

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Yonder v. Fraser*, 2017 NSSM 76

Date: 2017-04-05

Docket: Sydney, No. 457719

Registry: Sydney

Between:

Cassandra Lee Yonder

Claimant

v.

Jennifer Fraser

Defendant

Adjudicator: Patricia Fricker-Bates

Heard: February 22, 2017 in Sydney, Nova Scotia

Appearing: Cassandra Lee Yonder, Claimant
Jennifer Fraser, Defendant

BY THE COURT:

Background Facts

[1] On April 1, 2013, the Irish Wolfhound subsequently named Beyond Yonder Ostara was born. The owner at birth was the claimant, Cassandra Yonder. At the time, and throughout her dealings with the defendant, the claimant was not a member breeder of the Canadian Kennel Club. The defendant, owner of the registered kennel Capers Dream, had been breeding Basset Hounds since 2008.

[2] The claimant provided a sample of a typical Kijiji advertisement she would use for sale of puppies (see Exhibit #3). This was not the advertisement related to the sale of the Irish Wolfhound Ostara.

[3] On May 3, 2013, the defendant responded to the claimant's advertisement on Kijiji concerning the sale of "CKC Registered Puppies" under the email address yellowchevygirl@hotmail.com (see Exhibit No. 4):

[4] On May 5, 2013, the claimant sent an e-mail to the defendant concerning the purchase arrangements for the Irish Wolfhound puppy named Ostara. Those arrangements included a \$300 non-refundable reserve deposit with the remaining \$1100 of sale price due at the beginning of June 2013.

[5] On May 11, 2013, the claimant wrote the following to the defendant via e-mail:

The puppies will be 6 weeks old on Monday and usually they are ready to go home at about 8 weeks of age. This week I will circulate an update including new pictures and a copy of the contract and start to make arrangements for their transition to their new homes. So you can expect to hear from me again within the next few days. If you would like to come for a visit in the meantime just let me know.

Best to you and yours,
Cassandra
Beyond Yonder Irish Wolfhounds
920 (sic) 929-2578

[6] On May 14, 2013, a contract was forwarded to the defendant, Jennifer Fraser aka yellowchevygirl@hotmail.com, by the claimant via email with the Subject Line: BEyond Yonder Ostara: 6 weeks! contract and homecoming arrangements (see exhibit 4):

To our extended Irish Wolfhound family, the puppies are 6 weeks old today and growing like weeds! It is time to start to make arrangements to have them come home in a few weeks. Since they will be 8 weeks old on Monday, May 27th, I will make an appointment with the veterinarian to have their health check, first set of vaccinations and microchip implantation during that week. Therefore the week of June 1st would be the best time for shipping or coming to pick your puppy up. ...

The puppies' Canadian Kennel Club registrations are underway. The litter registration is currently being processed and the individual puppy registration will be sent to you by mail when they are complete. Your puppy will be named: "Beyond Yonder X" on his/her papers. Please let me know

what you'd like the X to read according to your choice of name. If I don't hear from you I'll use the names they've been given as puppies.

[Emphasis added]

Please review our contract and return it to me by email along with a statement indicating that you have read and agree with the terms and conditions as well as filling out your personal contact information.

[Bold in the original].

BEyond Yonder Irish Wolfhounds [Bold in the original]

Irish Wolfhound PURCHASING CONTRACT

The balance of the purchasing contract identifies the seller as Yonder Homestead; the purchaser information is blank; the identification of the puppy being purchased is Ostara; and Ostara's registration information is described as "limited Canadian kennel club". There is information concerning the purchase price, including a \$300 deposit, with the total owing at the time of pick up as \$1100. The date of receipt of that outstanding balance of \$1100 is blank. The contract has clauses dealing with a health guarantee, a limited warranty, shipping costs, mentoring, and care provisions.

[7] More importantly, for the purposes of this decision, the purchase contract contains the following **Limited Canadian Kennel Club Registration** provision: Beyond Yonder Irish Wolfhounds and the purchaser mutually acknowledge that his puppy is being sold on a non-breeding agreement. The purchaser agree to have the puppy spayed or neutered at their sole expense before the age of 18 months. The purchaser agrees to provide the seller with a copy of the spay/neuter certificate upon request. If the dog is bred contrary to the non-breeding agreement, the purchaser will pay liquidated damages to the seller in the amount of \$6000.

At the bottom of the purchase contract is a place for signatures:

SIGNATURES [Bold in the original]

Seller: Cassandra Yonder [in type print]

Purchaser: [Blank in the original]

Witness: [Blank in the original]

Date: [Blank in the original]

The purchase contract found in the claimant's e-mail to the defendant on May 14, 2013, is the only purchase contract before this court.

[8] On May 15, 2013, the defendant acknowledged receipt of the purchase contract sent to her electronically by the claimant on May 14, 2013. Again, the subject line on the defendant's response is "RE: BEyond Yonder Ostara: 6 weeks! contract and homecoming arrangements". The defendant's response is as follows:

Hi Cassandra,

I have read and agree with the terms and conditions of you contract concerning Ostara, i would like to leave her regestered name as Ostara but her call name will be molly. I will contact you the week of the 27th when i get my work schedule to make pickup arrangement's on my day off and if still possible I will get your husband to take her to sydney for me. My information is:

**Jennifer Fraser
194 Dominion st
Sydney,N.S.
B1N-2V3
902-567-2681
Yellowchevygirl@hotmail.com
[Bold in the original]**

The defendant is not contesting that she received the purchase contract and responded as per the email of May 15, 2013.

[9] The claimant did submit an Application for Registration of a Dog Born in Canada to the Canadian Kennel Club (see Exhibit No. 7), noting the dog's name as Beyond Yonder Ostara and, herself as the owner at birth, and the Defendant Jennifer Fraser as the new owner. Under Section "D Transfer Section", the following information is found: Time of Transfer/Date of Sale (d/m/y): 05/05/13; Date the new owner took possession of the dog (d/m/y): 01/06/13. In addition, the following box is checked off: Dog sold for House pet. In effect, the dog, Beyond Yonder Ostara was sold to the Defendant as a house pet, not for breeding and/or exhibiting purposes. However, on October 10, 2013, the Canadian Kennel Club issued an unrestricted Purebred Dog Certificate of Registration to the defendant, Jennifer Fraser, for the dog Beyond Yonder Ostara (see Exhibit 12). The claimant

acknowledged that this might have caused the defendant confusion. She also testified that this is the first time that a buyer has contested the purchasing agreement and its non-breeding clause that she used as a standard in the sale of her Irish Wolfhounds. She testified that she will use CKC Non-breeding agreements in future.

[10] At the time of the sale of the dog, Beyond Yonder Ostara, the claimant was not a member of the CKC but did register her dogs with the CKC. There was no dispute between the claimant and the Defendant that dog breeders, such as the claimant, can register their dogs with the Canadian Kennel Club without being member breeders.

[11] Over three years later, on September 13, 2016, the claimant sent the following email to “Irish wolf hounds” Ad on Kijiji (see Exhibit No. 4):

Jennifer Fraser Huntington It has come to my attention that the Irish Wolfhound named Beyond Yonder Ostara (aka Molly) has been bred in breach of our purchase agreement in which you agreed to the terms and conditions in writing. The agreement clearly states that you purchased Molly as a pet, and would have her spayed, and send me proof of her spay by the time she was 18 months of age (at my request). It also states that if the dog were to be bred that you agreed to pay me \$6000 in damages. Please find the email that I sent to you at yellowchevygirl “at” hotmail.com”. And respond to me at yonderhomestead “at” hotmail.com” As soon as possible to discuss this.

[12] In response, the defendant, Jennifer Fraser, sent the following electronic response from yellowchevygirl@hotmail.com on September 14, 2016 at 9:07 a.m.:

Omg Cassandra your requests are crazy you can't sell someone a puppy then 3 years later demand more money especially \$6000.00 I can buy 4 puppies for that amount. I am not spaying Molly or neutering Mike, you gave me full registration the day I purchased her I never signed any contracts when I picked her up.

Sent from my iPhone

[13] The claimant indicated the following by e-mail sent September 14, 2016 at 11:48 a.m.:

Jennifer;

I'm not demanding more money for the puppy I sold you. I am simply holding you to the terms and conditions of the purchase agreement we made when you bought Beyond Yonder Ostara aka Molly from me in May 2013.

I have your written statement that you have read and agreed to the terms and conditions of our purchase agreement which includes the following paragraph:

“LIMITED CANADIAN KENNEL CLUB REGISTRATION”

Beyond Yonder Irish Wolfhounds and the purchaser mutually acknowledge that his puppy is being sold on a non-breeding agreement. The purchaser agree to have the puppy spayed or neutered at their sole expense before the age of 18 months. The purchaser agrees to provide the seller with a copy of the spay/neuter certificate upon request. If the dog is bred contrary to the non-breeding agreement, the purchaser will pay liquidated damages to the seller in the amount of \$6000.

...

Cassandra Yonder

[14] By email dated September 19, 2016 at 4:57 p.m., the defendant wrote:

Cassandra I'm sorry that you feel this way but I am not meeting with any of the conditions you are requesting. When I first spoke to you about purchasing Molly You did go over all of your requests but on the day of final sale of her you gave me breeding rights,I did not sign any contract agreeing to these demands. I have confirmed with the CKC that YOU registered molly sold as a breeding dog not as a pet so I have every right to breed her.

Jennifer

Sent from my iPhone

[15] To the defendant's assertion that the claimant had given breeding rights to the dog to the defendant, the claimant wrote via email on September 19, 2016 at 6:23 p.m.:

I did not make any agreement with you on the day of the transfer of sale of Beyond Yonder Ostara to modify the terms and conditions of our previously negotiated purchase agreement.

Cassandra.

[16] In an exchange of e-mails between the claimant and the CKC Membership Services Division (see Exhibit No.7), the following information is provided on September 20, 2016, at 11:01 a.m. under the subject heading: Re: inquiry about breach of a non breeding contract:

Dear Cassandra,
Thank you for contacting the Canadian Kennel Club.

The designation is for statics only. If you do not send in the CKC non-breeding agreement with the application for registration, then an unrestricted registration certificate is issued.

If a person breaches a CKC non-breeding contract, no action is taken except that the progeny of this breeding will not be eligible for CKC registration.

Regards,

Teresa

Canadian Kennel Club

Based on this exchange, it appears that breaching a CKC non-breeding contract has limited consequences.

Position of the Parties

[17] The matter now is before this Court for resolution. There is no dispute between the parties that the claimant sold the Irish Wolfhound Ostara (aka Molly) to the defendant. There is no dispute that the claimant forwarded, via email, a purchasing contract to the Defendant on May 14, 2013; and that the Defendant responded to that email on May 15, 2013, in keeping with the instructions from the Claimant (see paragraph [8] herein), and accepted the terms of the purchase contract. There is no dispute that the Canadian Kennel Club is a registering body and that a breeder does not have to be a member in order to register a dog.

[18] The claimant's position is that the purchase agreement is valid and is not impacted by the issuance of an unrestricted CKC Registration Certificate to the

defendant for the dog, Beyond Yonder Ostara. When she registered the dog, she clearly indicated that the dog was sold as a pet, not for breeding or exhibiting purposes (see Exhibit No. 7). She denies that the purchasing agreement was varied orally, as the defendant claims, on the date of transfer, June 1, 2013, giving the defendant breeding rights contrary to the terms of the purchasing contract.

[19] The defendant claims that she did not sign any non-breeding agreement, that the purchasing contract was varied orally either prior to or on the date of transfer of the dog Beyond Yonder Ostara, giving her, the defendant, breeding rights; and that failure by the claimant to use a CKC Non-breeding Agreement for a CKC registered dog is fatal to the claimant's reliance on the non-breeding terms of the purchasing contract. In her statement of Defence/Counterclaim, the defendant wrote: "There was no non-breeding agreement I did not sign anything." She counterclaimed for legal fees, loss of work and expenses but did not quantify same in her Defence/Counterclaim or in her evidence during the hearing.

[20] Under Section 29 of the *Small Claims Court Act*, R.S. c. 430, s.1, an adjudicator has 60 days in which to deliver a reserved decision. This case was heard and decision reserved on February 22, 2017.

Discussion of the Law

Was there a valid contract?

[21] The first issue to be determined is whether or not there was a valid purchasing agreement/contract between the claimant and the defendant. The defendant placed considerable emphasis on the fact that she didn't *sign* the purchasing agreement. The growing reality of e-commerce and electronic business transactions has brought with it changes in what qualifies as signing a document. In Nova Scotia, the *Electronic Commerce Act, 2000*, c. 26, s. 1 deals with the legal effect of electronic exchanges in this Province. Sections 2 and 21 of that *Act* deals with electronic signatures and the formation of contracts:

This Act may be cited as the *Electronic Commerce Act, 2000, c. 26, s. 1* .

Interpretation

2 In this Act,

(a) "electronic" includes created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means;

(b) "electronic signature" means information in electronic form that a person has created or adopted in order to sign a document and that is in, attached to or associated with the document;

...

Formation of contracts

21 (1) Unless the parties agree otherwise, an offer or the acceptance of an offer, or any other matter that is material to the formation or operation of a contract, may be expressed

(a) by means of an electronic document; or

(b) by an action in electronic form, including touching or clicking on an appropriately designated icon or place on a computer screen or otherwise communicating electronically in a manner that is intended to express the offer, acceptance or other matter.

(2) A contract shall not be denied legal effect or enforceability solely by reason that an electronic document was used in its formation. *2000, c. 26, s. 21.*

Offer and acceptance are the cornerstones of contract law. “Just as there has to be an offer, i.e., an actual statement, oral, written, graphic, displayed on a computer monitor, of the terms on which the offer is prepared to deal, so too there has to be a similar or equivalent acceptance and this acceptance has to be communicated in some way”: Angela Swan and Jakub Adamski, *Canadian Contract Law* (3rd Ed.) (Lexis Nexis: October 2012) at pg. 256.

[22] The evidence clearly establishes that there was an offer by the claimant to sell the dog Beyond Yonder Ostara and an acceptance by the defendant of the terms of the purchasing contract for the dog Beyond Yonder Ostara. On May 14, 2013, a contract was forwarded to the defendant, Jennifer Fraser aka yellowchevygirl@hotmail.com by the claimant via email with the Subject Line:

Beyond Yonder Ostara: 6 weeks! contract and homecoming arrangements, wherein the claimant asked the defendant to:

Please review our contract and return it to me by email along with a statement indicating that you have read and agree with the terms and conditions as well as filling out your personal contact information.
[Bold in the original].

Beyond Yonder Irish Wolfhounds [Bold in the original]
Irish Wolfhound PURCHASING CONTRACT

The defendant followed those instructions, and, on May 15, 2013, acknowledged receipt of the purchase contract sent to her electronically by the claimant on May 14, 2013. Again, the subject line on the defendant's response is "RE: Beyond Yonder Ostara: 6 weeks! contract and homecoming arrangements". The defendant's response is as follows:

Hi Cassandra,

I have **read and agree with the terms and conditions of you contract concerning Ostara, i would like to leave her regestered name as Ostara but her call name will be molly I will contact you the week of the 27th when i get my work schedule to make pickup arrangement's on my day off and if still possible I will get your husband to take her to sydney for me. My information is:**

**Jennifer Fraser
194 Dominion st
Sydney,N.S.
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902-567-2681
Yellowchevygirl@hotmail.com**
[Bold in the original]

[23] There was an electronic document—the purchasing contract—and the defendant communicated electronically her acceptance of that contract and its terms by responding as directed by the claimant. This is in keeping with s. 2 of the *Electronic Commerce Act* (N.S.) that defines an electronic signature as “information in electronic form that a person has created or adopted in order to sign a document and that is in, attached to or associated with the document”. See

also *England v. Saunders-Todd*, [2015] N.S.J. No. 598 at para. 14, where, in the context of a contract made via text messages, the court noted: “Just as conversation can lead to the creation of an oral contract, text messages can be used to create contracts and establishing terms. Indeed, this concept finds support in legislation, such as the *Electronic Commerce Act*, S.N.S. 2000, c. 26.” I find that, in the case at bar, there was a valid purchasing contract and that the defendant signed the purchasing contract in question.

I further find that the absence of a CKC non-breeding agreement in the case before this court has no impact on the validity of the purchasing agreement for the Irish Wolfhound Beyond Yonder Ostara (aka Molly) or the non-breeding clause contained therein (see Exhibit No. 7 and the email exchanges between the claimant and the Canadian Kennel Club).

Was the contract varied orally by the contracting parties?

[24] The defendant maintains that the non-breeding term in the purchasing agreement was varied orally by the claimant, an assertion the claimant denies. In her testimony, the defendant maintained that before receiving the Irish Wolfhound puppy Ostara (aka Molly) on June 1, 2013, she and the claimant had a telephone conversation that, from the defendant’s perspective, gave her breeding rights. The claimant denies that such a conversation took place.

[25] In her email to the claimant of September 16, 2016, at 4:57 p.m., the defendant states: “When I first spoke to you about purchasing Molly You did go over all of your requests but on the day of final sale of her you gave me breeding rights, I did not sign any contract agreeing to these demands.” Again, the claimant denies that any variation to the non-breeding term of the purchase contract had been made on the day of final transfer/sale of the dog Beyond Yonder Ostara. This variation between the defendant’s hearing testimony concerning a telephone conversation, the above e-mail exchange and the wording of the defence/counterclaim itself, i.e., “There was no non breeding agreement I did not sign anything”, casts doubt on the defendant’s assertion that the non-breeding terms of the purchasing contract had been varied orally. There is nothing in the evidence to support the defendant’s position such as copies of a phone bill verifying telephone contact with the claimant on or about June 1, 2013, or an e-mail confirming that such a communication took place varying the terms of the original agreement either before or on the date of final transfer of the dog Ostara. I find no evidence to support the defendant’s position—in fact, the competitiveness of dog breeding as presented in the evidence before the court leads me to the

opposite conclusion. Based on the evidence before me, I find that there was no variation of the non-breeding clause in the original purchase agreement.

[26] The defendant places considerable emphasis on the fact that she received an unrestricted CKC Registration Certificate for the Irish Wolfhound dog Ostara (aka Molly) subsequent to taking final possession of the dog on June 1, 2013. She testified that the claimant should have taken more steps to secure the non-breeding status of the Irish Wolfhound Ostara (aka Molly) because in using the CKC-registered status of her dogs in selling those dogs, the defendant should also have used a CKC Non-breeding agreement.

[27] Throughout her testimony, the defendant emphasized the professionalism of her breeding establishment, Capers Dream, and her knowledge of CKC rules and regulations. This was echoed by her partner/witness, Darren Huntington. In fact, at one point during her testimony, the defendant referred to the claimant as a “backstreet breeder” because of the claimant’s unregistered status as a breeder. It seems to me, therefore, that the defendants ought to have exercised more diligence in ascertaining the impact of the unrestricted CKC Registration Certificate for breeding rights to the Irish Wolfhound Ostara (aka Molly) given the non-breeding terms of the purchasing contract and the penalty upon breach of same. There is no evidence before this Court to establish that the defendant made any such inquiries with the Canadian Kennel Club.

[28] The defendant made reference to the *Animal Pedigree Act*, R.S.C., 1985, c. 8 (4th Supp.), but I find that the legislation does not assist in the determination of this case.

Conclusion

[29] Upon hearing all of the evidence, and considering the applicable law and legal principles, I order the following:

1. That the defendant shall pay to the claimant the sum of \$6000 plus costs of \$119.35 for a total of \$6199.35;
2. And further that the defendant shall provide to the claimant within 30 days of this decision, proof that the Irish Wolfhound Ostara (aka Molly) has been spayed at the defendant’s expense. If such proof is not provided, the defendant shall return the Irish Wolfhound Beyond Yonder Ostara (aka Molly) to the claimant.

3. And further that the defendant's Defence and Counterclaim issued out of the Small Claims Court on December 19, 2016, hereby is dismissed.

Patricia Fricker-Bates, Adjudicator
Small Claims Court of Nova Scotia
April 5, 2017