



Civil Resolution Tribunal

Date Issued: February 21, 2024

File: SC-2023-005504

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brogan v. Cameron*, 2024 BCCRT 159

B E T W E E N :

TERESA BROGAN (also known as TERRI BROGAN) and WILLIAM
BROGAN

APPLICANTS

A N D :

ANNETTE CAMERON and PUPPY PATCH DOODLES INC. (Doing
Business as PUPPY PATCH LABRADOODLES)

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicants, Teresa Brogan and William Brogan, say they purchased a puppy named Charlie from the respondents, Annette Cameron and Puppy Patch Doodles

Inc., doing business as Puppy Patch Labradoodles. The applicants say Charlie required dental surgery and the respondents were required to pay for it under a 2-year contractual warranty. They claim \$2,114.46 for the surgery and related consultation. They also want a partial refund of Charlie's \$3,500 purchase price. The applicants limit their claim to \$5,000, which is the monetary limit for small claims disputes at the Civil Resolution Tribunal (CRT). Mrs. Brogan represents the applicants.

2. Ms. Cameron is Puppy Patch Doodles Inc.'s sole director. She represents the corporation and herself in this dispute. Ms. Cameron says her health guarantee does not cover dental issues. She also says Charlie had a slight underbite but would have outgrown it and did not require surgery. Finally, she says the applicants have not met contractual requirements to entitle them to compensation.

JURISDICTION AND PROCEDURE

3. These are the CRT's formal written reasons. The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
4. 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.
5. 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.

6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

New potential claims raised in submissions

7. In written submissions, the applicants say they want to be reimbursed \$667.56 for Charlie's cryptorchid neutering. Cryptorchidism is a condition where one or both testicles fails to descend into the scrotum, which I infer makes the neutering procedure more complex and more expensive. In their Dispute Notice filed at the outset of this dispute, the applicants noted that Charlie was cryptorchid and they were waiting to see if his undescended testicle dropped. However, the applicants did not claim reimbursement of the potential neutering costs. They also did not amend their Dispute Notice during the CRT's process. This means the respondents were not aware that the applicants could be seeking compensation for the neutering costs. I find it would be procedurally unfair to consider this possible claim. For that reason, I have not considered the neutering issue.

ISSUES

8. The issues in this dispute are:
 - a. Are the applicants entitled to \$2,114.46 for Charlie's dental surgery and consultation?
 - b. Are the applicants entitled to any refund of Charlie's purchase price?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision. The respondents did not provide evidence or submissions despite

having the opportunity do so, but I have considered the Dispute Responses they each provided at the outset of this dispute.

10. The applicants' claim is based on the purchase agreement. The legal doctrine of privity of contract means that a contract cannot give rights or impose obligations on anyone who is not a party to it. So, the first question is who the contracting parties were. There are 2 contracts in evidence. The November 24, 2022 "puppy purchase agreement" has a "Puppy Patch Labradoodles" logo but is explicitly between Ms. Cameron as the seller and Mrs. Brogan as the buyer. The "spay and neuter" agreement, signed the same day, is between Mrs. Brogan as the purchaser and Puppy Patch Doodles Inc. as the breeder.
11. Mr. Brogan is not a party to either agreement, so he has no standing to bring a contractual claim against the respondents. As the applicants do not provide any other basis for Mr. Brogan's claim, I dismiss it.
12. As for Mrs. Brogan's claim, I find it is based on the purchase agreement with Ms. Cameron and not the spay and neuter agreement with Puppy Patch Doodles Inc. There is no reference in the purchase agreement to Puppy Patch Doodles Inc. or the spay and neuter agreement. There is also no indication that Ms. Cameron was signing as a representative of any corporation rather than in her personal capacity. With that, I dismiss the claim against Puppy Patch Doodles Inc. The only remaining claim is between Mrs. Brogan and Ms. Cameron.
13. On November 25, 2022, Mrs. Brogan collected Charlie and paid Ms. Cameron \$3,500 in cash. Mrs. Brogan says Charlie displayed "aggressive mouthing behaviour" from the time she brought him home. She says Charlie had trouble eating and was dropping food everywhere. By March 2023, when these issues had not corrected themselves, Mrs. Brogan took Charlie to 2 dog trainers.
14. On of those trainers, Carrie Johnston, provided a written statement. She said she first saw Charlie on March 28, 2023, for what his owners described as nearly constant biting, nipping and jumping up on them. In her initial assessment, Ms.

Johnston said Charlie presented as being unable to focus visually, listen, or respond to anyone in his environment. He engaged in frantic jumping, biting, and finger nipping. He dropped treats and nipped Ms. Johnston's fingers. She inspected his mouth and found an abnormal alignment of his upper and lower teeth. She suspected Charlie may have been in pain, and suggested the owners seek a veterinarian's opinion.

15. Mrs. Brogan took Charlie to Dr. Tara Trimble, who had previously seen Charlie for Ms. Cameron. According to Dr. Trimble's notes, on March 31, 2023, she discussed with Mrs. Brogan removing 2 teeth or all the upper incisors. She encouraged Mrs. Brogan to get a second opinion.
16. On April 6, Dr. Teresa Jacobson diagnosed Charlie with a class 4 malocclusion. According to a written explanation attached to Charlie's diagnosis, a class 4 malocclusion means a hereditary misalignment of the teeth caused by a skeletal abnormality. Charlie was unable to fully close his mouth due to incisor teeth contact. Mrs. Brogan paid \$236.25 for the consultation with Dr. Jacobson. She then provided Dr. Jacobson's diagnosis and estimate to Ms. Cameron. Ms. Cameron replied that she wanted to reach out to the 2 veterinarians. Mrs. Brogan followed up on April 17 and April 19 to see if Ms. Cameron had followed up, but Ms. Cameron did not respond.
17. On April 18, Dr. Jacobson performed the dental surgery, removing 6 incisors. The cost was \$1,878.21, which was below the low end of the estimate's range. To date, Ms. Cameron has refused to reimburse Mrs. Brogan for the surgery.
18. I turn now to the applicable law. Even though pets occupy a unique place in people's lives, the law generally treats them as personal property. Pet sales are therefore subject to the law governing the sale of goods (see, for example, *Mackenzie v. Bolshoy dba Siberian Cattery Bolshoy Dom*, 2021 BCCRT 144). Generally, to be entitled to compensation from a seller, a buyer must prove breach of contract, breach of an express or implied warranty, fraudulent or negligent

misrepresentation, or known latent defect (see *Mah Estate v. Lawrence*, 2023 BCSC 411, at paragraph 86).

19. Mrs. Brogan primarily argues breach of warranty. The purchase agreement said Ms. Cameron guaranteed that at the time of delivery, Charlie was in good health and had a thorough examination. It also said Ms. Cameron warrantied Charlie against “all serious life-threatening genetic diseases” until he was 2 years old. A month before signing the purchase agreement, Mrs. Brogan asked about Ms. Cameron’s “health guarantee”. Ms. Cameron emailed a 1-page policy document. Although the policy said Puppy Patch Doodles Inc. provided the guarantee, I find Ms. Cameron confirmed by email that she was offering the guarantee in the context of Charlie’s purchase agreement. The policy said the 2-year health guarantee applied to all hereditary conditions designated “severe or life-threatening” by 2 independent veterinarians. In those circumstances, Ms. Cameron would cover all veterinary bills up to the dog’s purchase price. I find that the parties mutually intended the health guarantee policy to be incorporated into the parties’ contract. I say this because of the parties’ email correspondence and the absence of an “entire agreement” clause in the purchase agreement.
20. I accept Dr. Jacobson’s unchallenged evidence that Charlie’s class 4 malocclusion was a hereditary defect. There is no evidence that it was life-threatening, but I find it was serious or severe, and not cosmetic. I reach this conclusion in part based on Ms. Johnston’s evidence that following the surgery and a short training period Charlie was a transformed dog – happy, relaxed, and well-adjusted with age-appropriate focus and friskiness. I find Charlie was likely frequently in pain or discomfort before the surgery, as Ms. Johnston suggests. I also find it unlikely that 2 independent veterinarians would conclude that Charlie needed teeth removed if it was not serious or would self-correct as Charlie grew up, as Ms. Cameron alleges without supporting evidence.
21. I acknowledge that the policy said before paying the veterinary bills, Mrs. Brogan had to give Ms. Cameron “all diagnostic data” for review and agreement by her

chosen veterinarian. However, Ms. Cameron did not ask for diagnostic data despite having the opportunity to do so. Further, in texts Ms. Cameron identified Dr. Trimble as her preferred veterinarian and friend, so Mrs. Brogan met the requirement for review by Ms. Cameron's chosen veterinarian.

22. With that, I find that by failing to reimburse Mrs. Brogan for Charlie's dental surgery, Ms. Cameron breached the warranty against serious genetic illness. I find Mrs. Brogan's damages are the \$2,114.46 surgery and consultation costs.
23. I will briefly address Ms. Cameron's argument that her website said she did not cover dental issues, which Mrs. Brogan denies. I find Ms. Cameron has not proven any aspect of this possible defence. First, Ms. Cameron only included the alleged terms and conditions in her Dispute Response and did not provide a time-stamped copy of the website as evidence. Second, I find that if the exclusion existed at the relevant time, Ms. Cameron would have pointed to it in text messages with Mrs. Brogan when discussing dental surgery. Lastly and most importantly, it is the parties' contract that governs, and the agreement and policy did not refer to any terms and conditions found on any website.
24. Even if I am wrong in concluding that Ms. Cameron was obligated to cover the surgery under warranty, I find she independently agreed to cover it. In early April 2023, Mrs. Brogan and Ms. Carmeron texted each other discussing the option of returning Charlie for a refund. On April 5, Ms. Cameron said that if Mrs. Brogan decided to keep Charlie, Ms. Cameron would cover the cost of whatever was "threatening/harming Charlie with his teeth." At that point, she was aware of Dr. Trimble's recommendations and aware that Mrs. Brogan was seeking a second opinion from Dr. Jacobson. She also said on April 3 to "go ahead" with the "teeth fixing." Mrs. Brogan proceeded with the surgery based on that agreement. Although Ms. Cameron later said she wanted to speak with the veterinarians, she did not tell Mrs. Brogan not to proceed with the surgery. She also ignored Mrs. Brogan's follow-up requests before the surgery. The logical inference is that she either chose not to speak with the veterinarians or accepted that surgery was necessary. Either way, I

find Ms. Cameron must reimburse Mrs. Brogan \$2,114.46 for the surgery and consultation costs.

25. What about Mrs. Brogan's claim for a refund of the purchase price? In text messages she said she understood from a phone call that Ms. Cameron agreed to refund the \$3,500 purchase price, but Ms. Cameron said this was only if she returned Charlie. I find it unproven that Ms. Cameron agreed to provide a refund if Mrs. Brogan was keeping Charlie.
26. Is Mrs. Brogan entitled to a refund based on breach of contract, misrepresentation or under the *Sale of Goods Act*? I find she is not. She still has Charlie and does not want to return him. The evidence indicates Charlie is in good health and has no behavioural issues. Mrs. Brogan will be made whole by the damages award for the dental work. In the circumstances, there is no legal basis for a refund.
27. The *Court Order Interest Act* applies to the CRT. Mrs. Brogan is entitled to pre-judgment interest on the \$2,114.46 from April 18, 2023, when she paid the veterinary bill, to the date of this decision. This equals \$87.20.
28. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mrs. Brogan was partially successful, so I find she is entitled to reimbursement of \$87.50 for half her paid CRT fees. Neither party claims dispute-related expenses.

ORDERS

29. Within 21 days of the date of this order, I order Ms. Cameron to pay Mrs. Brogan a total of \$2,289.16, broken down as follows:
 - a. \$2,114.46 in debt,
 - b. \$87.20 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$87.50 in CRT fees.

30. Mrs. Brogan is entitled to post-judgment interest, as applicable.

31. I dismiss Mr. Brogan's claims and all claims against Puppy Patch Doodles Inc.

32. 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.

Micah Carmody, Tribunal Member