Civil Resolution Tribunal

Date Issued: December 21, 2020

File: SC-2020-004766

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ward v. S.R.F. Holdings Ltd. dba Academy of Dance*, 2020 BCCRT 1446

B E T W E E N :

MATHEW WARD, KATIE WARD, TREVOR ROWSE and MELISSA CARLIN

APPLICANTS

A N D :

S.R.F. HOLDINGS LTD. dba ACADEMY OF DANCE and LLYNFI HOLDINGS LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Sherelle Goodwin

INTRODUCTION

1. This dispute is about reimbursement of dance competition entrance fees.

2. The children of the applicants, Matthew Ward, Katie Ward, Trevor Rowse and Melissa Carlin, were students of the dance academy run by the respondent, S.R.F. Holdings

Ltd. dba Academy of Dance (AOD). The applicants say they paid AOD to register their children in the 2020 Shine Dance Festival (Shine) and the Great Canadian Dance Festival (Great Canadian) but the dance competitions were cancelled due to COVID-19. The applicants claim reimbursement of $1,297.80 in competition fees.

3. AOD acknowledges the applicants paid AOD the applicant fees but says it was only helping the applicants register in the dance festivals. AOD says any contract that exists is between the applicants and the dance competition companies. AOD also says it has paid the competition fees to the dance festival companies and so cannot refund the applicants their money in any event.

4. The respondent, Llynfi Holdings Ltd. (Llynfi), organized Great Canadian. Llynfi says the dance festival was not cancelled but postponed until 2021. It says it has no contract with the applicants and therefore owes them nothing.

5. The applicants are represented by Mr. Ward. AOD is represented by its owner. Llynfi is represented by an employee.

JURISDICTION AND PROCEDURE

6. 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.

7. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate

that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

8. Section 42 of the CRTA says 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.

9. 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

10. During facilitation, AOD refunded part of the applicants' competition fees. The applicants have reduced their claim to $1,297.80. As I explain below, I find this is the total amount the applicants jointly paid AOD for Great Canadian competition fees. I infer the applicants' remaining claims are only for reimbursement of Great Canadian competition fees.

11. The issue in this dispute is whether either respondent must reimburse the applicants their competition entrance fees and, if so, how much.

EVIDENCE AND ANALYSIS

12. In any civil dispute, like this one, the burden is on the applicants to prove their claims on a balance of probabilities. I have reviewed the parties' submissions and evidence, but only refer to that evidence necessary to explain and give context to my decision.

13. The daughters of Mr. and Mrs. Ward, Mr. Rowse, and Ms. Carlin (daughters) were all members of AOD for the 2019-2020 year. It is undisputed that AOD registered the daughters to compete in at least 3 dance competitions in the 2019-2020 season, along with other AOD dancers, including Great Canadian.

14. Based on AOD's December 1, 2019 invoices, I find AOD charged the applicants Great Canadian competition fees, based on the number and type of dances scheduled for each daughter, plus 5% GST. The invoices state that the fees were due, and paid, on December 1, 2019. I find the applicants jointly paid $1,297.80 to AOD for Great Canadian competition fees, broken down as follows:

    a. $592.20 by Ms. Ward,

    b. $273 by Mr. Rowse, and

    c. $432.60 by Ms. Carlin.

15. According to Llynfi's December 11, 2019 invoice to AOD, the total Great Canadian registration fee for AOD was $5,790. AOD had paid a $1,000 deposit on September 16, 2019. Llynfi's banking records show that AOD paid the remaining balance of $4,790 on December 11, 2019.

16. Based on Llynfi's invoice to AOD, I find Great Canadian was scheduled for May 13 to 17, 2020. It is undisputed that British Columbia's Provincial Health Officer issued a Class Order under the *Public Health Act* limiting public gatherings to 50 people on March 16, 2020. It is undisputed that Llyfni decided not to hold Great Canadian in 2020 due to the COVID-19 related restrictions.

17. Llynfi says it did not cancel Great Canadian, but rather postponed it to 2021. No party submitted any evidence about Llynfi's decision not to hold Great Canadian in 2020. Based on the parties' submissions, and the website rules and regulations submitted by Llynfi, I infer Great Canadian is a yearly event. Given this, I find Llynfi's decision not to hold the competition in 2020 at all is a cancellation, rather than a postponement. Although it is unclear when the competition was cancelled, I find that occurred prior to AOD's March 23, 2020 email to the applicants, and other parents, explaining that the competition organizers, including Llynfi, were not yet sure what they would do with the paid competition fees.

18. It is undisputed that Llynfi gave AOD a credit for the unused Great Canadian competition fees. Based on the June 2020 emails between AOD and Llynfi, as well as the June 24, 2020 signed credit agreement, I find Llynfi granted $5,790 credit to AOD as a studio, and not to individual dancers, including the applicants. The purpose of the credit is for AOD to register for Great Canadian in 2021.

19. It is undisputed that the daughters did not return to dance with AOD for the 2020-2021 season. Based on correspondence between the applicants and AOD, I find the Wards asked for a competition fee refund on May 12, 2019. As AOD does not dispute it, I accept that the other applicants also asked for a refund of their competition fees. I find AOD generally advised all parents, including the applicants, that it was not able to refund the paid competition fees during a May 27, 2020 online meeting, and in a June 1, 2020 email.

20. AOD says it is just a "middle-man" which helped the applicants and Llyfni enter into a contract for the dancers to dance at Great Canadian. AOD says it passed promotional information from Llynfi to the applicants and registered the dancers on behalf of the applicants. Although AOD did not use these words, I infer it argues it was acting as agent for either one or the other party and therefore is not responsible for refunding the competition fees. For the reasons set out below, I disagree.

21. The law of agency applies when one party (the principal) gives authority to another party (the agent) to enter contracts with third parties on its behalf. So long as an agent discloses that they are acting as an agent for the principal, the agent will not generally be liable under a contract made between the principal and the third party.

22. First, I find AOD was not acting as agent for Llynfi because, in its March and June 2020 emails to the applicants AOD specifically says it is not "affiliated" with Llynfi. Further, Llynfi says it had a contract with AOD directly, and not with the applicants. I infer Llynfi denies any intention for AOD to bind it to a contract with the applicants.

23. Second, I find AOD was not acting as agent for the applicants. Llynfi argues it had no contract with the applicants, so I find it was not aware that AOD held itself out as

agent for the parents, in registering for Great Canadian. Further, I find AOD registered for Great Canadian as a studio, and not on behalf of the individual dancers. Although AOD registered a certain number and type of performances, as set out on Llynfi's December 11, 2020 invoice, I find AOD did not register the dancers by name. It was only after the competition was cancelled and the credit was granted to AOD that Llynfi asked AOD to provide a roster of the dancers' names and their respective performances, in a June 2020 email. I find AOD could not have created a contract on behalf of the applicants if it did not even identify the applicants to Llynfi when registering for Great Canadian. So, I find AOD acted on its own behalf in registering the dancers for Great Canadian, rather than as agent for the dancers, or the applicants.

24. I acknowledge AOD's argument that it does not make any profit from the competition fees. Based on my comparison of Llynfi's invoice and the AOD invoices, I agree that AOD charged the applicants the same competition fees charged by Great Canadian, or less. However, just because AOD did not markup the competition fees does not mean it was acting as agent for either the applicants or Llynfi.

25. In a May 12, 2019 email to AOD, the Wards said their daughters would not be returning to AOD for the next dance season. The Wards advised that Great Canadian had told them that they could obtain a refund from the dance studio, and asked AOD to provide the refund. I disagree with AOD that the email proves that Llynfi agreed to refund the Wards their competition fees. Although it shows the Wards' belief that they were told their funds would be refunded, it is indirect information from unnamed sources, so I give it little weight. Further, the Wards wrote that the studio would provide the refund, which I find means AOD, and not Llynfi.

26. On balance, I find Llynfi has no contractual relationship with the applicants. I further find Llynfi has no legal obligation to reimburse the applicants their paid competition fees. I dismiss the applicants' claims against Llynfi.

27. I now turn to consider the claim against AOD.

28. AOD says it cannot reimburse the applicants their competition fees, because no longer has the money. I accept AOD's argument that Llynfi did not provide a refund to AOD, but rather a studio credit for Great Canadian in 2021. This is supported by a series of June 2020 emails between Llynfi and AOD, as well as a June 24, 2020 credit agreement signed by AOD. However, that is not determinative of whether AOD must refund the competition fees to the applicants. What matters is the terms of the agreement between AOD and the applicants.

29. The applicants say they signed a membership agreement with AOD, but no party submitted a copy of the agreement. The applicants say the agreement does not say AOD will not give refunds and does not address competition fees at all. As AOD does not dispute this, I accept it to be true. On the evidence before me I find the applicants and AOD entered into a verbal agreement, or contract, that the applicants would pay AOD the competition fees and AOD would pay those fees to companies like Llynfi so that the dancers could compete at festivals like Great Canadian.

30. It is undisputed that the applicants' contract with AOD did not contain a "force majeure" clause, which is where the parties agree about what will happen in the event of unforeseen circumstances (such as the COVID-19 pandemic) preventing someone from fulfilling a contract. In the absence of such a clause, the common law doctrine of frustration applies.

31. A contract is frustrated if its performance is rendered impossible or impracticable by an event that its parties did not reasonably contemplate. For a contract to be frustrated, it is not enough for there to be hardship, inconvenience or material loss. There must be a radical change in the nature of a fundamental contractual obligation that makes the contract impossible to perform (see *Wilkie v. Jeong*, 2017 BCSC 2131).

32. I find the contract between AOD and the applicants regarding Great Canadian was frustrated, because AOD's agreement to register the daughters for Great Canadian became impossible when Llynfi cancelled the competition. I acknowledge AOD's argument that it offered to register the applicants in the 2021 Great Canadian

competition. However, the applicants would also have to register with AOD for another year of dance with their daughters. In other words, AOD could not fulfill the contract with the applicants without further terms, or obligations for the applicants to fulfill. I find this means the contract itself was made impossible or impracticable, and so it was frustrated and the parties were not required to carry out their agreement.

33. On balance, I find AOD did not provide the applicants with the Great Canadian competition, which the applicants paid for. I acknowledge that AOD offered to use its credit with Llynfi as entry fees for the dancers to compete in Great Canadian in 2021. However, that is not what AOD originally agreed to provide when the applicants paid the fees in December 2019. As there is no contrary agreement between the parties, I find AOD must refund the applicants their competition fees for Great Canadian, based on the December 1, 2019 invoices.

34. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgment interest on the competition fees from June 1, 2020, the date they were all denied reimbursement to the date of this decision, as set out below:

    a. The Wards - $592.20 in fees plus $ 2.22 in interest, equals 594.42

    b. Mr. Rowse - $273 in fees plus $1.02 in interest, equals $274.02

    c. Ms. Carlin - $432.60 in fees plus $1.62 in interest, equals 434.22.

35. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As Mr. Ward paid the CRT fees, I find he is entitled to reimbursement of $175 for those fees. None of the applicants claimed reimbursement of any dispute-related expenses.

ORDERS

36. Within 30 days of the date of this order, I order AOD to pay Ms. Ward and Mr. Ward a total of $769.42, broken down as follows:

    a. $592.60 as reimbursement for competition fees,

    b. $2.22 in pre-judgment interest under the COIA, and

    c. $175 in CRT fees.

37. Within 30 days of the date of this order, I order AOD to pay Mr. Rowse a total of $274.02, broken down as follows:

    a. $273 as reimbursement for competition fees, and

    b. $1.02 in pre-judgment interest under the COIA.

38. Within 30 days of the date of this order, I order AOD to pay Ms. Carlin a total of $434.22, broken down as follows:

    a. $432.60 as reimbursement for competition fees, and

    b. $1.62 in pre-judgment interest under the COIA.

39. The applicants are entitled to post-judgment interest, as applicable.

40. I dismiss the applicants' claims against Llynfi.

41. 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.

42. 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.

Sherelle Goodwin, Tribunal Member