

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation:** *Levesque v Frazee*, 2023 NSSM 10

**Date:** 20230315

**Claim:** No. SCT 518473

**Registry:** Truro

**Between:**

Stephanie Levesque

CLAIMANT

and

Nicole (Flemming) Frazee and Sandy Frazee

DEFENDANTS

**Adjudicator:** Julien S. Matte, Adjudicator

**Heard:** February 27, 2023

**Counsel:** Stephanie Levesque, self-represented for the Claimant  
Adam L. Harris, Counsel, on behalf of Defendants

**Matte, Adjudicator,**

1. The parties met when the Defendants answered an advertisement for the sale of a purebred White German Sheppard from the Claimant. The dog, Yeti, with his unique orange colouring around the collar, turned out to be the perfect addition to the Defendants' family. In fact, so much so, that a puppy sired by Yeti was also purchased by the Defendants from the Claimant. The parties disagree about their rights under the contract of purchase and sale of Yeti.

2. The Claimant states that the contract gave her the right to breed Yeti while his adoptive family enjoyed his company, a right breached by the Defendants when the Defendants unilaterally decided to neuter Yeti. The Defendants claim that any breeding of Yeti was at their sole discretion.

**Facts**

3. The Claimant is the owner of a kennel specializing in the breeding of White German Sheppard dogs. The business involves ensuring that the dogs meet the high standard required by the registering authority through genetic testing while producing dogs that can be bred for future generations. The business consists of selling the offspring of certified male and female White German Sheppards as well as running a breeding program to ensure continued stock. The operation requires significant attention to detail in ensuring the highest standards of quality are met to maintain a pure breed.

4. The parties agree on most, if not all, the relevant facts. The parties agree that they signed a document on April 10, 2020 termed the Ownership Commitment ("Commitment") and a document entitled Karousel Hobby Farm Contract. The same document was also signed on April 18, 2020 with one small change to the original ("Contract").

5. Despite some submissions alluding otherwise, Defendant Sandy Frazee's testimony made it clear that the Defendants understood that Yeti would be used by the Claimant for breeding

while Yeti lived with the Defendants. Breeding did in fact did occur in late 2021, producing a litter of nine puppies for the Claimant.

6. In early 2022, the Defendants expressed interest in adopting one of Yeti's puppies. The Claimant agreed and initially offered a puppy to the Defendants at the full price of \$2600 minus a \$400 discount as a "thank you". The Defendants accepted the offer but testified that they would have expected to receive a free puppy for allowing Yeti to be used for breeding.

7. No terms with respect to breeding rights were outlined in the Contract beyond the Claimant agreeing to pay for genetic testing, registration and the eventual cost of neutering Yeti. In addition, the agreement details a number of clauses giving the Claimant control over Yeti in the event that the Defendants failed to properly care for him including the right to "repossess" Yeti. The parties also agreed that:

The new family agrees to get breeders permission before puppy is spay/neuter. [sic]

8. By March 2022, the Defendants claim that Yeti had started to spray in the house and become more aggressive including an attack on another dog. As a result, the Defendant had Yeti neutered despite the Claimant's protests.

9. On August 9, 2022, the Claimant sent the Defendants a demand letter asking for \$25,000 in damages or the return of Yeti, presumably if unneutered. Before this Court, the Claimant asks for the following damages but limits her claim to \$25,000.00 plus costs,:

- **\$7,500.00** Half of cost of the Claimant's investment in Yeti;
- **\$2,576.00** Costs associated with visiting Defendants, consult with lawyer and court fees;
- **\$5,600.00** Compensatory damages associated with loss time and stress;
- **\$8,376-13,876.00** Costs to obtain a replacement stud dog; and
- **\$17,800.00** Loss revenue for one litter of puppies.

## **Liability**

10. The Claimant testified that a breeding dog can breed until the age of 10 years old. Further, that breeding only occurs during a short window twice a year, that by definition a litter of puppies has at least three pups but that the litter sired by Yeti had nine. The Claimant expected to have Yeti breed two to three times. Once Yeti was no longer needed for breeding, the Defendant would retain all rights just as if they had adopted Yeti in accordance with a regular adoption as contemplated by the Commitment and outside the breeding program.

11. The Contract does not define breeding rights but rather indicates that:

If he is judged excellent for reproduction breeder may choose to let him have a girlfriend.

12. No other details are outlined, and no compensation is contemplated by the Contract for Yeti to be loaned back to the Claimant to breed. In fact, the Claimant agreed that the Defendants were entitled to “nothing” for Yeti’s “services”. The Defendants agree that the Claimant had breeding rights to Yeti but disagreed as to what those rights were. The Defendants claimed that they retained the discretion to spay/neuter Yeti once the Claimant had the opportunity to breed him once.

13. Neither party provided any basis for their position outside the words of the Contract.

14. The Contract, however, notes that the Defendants were to agree to “get breeders permission before the puppy is spay/neuter” [sic] without specifying when the Defendants may be allowed to spay or neuter Yeti. The Defendants argued that an earlier document termed Commitment that required the Defendants to neuter Yeti before twelve months gave them discretion. The Commitment is a document setting out terms for adoption of a puppy absent the breeding arrangement. The Contract, on the other hand, details the specifics of Yeti and the obligations of ownership and related breeding provision including the requirement to obtain permission from the Claimant for neutering.

15. While the neutering provisions of both agreements conflict, only the Contract accords with the evidence. By agreeing that the Claimant had breeding rights, the Defendants agreed that

Yeti could not be neutered for at least two years until Yeti reached maturity. Therefore, the provision of the Commitment requiring neutering before twelve months conflicts with the more specific requirements of the Contract. The Defendants could not both recognize the breeding rights and claim a discretion to neuter before twelve months. The Commitment is of no assistance to the Defendants' position.

16. As a result, as detailed above, the Defendants knew or ought to have known that they could not neuter Yeti without the Claimant's permission. However, the Defendants did just that opting to neuter Yeti when according to the Defendants, his behaviour changed after he sired a litter. Despite the protests of the Claimant, the operation went ahead in and around March 23, 2022, thereby preventing Yeti from being bred any further. The Defendants claim that once Yeti had sired a litter, they understood that it was at their discretion whether to neuter Yeti, a position unsupported by the evidence.

17. The dispute appears to have started after a puppy from Yeti's litter was offered to the Defendants at the cost of \$2200. According to the Defendants they were surprised by the cost having expected to get a free puppy in exchange for allowing Yeti to be bred. One month after getting the new puppy, the Defendants contacted the Claimant on March 20, 2022 indicating they wanted to have him neutered "asap". The next day the Claimant replied that they could aim to have him neutered after breeding him again in about 8 months. The Defendants replied that they would make an appointment for neutering the next day. The Claimant offered to take Yeti until he was neutered. Two days later Yeti was neutered.

18. Although the Contract is less than precise as to what breeding rights were retained, there is little ambiguity about which party was to decide when Yeti would be neutered. In the face of clear opposition from the Claimant and the words of the Contract, the Defendants elected to have Yeti neutered thereby unilaterally ending any breeding rights that the Claimant had under the Contract.

19. The Court finds that the Defendants breached the Contract.

## Damages

20. The Claimant testified that she intended to breed Yeti one more time near the end of 2022. Had Yeti been able to breed, the Claimant would have paid for Yeti to be neutered thereby extinguishing the breeding rights under the Contract. The Claimant claims \$17,800.00 as damages based on revenue she received from Yeti's first litter.
21. The Claimant also claims the cost of obtaining a new adult stud to replace Yeti as she lost Yeti as a stud dog for her breeding program. The Claimant has quantified the cost of obtaining a new stud dog as between approximately \$8,000-13,000 depending on which email opinion provided is preferred.
22. The Claimant also claims half her investment in Yeti of \$7,500.00.
23. Beyond costs allowed under *Small Claims Court Forms and Regulations* the Claimant remaining claims are in the nature of general damages, which are limited to \$100.00 under the *Act and Regulations* or costs not allowed such as compensation for legal fees or time spend on preparation for the hearing.
24. Under the law, Yeti is personal property subject to a contract between the parties. Yeti was sold by the Claimant to the Defendant with the condition that she retain breeding rights, breeding rights left undefined by the Contract. In *Yonder v. Fraser* 2017 NSSM 76 this Court considered a similar set of circumstances where a breeder sold a dog with the condition that the dog would not be bred. Unlike this case, the contract was clear that if the condition was breached the buyer would pay damages of \$6,000.00. Having found a breach, the Court allowed the claim and ordered the payment of \$6,000.00 as stipulated in the contract.
25. The Contract appears to grant the Claimant sole discretion to define breeding rights. However, as a professional breeder and drafter of the contract, it was incumbent on the Claimant to clearly lay out the terms of the intended breeding arrangement. Instead, the contract appears to grant the Claimant full discretion to define damages after the fact. At the

top of page 3 of the Contract, the Claimant “reserves the right to repossess this canine in the event that the buyer fails or refuses to comply with any terms of this agreement” and [cost] of enforcing compliance will be on the buyer”. This is the only remedial provision in the Contract. There is no mention of a loss revenue claim, replacement stud dog or reimbursement of investment.

26. Where a contract is ambiguous, as it is here, with respect to essential terms, any ambiguity is construed against the drafter. Here the Claimant failed to define what breeding rights she retained under the Contract and what the damages would be for a breach. While the Court finds that the Defendants did breach the Contract by having Yeti neutered, the proposed damages must flow from the Contract.

27. While the value of a litter may be connected to the breach, the quantification is somewhat arbitrary as the number of puppies is unknown. Further without a contractual term making damages for a breach clear, this method would leave any Defendant open to almost limitless damages. The second head of damages claimed, the cost of a replacement stud dog is only remotely connected to the breach as the Claimant was not entitled to a stud dog under the Contract, as Yeti was always intended to stay with the Defendants. Finally, the claim for the investment in Yeti was a cost to the Claimant outside of the contract and has no bearing on the damages claim for a loss of breeding rights.

28. While the Court is sympathetic to the Claimant for the claimed loss of revenue, the Court is limited by the four corners of the contract. The only remedy noted in the contract is repossession. Given the circumstances, the fact that Yeti has been a member of the Defendants’ family for nearly three years and the Claimant has no real interest in Yeti as a pet, repossession is not appropriate. Instead, Yeti as personal property has a market value of \$1,400.00 based on the purchase price in 2020. The Court awards this amount in special damages.

29. The Court does not sanction the Defendants breach of the Contract and finds that the Defendants’ act in the face of the Claimant’s protests and the plain wording of the Contract,

were flagrant and caused the Claimant pain and suffering. The Court awards the maximum \$100.00 in general damages.

30. The Court also awards pre-judgment interest from the date of the breach, March 23, 2022 to date at the rate of 4% or \$54.00 as per s.16 of the *Regulations*, costs of \$199.35 for filing fee and \$27.86 for service.

### **Counterclaim**

31. The Defendants breached the Contract by neutering Yeti without the Claimant's permission. The Defendants claim the cost for neutering Yeti under the Contract. The Defendants are not entitled to claim the cost incurred for neutering Yeti given their breach. The Counterclaim is dismissed.

### **Order**

32. The Claim is allowed. The Defendants are ordered to pay the Claimant \$1,781.21

**Julien S. Matte, Adjudicator**