



# Civil Resolution Tribunal

Date Issued: May 3, 2024

File: SC-2023-005062

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nowara v. Nowara*, 2024 BCCRT 424

B E T W E E N :

HAMZA NOWARA

**APPLICANT**

A N D :

SALAH NOWARA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. Hamza Nowara and Salah Nowara are brothers. I refer to them by their first names in this decision to avoid confusion.

2. Hamza owns a cat. In April 2023, Hamza lent the cat to Salah to breed the cat with Salah's friend's cat. Salah's friend successfully bred the cats. The parties disagree about how many kittens Hamza's cat had, and what was supposed to happen to the kittens.
3. Hamza seeks \$5,000 for what he says was a breach of the parties' agreement and an unauthorized sale of kittens. He says this amount includes financial losses and emotional distress. Salah disagrees. He says he complied with the parties' agreement by breeding the cat and then returning it to Salah.
4. Each party is self-represented. As I explain below, I dismiss Hamza's claims.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). 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.
6. 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.
7. 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.

## **ISSUES**

8. The issue in this dispute are:

- a. Did the parties have a binding agreement, and if so, what were its terms?
- b. Did Salah breach the agreement?
- c. What remedy, if any, is appropriate?

## **EVIDENCE AND ANALYSIS**

9. As the applicant in this civil proceeding, Hamza must prove his 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.
10. In the amended Dispute Notice, Hamza said he and Salah had a verbal agreement about Hamza's cat. Salah was to temporarily place the cat with his friend for breeding. After the cat had kittens, Salah would return the cat to Hamza.
11. Salah essentially agrees, but says he was doing Hamza a favour because the cat was in heat and causing Hamza distress. Salah also says Hamza was to receive half the litter. However, Salah says the cat produced a litter of only two kittens, and unfortunately one kitten died within a few days. Salah says the friend who oversaw the breeding kept the remaining kitten.
12. Hamza says that Salah is being dishonest about the number of kittens and whether they were sold for profit. However, Hamza does not explain why he thinks this except to say that it is highly unlikely for cats to have a litter of two kittens. There is no objective evidence before me about how common or rare it is for a cat to have a litter of two. Also, there is no evidence that Salah sold any kittens. So, I find Hamza has not proven there was more than one kitten.
13. Hamza says the parties had no verbal agreement except that Salah would take the cat to breed with his friend's cat and return the cat to Hamza afterward. Elsewhere, Hamza says Salah assured him he could keep all the kittens. Confusingly, Hamza also says several times that the parties did not have an agreement at all.

14. Despite this, Hamza frames his claim as a breach of contract claim, so that is how I will analyze it. A breach of contract claim requires a valid contract. The party relying on the contract must prove, on a balance of probabilities, a mutual intention to create legal relations, consideration (something of value) that flowed in return for a promise, essential terms that were sufficiently clear, and a matching offer and acceptance of the terms (see *Ratanshi v. Brar Natural Flour Milling (B.C.) Inc.*, 2021 BCSC 2216). Whether there is an enforceable contract involves an objective test based on what a reasonable person in the parties' situation would have believed and understood, rather than on the parties' subjective beliefs (see *Berthin v. Berthin*, 2016 BCCA 104, at paragraph 46). Here, I find Hamza has not proven that he and his brother intended to create legal relations as opposed to simply putting two cats together and hoping for kittens. Even if there was a contract here, the only clear terms were that Salah would take cat to his friend and return it after breeding. I find Salah complied with those terms.
15. I find the parties did not agree on who would own any kittens as between Hamza, Salah, and Salah's friend who was apparently not a party to the alleged contract. There is no suggestion that they agreed on what would happen if only one kitten survived. In the circumstances, Hamza has not proven a contractual breach. Even if he had, it would be difficult to quantify damages given that Hamza did not provide any evidence about a kitten's value.
16. As for mental distress damages, even if I found that Salah had breached the parties' agreement, I would not have awarded mental distress damages. While the experience may have been upsetting for Hamza, the law distinguishes between psychological disturbance that rises to the level of personal injury and psychological upset that does not amount to injury and therefore is not compensable (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at paragraph 9, and *Lau v. Royal Bank of Canada*, 2017 BCCA 253, at paragraphs 47-50). There is no objective evidence at all here, and the evidence overall falls far short of establishing an injury.
17. For all these reasons, I dismiss Hamza's claim.

18. 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. Salah was successful but did not pay CRT fees. I dismiss Hamza's claim for CRT fees. Neither party claims dispute-related expenses.

## **ORDER**

19. I dismiss Hamza's claims and this dispute.

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Micah Carmody, Tribunal Member