



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pasha v. Fulford*, 2024 BCCRT 739

B E T W E E N :

PARVANEH PASHA

APPLICANT

A N D :

LINDA FULFORD

RESPONDENT

A N D :

PARVANEH PASHA

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Amanda Binnie

INTRODUCTION

1. This dispute is about the sale of a puppy. The applicant and respondent by counterclaim, Parvaneh Pasha, claims the respondent and applicant by counterclaim, Linda Fulford, cancelled the parties' contract for a puppy to sell to a higher bidder. Dr. Pasha claims \$2,500, the amount she says she paid to purchase a puppy from another breeder, and \$2,500 in emotional suffering.
2. Ms. Fulford says she was entitled to cancel the contract and counterclaims for \$5,000 in loss of sale, costs, and emotional damages due to Dr. Pasha's communications.
3. The parties are self-represented.

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. Both parties provided sufficient documentation of their messages, which were the parties' main form of communication. 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.
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.

ISSUES

8. The issues in this dispute are:
 - a. Is Dr. Pasha entitled to \$2,500 in damages for breach of contract?
 - b. Is Dr. Pasha entitled to \$2,500 in damages for emotional distress?
 - c. Is Mrs. Fulford entitled to \$5,000 in damages?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Dr. Pasha must prove her claims on a balance of probabilities, meaning more likely than not. Mrs. Fulford must prove her counterclaim to the same standard. 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.

Background

10. Dr. Pasha was referred to Mrs. Fulford by one of her colleagues, who had bought a dog from Mrs. Fulford in the past. In March 2023, Dr. Pasha reached out to Mrs. Fulford via text message to ask about a puppy.
11. Both parties provided copies of their text messages on Whatsapp. Dr. Pasha provided a PDF she says she exported from Whatsapp, which she annotated with notes and highlighting. Mrs. Fulford provided a video screenshot of her scrolling through her text history with Dr. Pasha. While Dr. Pasha's PDF is missing some pictures due to the download constraints, I accept these are not relevant to this dispute and the parties main text messages are the same in both versions. So, I find I can rely on them in coming to my decision.

12. Dr. Pasha went to Mrs. Fulford's home to view the potential parents of a puppy in mid-March. The text messages after this meeting are unclear, but I infer the parties communicated either in person or over the phone and came to an agreed price of \$2,400 for a female white Maltese puppy. It is undisputed Dr. Pasha paid Mrs. Fulford a \$400 deposit on March 26.
13. Though Dr. Pasha argues Mrs. Fulford agreed to provide her with a puppy born in June, I find that there was no specific term in the contract for the puppy's birthdate. Later communications between the parties show Dr. Pasha was still asking if either of the potential mothers were pregnant on April 1. So, I find neither party was certain of the future puppy's birthdate at the time Dr. Pasha sent her deposit.
14. On May 21, Dr. Pasha asked for an update on the pregnant dog. Mrs. Fulford advised that the dog had a "false heat", but that the birthday would be end of June. Mrs. Fulford offered a reduction of \$100, and Dr. Pasha accepted. So, even if I had found the puppy's birthdate was a term of the agreement, I find the parties reached an agreement modifying this term.
15. On June 17, Mrs. Fulford told Dr. Pasha her dog was about to give birth, and she did so on July 7. Mrs. Fulford provided updates on the puppies' development, with Dr. Pasha responding positively each time. The parties then discussed which puppy Dr. Pasha would like, and agreed on one of the calmer females.
16. There is again a break in the text conversation on August 27, but I accept the parties communicated by phone as Dr. Pasha became unhappy with the purchase price. The parties came to an agreement about a reduced price of \$1,500.
17. However, the parties then disagreed via text message on whether the purchase price was now \$1,500 or it was \$1,500 *remaining* after accounting for the \$400 deposit. In the end, on August 28 in the morning, Mrs. Fulford agreed to receive the \$1,500, but reduced her health guarantee from 2 years to 72 hours, which I find Dr. Pasha accepted.
18. After those discussions, Mrs. Fulford continued to provide updates on the puppy.

19. However, in the evening of August 28, Dr. Pasha sent further ads of other Maltese puppies to support the reduced price. This was clearly frustrating for Mrs. Fulford, who sent back her own ads showing puppies in the range of \$2,500 and told Dr. Pasha she did not want to discuss it further.
20. Eventually, Mrs. Fulford became so frustrated she offered to either gift the balance to Dr. Pasha or refund her \$400 deposit. She appears to change her mind about this less than an hour later, again arguing over the new \$1,500 price the parties agreed to.
21. In the morning of April 30, the parties agreed to a pickup date of September 10, with Dr. Pasha to bring the remaining \$1,100 balance in cash.
22. However, late at night on August 30, Mrs. Fulford sent a message to Dr. Pasha saying she was not going through with the transaction due to Dr. Pasha's "harassment" and advising Dr. Pasha she had sent the \$400 deposit back by e-transfer. Mrs. Fulford says she sent this after she spoke with her daughter, EF, about the renegotiations. A letter from EF supports this.
23. Though Dr. Pasha tried to get Mrs. Fulford to sell her the puppy after this point, even offering to pay \$1,800, Mrs. Fulford did not respond. Dr. Pasha admits she accepted the returned deposit.

Is Dr. Pasha entitled to \$2,500 in damages for breach of contract?

24. Dr. Pasha claims \$2,500 in damages for breach of contract, which is the price she says she paid a different breeder for a Maltese puppy.
25. I find whether she is entitled to damages depends on who breached the contract.
26. First, I must consider whether Dr. Pasha's attempts to renegotiate the purchase price was a breach of the contract.
27. In general, when contract parties agree to vary contract terms, the variation is enforceable if there is no duress, unconscionability, or other public policy reason not

to enforce the contract. There is no longer a requirement for “fresh consideration” for a variation to be enforceable, although the existence of consideration is still a factor in determining enforceability of a variation of a contract. Consideration is something of value given by each party (see *Rosas v. Toca*, 2018 BCCA 191).

28. I find that there are no public policy considerations that apply to this sale, so I turn now to duress and unconscionability.

Duress

29. I have considered Mrs. Fulford’s argument that Dr. Pasha was abusive, bullying, and belittling. Though Mrs. Fulford does not use the words, I find she is arguing she agreed to the new purchase price under duress.

30. 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, Mrs. Fulford must show Dr. Pasha put her in a position where 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.

31. I accept Dr. Pasha’s renegotiation attempts were frustrating for Mrs. Fulford. However, I have reviewed all the parties’ messages and I find nothing in them reaches the level of unfair, excessive, or coercive.

32. While Mrs. Fulford alleges texts all day and night, as well as many phone calls, I find this is not proven on the evidence. Both parties texted at various times throughout the day. While Mrs. Fulford has provided one voicemail recording she says is of Dr. Pasha belittling her, I do not find the contents of the voicemail support this. The parties clearly disagreed about whether the ads Dr. Pasha provided were comparable, and I find Dr. Pasha was calm and polite through the voicemail. So, I find Mrs. Fulford has not proven she agreed to the new price under duress.

Unconscionability

33. I turn now to unconscionability. A contract is unconscionable when it results from an inequality in bargaining power and results in a substantially unfair bargain (see *Loychuk v. Cougar Mountain Adventures Ltd.*, 2012 BCCA 122). I find there is no evidence of inequality of bargaining power.
34. Mrs. Fulford refers in her messages to “20-30 calls” for the puppy, and a normal wait list of 6 months to a year for one of her puppies. While Mrs. Fulford became unhappy with the new purchase price, I find there is no evidence it was substantially unfair, given the ads provided by Dr. Pasha. So, I find the amended contract was not unconscionable.
35. So, I find the parties agreed to an enforceable amendment to the contract. To be clear, I find the parties’ final agreement was that Mrs. Fulford would provide a white, female Maltese puppy for \$1,500, with a 72-hour health guarantee, on September 10. As a result, by ultimately refusing to sell Dr. Pasha the puppy, I find Mrs. Fulford breached the parties’ contract. As this was the only thing the parties were contracting for, I find this was a fundamental breach.

Damages for breach of contract

36. I turn now to damages. In the case of a fundamental breach, the innocent party may claim damages based on their out-of-pocket losses (see *Karimi v. Gu*, 2016 BCSC 1060 at paragraphs 206 to 211). In other words, to put them in the position they were in before the contract was made.
37. Dr. Pasha claims \$2,500, which is the price she says she paid another breeder for a Maltese dog. The difficulty for Dr. Pasha is she has provided no support for this purchase price, such as the contract for the new puppy or a receipt. On her own evidence, there were several Maltese puppies available for \$1,500. In her submissions, she says \$1,500 is “what the going price was/is in the market”. She does not say why she did not purchase one of the available \$1,500 dogs. Given the above, and as Mrs. Fulford undisputedly refunded Dr. Pasha’s deposit, I find Dr.

Pasha has not proven she is out of pocket any amounts and I dismiss her claim for damages for breach of contract.

Is Dr. Pasha entitled to \$2,500 in damages for emotional distress?

38. Dr. Pasha claims \$2,500 for emotional distress. She says she was purchasing the puppy in part to help her son, who had been in a coma for 3 months. She says she was told by his doctors a pet would help his recovery.
39. To succeed in a claim for emotional distress, there must be an evidentiary basis for awarding damages, such as medial evidence (see *Lau v. Royal Bank of Canada*, 2017 BCCA 253 and the non-binding but persuasive decision of *Eggberry v. Horn et al*, 2018 BCCRT 224).
40. Dr. Pasha's son is not a party to the contract or this dispute. I accept that his illness would have been a stressful and upsetting time for Dr. Pasha. However, she has provided no medical evidence to support her claimed damages for emotional distress because of the failed puppy purchase, so I dismiss this claim.

Is Mrs. Fulford entitled \$5,000 in damages?

41. Mrs. Fulford did not break down her claim for \$5,000, beyond saying it is for "loss of sale, costs and emotional damages".
42. I have found that Mrs. Fulford was the one who breached the contract, and so I dismiss her claim for damages. In any event, I find her damages are unproven. While both Mrs. Fulford and EF say Mrs. Fulford gifted the puppy to a widow, I find there is no proof she could not sell the puppy. Like Dr. Pasha's claim for emotional distress, I find Mrs. Fulford has not proven any compensable emotional damages.

Fees and expenses

43. 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 neither party was successful in their respective claims, I make no order for reimbursement of fees.

44. Dr. Pasha did not claim any dispute-related expenses. Mrs. Fulford claims \$1,500 in legal and mailing expenses. The “legal expenses” appear to be from invoices for having statements notarized, which are for \$240.36 and \$336. There is a second receipt for \$336, but it is unclear if this is the same as the first \$336 Mrs. Fulford paid.
45. I find Mrs. Fulford is not entitled to reimbursement for the notary fees. The CRT’s rules provide for reimbursement for reasonable dispute-related expenses. I find the notary fees are not reasonable, because the CRT does not require witness statements to be notarized, and notarization does not change the weight placed on such statements. So, even if Mrs. Fulford had been successful, I would not have ordered reimbursement of these expenses in any event.

ORDER

46. I dismiss Dr. Pasha’s claims, Mrs. Fulford’s counterclaim and these disputes.

Amanda Binnie, Tribunal Member