are covered? Ms. Molloy’s argument also ignores the warranty’s first sentence that provides an unqualified guarantee that the puppy would be in excellent health and condition on the sale date. Along similar lines, the clause about the process for getting a new puppy or refund says it applies when there is a life threatening disorder or if the puppy was unfit for sale.
18. I find that the only reasonable interpretation is that the contract includes two separate guarantees about Kookbie’s health. I find this is the only way to give effect to all the terms outlined above. One warranty is the limited health guarantee, which applies to life threatening conditions and lasts for a year. The other warranty is a broader guarantee of good health, which applies only at the time of sale. In other words, I find

that Ms. Molloy provided an explicit warranty that Kookbie was in “excellent health and condition” on the day Ms. Elliott purchased him.

19. So, was Kookbie in excellent health and condition? He certainly was not in June 2023, when Dr. Lerche examined him. But, as Ms. Molloy points out, that was almost four months after the sale. She says there was nothing wrong with Kookbie when she sold him. She relies on a January 17, 2023 litter report she says her vet filled out about Kookbie. That litter report is very basic. It does not say who filled it out or what they examined for. The portion where the writer wrote either “normal” or “abnormal” was under the heading “TPR”, and the form does not say what “TPR” means. In short, this form does not persuade me that Kookbie’s tail was normal on January 17, 2023.
20. I also do not accept Ms. Molloy’s evidence that there was nothing wrong with Kookbie’s tail when she sold him. I rely primarily on her continued denial in this dispute that there was ever anything truly wrong with it. If she cannot accept now that the tail was deformed, then her evidence that there was nothing wrong with it when Kookbie was in her care is not credible. Based on Dr. Lerche’s letter that says the tail problem was likely inherited and Ms. Elliott’s evidence that the tail issue was apparent as soon as she took Kookbie home, I find that the deformity was likely present on the sale date. So, the warranty applies.
21. What about the exclusion for kinked, crooked or inverted tails? There is no suggestion that Kookbie’s tail was crooked or inverted. Instead, Ms. Molloy relies on the term “kinked”. Ms. Elliott argues that what Kookbie had was much more serious than a “kink”. As the party relying on the exclusion, Ms. Molloy must prove that the condition fits within it.¹ I find that the plain meaning of the word “kink” in this context is a sharp twist or curve in an otherwise roughly straight tail. On that plain meaning, I find that Kookbie’s tail was not “kinked”, as the issue appears to have been that the upper part of the tail did not have full range of motion. I acknowledge that the term “kink” may have a specific veterinary meaning when applied to a dog’s tail. But that knowledge

¹ *Dumas v. Nissan Canada Inc.*, 2021 BCPC 132, at paragraph 108.

falls outside the common knowledge of an ordinary person, and there is no expert evidence explaining it. So, I find that Ms. Molloy has not proved the exclusion applies.

22. Finally, Ms. Molloy argues that her contract required Ms. Elliott to have Kookbie assessed by Ms. Molloy's vet. However, that part of the contract is specifically about what Ms. Elliott would have had to do to get a new puppy. Ms. Elliott never asked for a new puppy, so I find that part of the contract does not apply.
23. In summary, I find that Ms. Molloy provided a contractual warranty that Kookbie was in excellent health and condition when Ms. Elliott purchased him. I find she breached that warranty because Kookbie had a serious tail deformity, which was not excluded from the warranty. Ms. Elliott paid more to amputate the tail than the \$835 she owes Ms. Molloy. Since Ms. Elliott did not file a counterclaim, the result is that I dismiss Ms. Molloy's claim.
24. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Molloy was unsuccessful, so I dismiss her claim for CRT fees and dispute-related expenses. Ms. Elliott did not claim any dispute-related expenses or pay any CRT fees.

ORDER

25. I dismiss Ms. Molloy's claims, and this dispute.

Eric Regehr, Vice Chair