



# Civil Resolution Tribunal

Date Issued: July 14, 2020

File: SC-2019-011087

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bustos v. Purebelle Aesthetics Inc.*, 2020 BCCRT 785

B E T W E E N :

ADRIANA ORTEGA BUSTOS

**APPLICANT**

A N D :

PUREBELLE AESTHETICS INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Rama Sood

## INTRODUCTION

1. This small claims dispute is about tuition fees. The applicant, Adriana Ortega Bustos, says the respondent, Purebelle Aesthetics Inc. (Purebelle), offered a 2 day training course for a plasma pen but did not advise her that its use in Canada was restricted. Ms. Bustos seeks a full refund of the \$3,787.27 tuition fee she paid Purebelle for the course.

2. Purebelle denies that it misled Ms. Bustos.
3. Ms. Bustos is self-represented. Purebelle is represented by its employee, MH.

## **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). 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, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
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.

## **ISSUE**

8. The issue in this dispute is whether Purebelle must refund the tuition fee paid by Ms. Bustos.

## EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the burden is on Ms. Bustos to prove her claim on a balance of probabilities. I have reviewed all submissions and evidence provided. I refer only to the relevant evidence necessary to give context to my decision.
10. The following facts are undisputed:
  - a. Plasma pens are small handheld medical devices used for cosmetic skin treatments such as eyelid lifts, wrinkle reduction, and to remove moles, skin tags, scars, and spots.
  - b. Purebelle offered a training course for use of plasma pens.
  - c. On April 10, 2018 Ms. Bustos registered for a 2 day Plasma Lift Training Course offered by Purebelle to become a certified Plasma Lift Technician (course).
  - d. Purebelle charged a \$3,787.27 tuition fee for the course, which included a plasma pen and 25 probes.
  - e. If Ms. Bustos cancelled, Purebelle offered a full refund up to 14 days before the course and 50% refunds up to 7 days before the course.
  - f. Ms. Bustos attended the course on April 28, 2018 and April 29, 2018.
  - g. Ms. Bustos received a Plasma Lift Training Elite Technician certificate from Purebelle on April 29, 2018 after completing the course. The certificate stated that Ms. Bustos successfully passed the Plasma Lift Training course and was now professionally trained and qualified as an Elite Technician for using a plasma flash pen.
11. Ms. Bustos says after completing the course she traveled to Mexico for personal reasons and did not return until November or December 2018. She says upon returning she discovered that Health Canada classified the plasma pen as a class II medical device and she was not permitted to use it.

12. Ms. Bustos provided an alert from Health Canada issued on November 26, 2018 that stated the following:
  - a. Health Canada had not approved plasma pen devices for sale in Canada.
  - b. Health Canada was aware that plasma pens were being used in spas and sold to consumers through esthetician training courses.
  - c. Starting in June 2018, Health Canada informed companies that it was illegal to advertise, import for sale, or sell plasma pens in Canada without appropriate licensing.
13. Ms. Bustos also provided a recall alert from Health Canada dated March 27, 2019 that stated plasma pens were not authorized for sale in Canada and that consumers should be wary of spas that promoted plasma pen services. The alert also stated that Health Canada was aware some beauty academies were selling unauthorized devices to trainees once they completed training. It also repeated that advertising for sale or selling medical devices in Canada without appropriate licensing was illegal.
14. Ms. Bustos says Purebelle should have known when it offered the course in April 2018 that Health Canada had restricted the use of plasma pens and that she would not be able to provide services. I find there is no evidence that Health Canada had placed any restrictions on plasma pens prior to June 2018.
15. Purebelle says plasma pen treatments have been available in Europe for over 25 years. It says it contacted Health Canada and Consumer Products & Safety Program in July 2016 and confirmed that the treatment was not regulated by Health Canada. It says the plasma pen was considered a consumer product since it was used for cosmetic treatments. Purebelle did not provide any evidence of its discussions with any government agency.

***Did Purebelle mislead Ms. Bustos?***

16. Although Ms. Bustos does not use these exact words, I find that her claim is a misrepresentation claim against Purebelle. However, I find Purebelle did not make any misrepresentations to Ms. Bustos when she took the course in April 2018. My reasons are as follows.
17. A negligent misrepresentation occurs when: (1) there is a duty of care based on a “special relationship” between the seller making the representation and the buyer, (2) the representation in question was untrue, inaccurate, or misleading, (3) the seller acted negligently in making the representation, (4) the buyer relied in a reasonable manner on the negligent misrepresentation, and (5) the reliance must have been detrimental to the buyer (see *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)).
18. While I am not bound by it, I agree with the CRT’s reasoning in *Qin v. Vancouver International College of Health and Wellness Inc.*, 2019 BCCRT 6871 that an instructor owes a duty of care to a prospective student.
19. I must now consider whether Purebelle made an untrue, inaccurate, or misleading representation. When Ms. Bustos registered for the course, Purebelle stated that Plasma Lift was a successful treatment in Europe for over 20 years and only recently introduced to Canada. It also stated that students could start providing treatments after completing the course. I find the statements made by Purebelle when Ms. Bustos took the course in April 2018 were accurate since Health Canada’s first alert was not issued until June 2018.
20. Ms. Bustos also says Purebelle incorrectly advised her she could still use the plasma pen after June 2018. I find Purebelle’s statements after the course ended in April 2018 are not relevant since Ms. Bustos’s claims are about statements that were made when she took the course. Even if they were relevant, since Ms. Bustos never actually provided treatments in Canada, I find she has not demonstrated that she relied on Purebelle’s statements to her detriment after June 2018.
21. Given my reasons above, I dismiss Ms. Bustos’s claims.

22. Since Ms. Bustos was not successful, I dismiss her claim for reimbursement of CRT fees.

**ORDER**

23. I dismiss Ms. Bustos's claims and this dispute.

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Rama Sood, Tribunal Member