

**CITATION:** Fan v. Cute Pet Resort Inc., 2025 ONSC 161  
**NEWMARKET COURT FILE NO.:** CV-23-4572-00  
**DATE:** 20250109

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
XIAOWEI FAN also known as Alex Fan ) Oluwaseun Olowolafe, for the Plaintiff and  
 ) the Defendant by Counterclaim  
Plaintiff )  
 )  
– and – )  
 )  
CUTE PET RESORT INC. and QIUXUE ) Andrew Ostrom and Zhentao Cao, for the  
CHEN ) Defendants and Plaintiff by Counterclaim  
 )  
Defendants )  
 )  
**AND BETWEEN:** )  
 )  
CUTE PET RESORT INC. )  
 )  
Plaintiff by Counterclaim )  
 )  
 )  
– and – )  
 )  
HUIDAN HUANG )  
 )  
Defendant by Counterclaim ) **HEARD:** November 26, 2024

2025 ONSC 161 (CanLII)

**REASONS FOR DECISION**

**DE SA J.:**

- [1] The Plaintiff, Xiaowei Fan (“Mr. Fan” or “Alex”), moves for summary judgment. The action arises out of the death of a pet dog following his stay at a boarding facility. The action is based on allegations of negligence and fraudulent misrepresentation.
- [2] The Defendants submit that there are multiple genuine issues requiring a trial and that the action is manifestly unsuited to adjudication by means of summary judgment. Causation and whether the applicable standard of care was met are heavily disputed issues.

Additionally, the Plaintiff seeks to pierce the corporate veil and the corporate Defendant advances a counterclaim on the basis of defamation.

- [3] Having reviewed the matter, I agree with the Defendants that this case is not suited for summary judgment. Accordingly, the motion is dismissed.
- [4] The reasons for my decision are outlined below.

### **Summary of Facts**

#### **Background**

- [5] The Defendant, Qiuxue Chen (“Ms. Chen”), is the sole director of the Defendant, Cute Pet Resort Inc. (“Cute Pet”). Cute Pet operated a pet-boarding facility from a premises located in Stouffville, Ontario (“the Premises”). Cute Pet evolved from Ms. Chen’s desire to earn a living through her love of caring for animals.
- [6] Ms. Chen did not have any prior business experience and did not obtain legal advice when she set up her business. Consequently, she did not become aware that local bylaws required Cute Pet to apply for a license until July 2023. Upon becoming aware, Ms. Chen submitted an application for a license.
- [7] The Plaintiff, Alex Fan (“Mr. Fan” or “Alex”), and the Defendant by Counterclaim, Huidan Huang (“Ms. Huang” or “Dani”) (Mr. Fan and Ms. Huang are collectively referred to herein as “the Owners”) were taking a trip to Vancouver in early August 2023 and were looking to make care arrangements for their male Border Collie, Lulu, while they were away.
- [8] On July 31, 2023, the Owners attended at the Premises with Lulu for a screening interview. This was in accordance with Cute Pet’s usual procedure of requiring potential clients to bring their pets to the Premises before boarding arrangements were made to assess the pet’s temperament and suitability for boarding.
- [9] Ms. Chen noticed that during the screening interview Lulu appeared nervous and avoided interacting with the other dogs who were present. However, Lulu did not display any aggression and appeared to be healthy.
- [10] Ms. Chen verified that Lulu had been appropriately vaccinated based on paperwork Ms. Huang provided. Accordingly, Ms. Chen informed the Owners that Cute Pet would be happy to host Lulu during their forthcoming trip.
- [11] After taking a tour of the Premises, the Owners seemed satisfied with what they had seen and heard and indicated that they wanted to proceed with boarding Lulu at Cute Pet.

#### **The Boarding Contract**

- [12] On August 15, 2023 the Owners attended at the Premises with Lulu and Ms. Huang executed a contract (“the Boarding Contract”).

- [13] The Boarding Contract specifically provides, *inter alia*:
11. CUTE PET RESORT INC. does not assume and shall not be held responsible for any liability with respect to any animal/s listed in the agreement, or any kind, character or nature whatsoever, including loss by fire, theft, escape, death, injury to a person, animals or property or death or injury to any other animal/s caused by the above named animal/s during the term of the boarding.
  12. You acknowledge the risks of communal boarding. Pets playing together in playgroups can sometimes result in injuries or spreading of illnesses such as Kennel Cough.
  13. Owner agrees to release, indemnify and hold harmless CUTE PET RESORT INC. from any and all manner of damages, claims, loss, liabilities, costs or expenses, including reasonable attorney's fees and related costs, arising out of or related to CUTE PET RESORT INC.' services, except which may arise from the gross negligence or intentional and willful misconduct of CUTE PET RESORT INC....
- [14] The Owners provided a bag of food for Lulu's consumption during his stay and then departed.
- [15] In accordance with her usual practice, Ms. Chen paid special attention to Lulu at the outset of his stay to monitor his adjustment. Unlike many dogs, who are excited to find themselves with an opportunity to play with other dogs, Lulu kept to himself and appeared nervous. However, this was consistent with his behaviour during the initial interview and Ms. Chen expected that, given time, he would settle in.
- [16] On the evening of August 15th, and throughout the day on August 16th and 17th, Lulu appeared to be in good health. Lulu did not exhibit any unusual behaviour, apart from his reluctance to interact with the other dogs and an initial reluctance to eat, until handed his first meal by Ms. Chen. On August 15, 16 and 17 Ms. Chen checked on the dogs and offered them water a few times overnight. Lulu did not display any unusual behaviour on these occasions.
- [17] In accordance with Cute Pet's usual procedures the Owners were sent videos of Lulu, among the other pets in Cute Pet's care, on August 16 and 17, 2023. The Owners raised no concerns about Lulu's wellbeing or the care he was receiving.

*Lulu Becomes Ill*

- [18] On the morning of August 18, 2023 other staff members were caring for the pets while Ms. Chen was upstairs in her living quarters. At 10:16 a.m. Ms. Chen received a message from a staff member, Tingting, alerting her that Lulu was behaving strangely and so Ms. Chen came downstairs to see for herself. She found that Lulu was lying on the ground. Tingting

told Ms. Chen that Lulu had been laying in the position without moving for a while and that he had not eaten his breakfast. Shortly thereafter, Lulu then stood up and walked away.

- [19] Ms. Chen took a video of Lulu and sent it to the Owners to alert them to the situation. They did not appear to be greatly alarmed. Ms. Huang responded “thank you for your hard work, [he’s] a timid border collie, is Lulu feeling better now?”
- [20] Ms. Chen wrote back to Ms. Huang to advise her that Lulu was in the corner by himself and that she would check on him in the afternoon. This exchange occurred at 10:33 a.m. At 10:56 a.m. Ms. Huang wrote telling Ms. Chen to give Lulu a treat.
- [21] Although not yet too worried, the staff and Ms. Chen continued to keep an eye on Lulu. He again laid down and after about half an hour, began breathing heavily. Ms. Chen grew more concerned after observing this and sent Ms. Huang a further video at 11:26 a.m. Soon thereafter Ms. Chen decided that Lulu should receive medical care and, at 11:30 a.m., she wrote to Ms. Huang stating that she was afraid the issue was serious and so had decided to take Lulu to a veterinarian. Ms. Huang sent the address of Lulu’s veterinarian and Ms. Chen and her boyfriend immediately headed there. They brought with them a cat whom Ms. Chen was scheduled to deliver to her owner at the airport.
- [22] At 11:48 a.m. they arrived at the LeGallais Veterinary Hospital. Ms. Chen spoke with the staff and explained that this was an emergency and they were consequently admitted to meet with the veterinarian on duty approximately 2 minutes after arrival. Ms. Chen provided the veterinarian with all the details she knew concerning how Lulu’s condition had developed. The veterinarian quickly began examining Lulu and told Ms. Chen that he would communicate with the Owners regarding his prognosis and treatment.
- [23] Since Ms. Chen was due to deliver the cat to the airport, she asked her boyfriend to stay at the veterinarian’s office to answer any additional questions or provide any needed help, and she then left.
- [24] The doctor at LeGallais recommended to transfer Lulu to a specialized care facility for intensive care. At 11:50 a.m. on the same date, Lulu was transported to LeGallais Vet Hospital. Thereafter, Mr. Fan arranged to have Lulu transferred to the emergency hospital.
- [25] The Owners were informed that Lulu was suffering from pneumothorax, and his blood tests indicated hypernatremia, hyperchloremia, and azotemia; he was also battling high fever, low blood sugar, and several other complications.
- [26] The doctor advised that they may not know the cause but there is good reasons to assume that there is something severe underlying and that prognosis was grave. The doctor recommended considering euthanasia or specialist referral, as Lulu, still alive, was enduring severe pain, compromising his well-being and contrary to his best interests.
- [27] At 9:15 a.m. on August 19, 2023, the emergency hospital informed the Owners that Lulu had passed away.

*The Autopsy*

- [28] The Owners requested the emergency hospital to conduct an autopsy on Lulu to determine the cause of death. The Animal Health Lab at the University of Guelph conducted a necropsy. The Lab provided a report combining multiple veterinary expert opinions.
- [29] The report recognized that the exact cause of Lulus' acute clinical presentation (including hypernatremia, hyperchloremia and hypoglycemia) and death remained unclear. However, based on the blood work and marked dehydration at the time of presentation, the consensus was that the electrolyte abnormalities and clinical signs were consistent with water deficit and not salt excess. This would have developed in the face of reduced water intake/increased water loss, and acute onset/uncompensated diabetes insipidus was a possibility.
- [30] The neurologic signs, cerebral edema and microscopic changes in the brain developed were attributed to severe metabolic derangement.

*Dealings with Pet Cute Following Lulu's Passing*

- [31] On August 21, 2023 the Owners attended at the Premises to speak with Ms. Chen and retrieve Lulu's belongings. The Owners took photos during this visit.
- [32] On September 6, 2023, Ms. Huang contacted Ms. Chen to inquire about Cute Pet's insurance and Ms. Chen responded that Cute Pet has valid insurance for pet boarding services. However, the insurer denied coverage given their conclusion that Lulu's death was caused by a pre-existing condition.
- [33] On September 26, 2023, the Town of Whitchurch-Stouffville, the jurisdiction in which Cute Pet operates, confirmed to Alex that Cute Pet had not yet been granted with a Kennel Business Licence, a requisite permit for providing pet boarding services to the public.

*By-law of the Town of Whitchurch-Stouffville*

- [34] The By-law (2022-032-LI) of the Town of Whitchurch-Stouffville provides:

Kennel: an establishment, operating under the authority of a valid Kennel license, for the non- medical care and grooming, keeping, breeding and raising of dogs, and may include the operation of a dog daycare centre if operated from the same Premises and location as the Kennel, but shall not include a veterinary clinic.

No Person shall operate a Business listed under this by-law unless that Person has first obtained a Licence from the Town.

Schedule D - Kennels

1. Every Owner operating a Kennel shall Licence the Kennel with the Licensing Office pursuant to this By- law. The Licensee shall:
  - (i) Display the Licence permanently in a prominent place in the Kennel to which it applies.
  - (ii) Keep the dogs in sanitary, well-bedded, well-ventilated, naturally lighted, clean quarters and maintain such quarters at a healthful temperature at all times.
  - (iii) Adequately feed the dogs periodically each day and keep same in a clean, healthy condition, free from vermin and disease.
  - (iv) Adequately provide each animal, at all times, with access to clean water for drinking.
  - (v) Ensure that any dog that appears to be suffering from any disease shall, within reason, be given care and attention from a qualified veterinarian.
  - (vi) Ensure that no Kennel contains a greater number of dogs than may, in the opinion of an Inspector, be housed, fed or otherwise cared for without causing overcrowding, unnecessary discomfort or risk of injury or disease to the dogs therein.
  - (vii) Ensure that all advertisements of the Kennel include their valid Town Licence number.

Ms. Huang's Social Media Campaign

- [35] On or about September 23, 2023 Ms. Huang commenced an online campaign to warn other pet owners about Cute Pet's business through social media postings ("the Postings"). Ms. Huang utilized the WeChat and Xiaohongshu platforms, which are extremely popular in the Chinese-Canadian community from which the majority of Cute Pet's clientele had been drawn.
- [36] The Postings were each entitled with variations of the title "Avoid the mine! A black-hearted foster care in Toronto killed my dog!" Examples of the statements contained in these postings include:
- a) "This foster care does not provide drinking water indoors."
  - b) "There is only a plastic bucket for water outdoors, which is their only water supply, but the water level is pitifully low. Whether the dog can grab water depends on their own ability."

- c) “The foster care staff is very limited, resulting in delayed medical treatment.”
  - d) “They also deceived customers by promoting that they have licensed foster care.”
  - e) The Postings attracted enormous readership. As of September 11, 2024 they had collectively generated 3,677 “likes” and 1,627 comments.
- [37] Ms. Chen attempted to counter the damage to Cute Pet’s reputation which the Postings were causing with responding posts. These efforts, however, were not successful. Shortly after the postings, all of the future bookings which Cute Pet had were cancelled. Several of the dogs who were actually boarded at the Premises at the time were picked up early by their owners. Simultaneously, new inquiries and bookings dropped off.
- [38] Ms. Chen attempted to persist in running the business for a time but realized that a recovery was unlikely while the Postings remained online, and Ms. Huang continued to target Cute Pet.
- [39] Ms. Chen reluctantly decided to shut down the business on or about October 3, 2023. Once this decision was made, Ms. Chen cancelled Cute Pet’s outstanding licensing application with the municipality as there was no longer any purpose for it.

### Analysis

#### Summary Judgment under Rule 20.04 of the Rules of Civil Procedure

##### Test: Motion for Summary Judgment

- [40] Pursuant to Rule 20.04(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the court shall grant summary judgment if it is satisfied there is no genuine issue requiring a trial. Animating the interpretation of 20.04(1) is Rule 1.04 which requires that the rule be liberally construed to secure the just, most expeditious and least expensive determination of a proceeding on its merits having regard to the complexity of the issues and the amounts involved.
- [41] The judge in deciding whether to grant summary judgment must ask: can the full appreciation of the evidence and issues that is required to make dispositive findings be achieved by way of summary judgment, or can this full appreciation only be achieved by way of trial? A trial is not required if the judge on the motion can 1) achieve a fair and just adjudication; 2) make the necessary findings of fact; 3) apply the law to those facts; and 4) the motion is a proportionate, more expeditious and less expensive means to achieve a just result rather than going to trial.
- [42] As the Supreme Court explained in *Hryniak v. Mauldin*, 2014 SCC 7 (CanLII), [2014] 1 SCR 87, at para. 50:

These principals are interconnected and all speak to whether summary judgment will provide a fair and just adjudication. When a summary judgment

motion allows the judge to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. Similarly, a process that does not give a judge confidence in her conclusions can never be the proportionate way to resolve a dispute. *It bears reiterating that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principals so as to resolve the dispute.* [Emphasis added.]

- [43] The Court assumes the evidence in the record is all the evidence the parties would rely on if the matter proceeds to trial: *Combined Air Mechanical Services Inc. v. Flesch* 2011 CarswellOnt 13515 (Ont. C.C.), para. 56; *Royal Bank of Canada v. Tie Domi*, 2011 ONSC 7297, para. 5; *Byfield v. Toronto Dominion Bank* 2012 CarswellOnt 814 at para. 8-10.

**Is this case appropriate for Summary Judgment?**

- [44] According to the Plaintiff, given the autopsy results, and the conditions at the Premises, it is “safe to conclude” that during Lulu’s three-day stay at the boarding facility, Lulu had insufficient, or potentially no access to water. This is a failure for the Defendants given their legal responsibilities to ensure Lulu had adequate food and consistent access to water which is required by By-law 2022-032-LI.
- [45] The Plaintiff’s argument rests on the conclusory statement that it is “safe to conclude” that Lulu was deprived of water. The fact that Cute Pet’s negligence cannot be excluded as a possible cause does not meet the burden the Plaintiffs must meet.<sup>1</sup>
- [46] Contrary to the position advanced by the Plaintiff, the Defendant’s evidence on the motion maintains that adequate water was made available to all the animals staying at the Premises. The Defendants’ evidence also provides that Lulu was acting normal on the first two days he stayed at the facility.
- [47] As soon as Lulu started exhibiting unusual behaviour, the Owners were contacted about the concern, and efforts were made to address it. Cute Pet ensured Lulu was in the care of his veterinarian less than 2 hours after he first displayed signs of abnormal behaviour.
- [48] While autopsy report establishes that Lulu died of dehydration, it contains no conclusions as to the cause of that dehydration. The one possible cause suggested by the autopsy report is “acute onset/uncompensated diabetes insipidus.” This is obviously a pre-existing medical condition for which Cute Pet could not be responsible.
- [49] The records filed on the motion reveal that Lulu had not been to a veterinarian in almost a year prior to his boarding at the Premises. It is entirely possible that a condition may have developed since his last veterinary examination.

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<sup>1</sup> *Adam v. Ledesma-Cadhit*, 2021 ONCA 828, at para. 57.

- [50] Paragraph 12 of the Boarding Contract provides that Cute Pet shall not be responsible for “any liability...of any kind, character or nature whatsoever.” It goes to specifically exclude liability for the risk of loss by death. Paragraph 14 further releases Cute Pet from “all manner of damages, claims, loss, liabilities, costs or expenses,” with the exception of “gross negligence or intentional and willful misconduct.”
- [51] The effect of these limited liability clauses, and whether Ms. Chen can be held liable personally in such circumstances for a contract entered into by her corporation are also live issues being raised by the Defendants.
- [52] With respect to the allegations of fraud, the Plaintiff alleges that Ms. Chen fraudulently misrepresented that “Cute Pet was properly licensed to provide pet boarding services to the public.” However, again, Ms. Chen denies that she made any such representation. None of Cute Pet’s advertising included any reference to a licence. Nor are there any other witnesses who corroborate Mr. Fan’s version of events.
- [53] The question of whether the evidence available to the court on a summary judgment motion allows for a “full appreciation” of the matter is highly fact dependant and varies on a case by case basis. As the Court of Appeal observed in *Combined Air Mechanical Services Inc. v. Flesch*, 2011 ONCA 764 (CanLII), at para. 39:

Although both the summary judgment motion and a full trial are processes by which actions may be adjudicated in the “interest of justice”, the procedural fairness of each of these two processes depends on the nature of the issues posed and the evidence led by the parties.

In some cases, it is safe to determine the matter on a motion for summary judgment because the motion record is sufficient to ensure that a just result can be achieved without the need for a full trial. *In other cases, the record will not be adequate for this purpose, nor can it be made so regardless of the specific tools that are now available to the motion judge. In such cases, a just result can only be achieved through the trial process. This pivotal determination must be made on a case-by-case basis.* [Emphasis added]

See also *Toronto-Dominion Bank v. Hylton*, 2012 ONCA 614 (CanLII) at para. 5.

- [54] In this case, a proper adjudication of the matter cannot be achieved on the basis of the record before me. I am not satisfied that there is no genuine issue requiring a trial.

*The Counterclaim*

[55] Given that summary judgment is not appropriate in respect of the main action, it would also not be appropriate in respect of the counterclaim given the obvious risk of inconsistent findings of fact.<sup>2</sup>

[56] The application is dismissed.

Costs

[57] I will receive costs submissions from the Defendants within 3 weeks of the release of this decision. The Plaintiff will have 2 weeks thereafter to provide a response.

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Justice C.F. de Sa

**Released:** January 9, 2025.

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<sup>2</sup> *Butera v. Chown, Cairns LLP*, 2017 ONCA 783 (CanLII); *Nazir v. Stewart Title Guaranty Company*, 2024 ONSC 5394.

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**REASONS FOR DECISION**

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Justice C.F. de Sa

**Released:** January 9, 2025.