IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Wells v. Madabout Labs, 2009 NSSM 31

Claim No: 311590

BETWEEN:

PHILL WELLS, JESSE WELLS and BARB DICKENS

Claimants

- and -

JANICE KIVIMAKI and HENRY MORIN (d.b.a. Madabout Labs)

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on July 14, 2009

Decision rendered on July 15, 2009

APPEARANCES

For the Claimants self-represented

For the Defendants self-represented

BY THE COURT:

[1] The Claimants have brought this claim against the owners and operators of a dog breeding business alleging that they were unlawfully denied a puppy after entering into an agreement to acquire one.

[2] The Defendants breed Labradors, as suggested by the name of their business (which though not named as such in the Claim, is actually a limited company).

[3] In early February 2009, the Claimants contacted the Defendants and expressed an interest in a black, male Labrador puppy, if and when available. At the time one of the Defendants' dogs was pregnant and it was anticipated that the litter would be all black.

[4] Over the next weeks there was further communication, mostly over email, about the Claimants visiting the Defendants, as they insist upon being satisfied that those who acquire their dogs are suitable. The Claimants eventually paid a $60 deposit.

[5] The litter was born on March 30, 2009. It consisted of six males and one female, all black. Unfortunately, on April 19 one of the males died.

[6] Notwithstanding continued communication between the Claimants and the Defendants, all of which might have suggested that one of the males from this litter was earmarked for the Claimants, on May 4, 2009 the Defendants advised the Claimants by email that because of the death of

one of the pups they would not be in line for any of the remaining five males.

[7] In subsequent conversations the offer was extended that the Claimants could have their deposit returned, or that they could apply their deposit to a subsequent litter or possibly go for a yellow dog.

[8] The almost immediate response of the Claimants was that they intended to sue, at which point the Defendants concluded that there was no possibility of a future positive relationship and returned the deposit.

[9] The Claimants ask for $1,400.00 in damages. They did not fully explain how they come up with this figure, as the price of the dog was to be $850.00, and anything that they may have spent in preparation for a dog could be used when another puppy is located.

[10] In order to succeed to any extent in court, the claim would have to be based on a breach of contract. Here there was as yet no written contract, so it would have to be based on an oral agreement that both parties would likely acknowledge existed. It is my task to determine what were the terms of that agreement.

[11] The Claimants insist that they were fourth in line for a puppy from this litter, and since one of those ahead of them wanted a female, third in line for a male. They say that they were led to understand this by the Defendants.

[12] The Defendants say that the Claimants were actually fifth in line for a male, based upon the order of deposits received, and that they themselves

exercised a right (which they say they explain to everyone) to have “pick of the litter” for a dog which would be kept for their breeding program. They say that there was a male which they were able to identify at some point, which they elected to keep, which only allowed for four males to be sold. They insist that they had no reason to deny the Claimants a puppy - it was just a numbers game, and that they were fully prepared to place them in line for a puppy from a subsequent litter or - if they were in a hurry - to help them find a suitable puppy from another breeder.

[13] On a balance of probabilities, I am unable to find that the Claimants were actually ever third or fourth in line. There is no cogent evidence supporting that. It seems improbable to me that the Defendants would arbitrarily have shuffled the Claimants down the list and denied them a puppy. I allow for the fact that the Claimants might have had a different set of expectations, and that there may even have been a misunderstanding based on something that was said or implied, but that does not automatically mean that the Claimants’ understanding became binding terms of an oral agreement. To be binding on all parties, an oral agreement must be clear as to its terms.

[14] In the end, I find that there was an agreement to place the Claimants in line for a puppy, but that in the end the puppy could not be delivered because there were simply not enough black males to meet all of the demand.

[15] Disappointed though the Claimants must have been, I am unable to comprehend how they could possibly have concluded that bringing this action would be a productive response to the situation which occurred.

There was no demonstrated urgency to having a puppy “now or never.” There was no satisfactory evidence to suggest that another suitable puppy might not be located elsewhere, or from these Defendants, although that might require a bit of patience and effort. It is a legal fact that not every set of disappointed expectations amounts to an actionable breach of contract.

[16] In the end, as stated, the terms of the oral agreement were not breached by the Defendants, and moreover, even if there were a breach of contract, I find that there has been no proof of any substantial damages that would justify recovery of anything approaching $1,400.00. At most there were a few car trips out to the Defendants’ establishment, which might have been seen as a wasted expense. No other damages have been proved.

[17] In the result the claim is dismissed.

Eric K. Slone, Adjudicator