



Civil Resolution Tribunal

Date Issued: September 30, 2020

File: SC-2020-003399

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kongyuy v. Quick Pass Master Tutorial School Ltd.*, 2020 BCCRT 1105

B E T W E E N :

FELIX KONGYUY

APPLICANT

A N D :

QUICK PASS MASTER TUTORIAL SCHOOL LTD. and BENSON
WANG

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a refund for tutoring services. The applicant, Felix Kongyuy, entered a contract with the respondent corporation, Quick Pass Master Tutorial School Ltd. (Quick Pass), for tutoring services. The respondent, Benson Wang is a director of Quick Pass.

2. Mr. Kongyuy claims Quick Pass and Mr. Wang breached the *Business Practices And Consumer Protection Act* (BPCPA). Mr. Kongyuy also says that Quick Pass and Mr. Wang failed to deliver all of the promised lessons. I infer that Mr. Kongyuy claims that Mr. Wang is responsible for Quick Pass' conduct as its director. Mr. Kongyuy requests a refund of \$787.50 from Quick Pass and Mr. Wang.
3. Quick Pass and Mr. Wang deny Mr. Kongyuy's claim. They say they complied with the contract. Quick Pass and Mr. Wang also say the contract does not allow refunds.
4. Mr. Kongyuy and Mr. Wang are self-represented. Mr. Wang, in his capacity as director of Quick Pass, also represents Quick Pass.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. I note that Mr. Kongyuy submitted evidence late and Mr. Wang submitted evidence late in response. Mr. Kongyuy was given an opportunity to respond to Mr. Wang's late evidence but he did not do so. I find that the late evidence submitted by both Mr. Kongyuy and Mr. Wang did not prejudice any party because all parties had an opportunity to respond. So, I have allowed Mr. Kongyuy's and Mr. Wang's late evidence and I have considered that evidence in my decision.
9. In his submissions, Mr. Kongyuy claims his privacy was violated. However, Mr. Kongyuy did not make a claim against Quick Pass and Mr. Wang for a breach of privacy rights in his Dispute Notice. So, I decline to make any findings regarding Mr. Kongyuy's privacy rights.
10. 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.

ISSUES

11. The issues in this dispute are:
 - a. Is Mr. Wang responsible for Quick Pass' conduct? If so, does Mr. Wang owe Mr. Kongyuy a refund?
 - b. Did Quick Pass breach the BPCPA? If so, must Quick Pass refund Mr. Kongyuy some or all of the \$787.50 paid for tutoring services?
 - c. Did Quick Pass breach its contract with Mr. Wang? If so, must Mr. Wang refund Mr. Kongyuy some or all of the \$787.50 paid for tutoring services?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, Mr. Kongyuy must prove his case on the balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.

13. It is undisputed that Mr. Kongyuy electronically signed a contract with Quick Pass on March 27, 2020. The contract says Mr. Kongyuy will pay Quick Pass \$682.50 for tutoring services. The contract also says there are no refunds.
14. Electronic payment records show Mr. Kongyuy paid Quick Pass \$682.50 on March 27, 2020 and an additional unexplained payment of \$105 on April 2, 2020. I find that both payments were provided for Quick Pass' tutoring services. So, I find that Mr. Kongyuy paid Quick Pass a total of \$787.50 for its services.
15. It is undisputed that Quick pass sent electronic course materials to Mr. Kongyuy. Mr. Kongyuy says he did not receive chapters 3 and 17 of the course materials initially. Quick Pass says the program consists of 26 chapters and all chapters, including chapters 3 and 17, were eventually provided to Mr. Kongyuy in April 2020.
16. It is undisputed that Mr. Kongyuy sent Quick Pass an April 18, 2020 email request to cancel the contract and request a refund. Mr. Kongyuy sent a text the same day following up on his email. Neither party provided a copy of Mr. Kongyuy's April 18, 2020 email.

Mr. Kongyuy's claim against Mr. Wang

17. Based on the contract's terms, I find that the contract is between Mr. Kongyuy and Quick Pass only. The contract does not mention Mr. Wang and Mr. Kongyuy has not provided any evidence showing that Mr. Wang intended to enter into a contract with Mr. Wang in his personal capacity.
18. I also find that Mr. Wang is not personally bound by the contract as Quick Pass' director. As a corporation, Quick Pass is a separate legal entity that is distinct from its directors. When a corporation enters into a contract, it does not automatically bind its directors. Its directors are also not generally liable for a corporation's actions unless the corporation is used as a cloak for fraud or improper conduct. (See *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121 (CanLII).)

19. For the above reasons, I dismiss Mr. Kongyuy's claim against Mr. Wang. I now turn to Mr. Kongyuy's claims against Quick Pass.

Mr. Kongyuy's claim that Quick Pass breached the BPCPA

20. Mr. Kongyuy says Quick Pass did not comply with the BPCPA which has requirements for future performance contracts. Section 17 of the BPCPA defines a future performance contract as an agreement for services where the full amount is not paid, or where services are not supplied in full, at the time of the parties' agreement. Here, Mr. Kongyuy entered the contract with Quick Pass on March 27, 2020, but the tutoring services were to be provided later. So, I find that this is a future performance contract.

21. Section 23 of the BPCPA says a consumer may cancel a future performance contract by giving notice of cancellation to the supplier within a year of receiving the contract if the contract does not contain the information required under section 19. Mr. Kongyuy says this missing information included Quick Pass' business address, an itemized purchase price and a detailed description of the contract's goods or services. Section 54(2) of the BPCPA says this notice must provide the reason for cancelling the agreement.

22. I find that neither the contract nor the nondisclosure agreement provided Quick Pass' business address. So, I find that Quick Pass breached section 19(f) of the BPCPA by failing to provide its business address. Based on this finding, it is unnecessary to determine whether Quick Pass also breached the BPCPA by not providing an itemized purchase price or a detailed description of the goods or services to be supplied under the contract.

23. Based on the applicant's undisputed submission, I find that the applicant provided notice of cancellation by sending an email and text message on April 18, 2020. Further, I am satisfied that Mr. Kongyuy has provided his reasons for ending the contract as required by section 54(2) of the BPCPA. The April 18, 2020 cancellation email was not provided as evidence and Mr. Kongyuy's April 18, 2020 text message

does not state a reason for ending the agreement. However, based on the parties' submissions, I infer that Mr. Kongyuy asked to cancel the agreement because his family had a medical emergency. I find that this dispute itself is sufficient notice of Mr. Kongyuy's reason for cancelling the agreement under section 54(2) of the BPCPA. So, I find that Mr. Kongyuy provided sufficient notice of cancellation of the agreement under section 23(5) of the BPCPA.

24. Section 28(1) says that if a future performance contract is cancelled, the consumer must return any goods received under the contract by delivering the goods to the person named in the contract as the person to whom notice of cancellation may be given or to the business address of the supplier.
25. In this matter, Mr. Kongyuy received electronic data. In the dispute of *Oda v. 1127636 B.C. Ltd.*, 2020 BCCRT 178, the CRT found it unnecessary to return goods when it was impossible to do so. In that matter, the CRT decided that a consumer did not have to return goods when it would be impossible to do so. Although this decision is not binding on me, I find the reasoning persuasive and I apply it herein. I find that it would be impractical to return electronic data so I find that Mr. Kongyuy does not need to do so.
26. Given Quick Pass's failure to comply with the BPCPA and Mr. Kongyuy's cancellation of the contract, I find Quick Pass must refund Mr. Kongyuy \$787.50.
27. Based on my findings above, it is unnecessary to determine whether Quick Pass also breached the contract. Accordingly, I decline to make findings on this issue.
28. The *Court Order Interest Act* (COIA) applies to the CRT. The applicant is entitled to pre-judgement interest on the refund of the purchase price of \$787.50 from April 25 2020, the date Mr. Kongyuy filed this dispute, to the date of this decision. This equals \$3.70.

29. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. However, neither party requested reimbursement of CRT fees or dispute-related expenses so none are ordered.

ORDERS

30. Within 30 days of the date of this order, I order Quick Pass to pay Mr. Kongyuy a total of \$791.20, broken down as follows:

- a. \$787.50 as reimbursement of tuition fees, and
- b. \$3.70 in pre-judgment interest under the COIA.

31. Mr. Kongyuy is entitled to post-judgment interest, as applicable.

32. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

33. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Richard McAndrew, Tribunal Member