Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Way v. Baby Smart Childcare and Education Ltd.*, 2021 BCCRT 40

B E T W E E N :

GEOFFREY WAY and KEELY MCGOWAN

APPLICANTS

A N D :

BABY SMART CHILDCARE AND EDUCATION LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Rama Sood

INTRODUCTION

1. This dispute is about provision of daycare services. The applicants, Geoffrey Way and Keely McGowan, say the respondent, Baby Smart Childcare and Education Ltd. (Baby Smart), breached their agreement to provide daycare services for their son. They say as a result they had to rely on friends and family for childcare for several

months until they could secure permanent daycare with another provider. They seek $2,640 in damages.

2. Baby Smart says the applicants did not sign its contract and so it denies the parties had a binding agreement.

3. The applicants are represented by Mr. Way. Baby Smart is represented by JZ who I infer is an employee.

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). 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.

5. 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.

6. 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.

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.

ISSUES

8. The issues in this dispute are:

    a. Whether Baby Smart agreed to provide daycare services to the applicants,

    b. If so, whether Baby Smart breached the agreement, and

    c. If Baby Smart breached the agreement, the appropriate remedy.

EVIDENCE AND ANALYSIS

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

10. The applicants' son is 1 year old. They say they required daycare starting April 2020 when Ms. McGowan's maternity leave ended and she returned to work, even though she was working from home due to the COVID-19 pandemic. They say they contacted several different daycares in February and decided on Baby Smart.

11. It is undisputed that in early March, Baby Smart offered full-time daycare to the applicants for $1,300 per month starting March 30. On March 3 the applicants paid a $500 deposit by e-transfer and returned a signed registration form, signed parent handbook, and an immunization records form that Baby Smart had sent them.

12. On March 6, Baby Smart emailed the applicants a contract, emergency consent form, field trip authorization, and permission to photograph (additional forms) and asked the applicants to bring the forms to the daycare on March 30. There is no evidence that the applicants completed and returned the additional forms to Baby Smart.

13. The parties agreed to delay the start date, first to April 1, and then to June 1 due to concerns about the COVID-19 pandemic. They also changed from full-time to part-time with a 2 week gradual entry period, and changed the fee to $55 per day.

14. In a May 26 email, the applicants confirmed that their son would start June 1 with gradual entry and attend part-time. In a May 27 email Baby Smart stated “See you on 1 June. Miss [B] works in daycare now”. Baby Smart did not indicate the applicants had to complete any further steps or submit the additional forms before their son could start daycare.

15. JW, Baby Smart’s owner, stated that since the applicants did not return the additional forms emailed on March 6, on May 29 they prepared a document package for Baby Smart’s employee, BZ, to give Mr. Way on June 1. JW stated they instructed BZ that the documents must be completed and returned immediately on the same day. JW did not state what documents were in the package.

16. Mr. Way says he and his son attended the daycare on June 1 for 2 hours. He says he brought supplies and BZ asked him to bring additional supplies for the following day. Mr. Way also says BZ gave him a package of documents and asked him to complete and return them by the following day.

17. While BZ admitted giving the document package to Mr. Way on June 1, she did not state whether she instructed Mr. Way to complete and return the documents the same day. So, I accept Mr. Way’s evidence that BZ told him to return it the next day.

18. Mr. Way says the package included the parent handbook, a field trip authorization form, a permission to photograph form, and an emergency consent form. He did not state whether it contained Baby Smart’s contract. Since neither JW or BZ stated which documents were in the package BZ gave to Mr. Way, I find that the package only contained the documents Mr. Way mentioned and did not include a contract.

19. Later that evening, JW emailed Mr. Way that Baby Smart could not take care of the applicants’ son. JW also told Mr. Way they would return the deposit cheque and not to bring his child to the daycare. JW did not provide any further explanation.

20. Mr. Way says he returned to the daycare on June 2 and BZ returned the supplies he had brought the previous day and a cheque for $500. He says he asked BZ and JW for an explanation, but they only told him repeatedly that “We cannot take care of your

child. Sorry." Mr. Way denies that Baby Smart ever provided any further explanation for why his son could not attend the daycare.

21. Baby Smart says legally it must have written "permission" from the parents before it can provide daycare services. It says since the applicants did not sign the March 3 contract or the documents in the package by June 1, it could not continue to provide services.

22. The applicants say they did not return the contract Baby Smart emailed them on March 6 since it was for full-time daycare services and Baby Smart did not provide a contract for part-time services. They did not explain why they did not complete and return the emergency consent form, field trip authorization, and permission to photograph that was emailed on March 6.

23. The applicants say they had to make alternative childcare arrangements until September 30 when their son started attending another daycare full-time.

Was there a binding agreement between the parties?

24. Although I am not bound by it, I note that a prior CRT decision, *681288 BC LTD v. Hankin*, 2017 BCCRT 140, sets out a useful summary of the basic elements of a contact, at paragraph 19:

> "For a contract to exist, there must be an offer by one party that is accepted by the other. There must be contractual intention, which means the parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. There must also be valuable consideration, which refers to payment of money or something else of value (for a discussion of the basic elements of a contract, see *Babich v. Babich*, 2015 BCPC 0175, and *0930032 B.C. Ltd. v. 3 Oaks Dairy Farms Ltd*., 2015 BCCA 332). One party's belief that there is a contract is not in itself sufficient. There must be what is known in law as a 'meeting of the minds' about the contract's subject matter."

25. Baby Smart denies there was an enforceable contract between the parties. Baby Smart says according to section 57(2.2) of the *Child Care Licensing Regulation* (CCLR), it needed parents' written permission before a child could attend daycare. This section is discussed in further detail below. Baby Smart denies that the signed registration form and the emails between the parties are the same as a contract as the applicants allege.

26. Baby Smart says although it emailed a copy of its contract to the applicants on March 6 and gave Mr. Way a copy on June 1, the applicants did not submit a signed copy. I find it was reasonable for the applicants to not sign the March 6 contract since it was for full time daycare and not for the part-time terms the parties agreed to in May. I also find there is no evidence that Baby Smart gave Mr. Way a contract on June 1.

27. While there was no signed contract, I find that the evidence before me establishes contractual intention or a 'meeting of the minds' between the applicants and Baby Smart. I have reviewed the emails between the parties and I find a reasonable person would conclude that on May 27, 2020, the applicants and Baby Smart had entered into a binding agreement for Baby Smart to provide the applicants with part-time daycare services starting on June 1, 2020 at a rate of $55 per day, with a 2 week gradual entry period. In addition, Baby Smart received valuable consideration since the applicants e-transferred a $500 deposit.

28. I find section 57(2.2) of the CCLR applies to licensees providing "Child-minding" to immigrant parents in particular scenarios, none of which are applicable. I find there is no evidence that the applicants met these conditions and so Baby Smart would not need to comply with this section. However, under section 57(3), Baby Smart must have written consent from a parent authorizing it to either call a medical practitioner or ambulance in case of accident or illness, or to release a child to someone other than the parent. I find these consents were contained in the parent handbook that the applicants signed and returned to Baby Smart on March 3.

Did Baby Smart breach the agreement?

29. When a party fails to perform a primary obligation of a contract in a way that deprives the other party of substantially the whole benefit of the contract, it is called a fundamental breach. (See *Hunter Engineering Co. v. Syncrude Canada Ltd*., 1989 CanLII 129 (SCC)). A fundamental breach is a breach that destroys the whole purpose of the contract and makes further performance of the contract impossible (See *Bhullar v. Dhanani*, 2008 BCSC 1202.).

30. I find that Baby Smart breached the agreement by refusing to provide the applicants with daycare services. Baby Smart says it can cancel services for any reason during gradual entry. I find there is no evidence the parties agreed to that term.

31. Baby Smart provided several other reasons for refusing to provide daycare services. First, it says the applicants did not provide a part-time schedule. The applicants say the parties agreed on a temporary schedule in the May 26 email for their son to attend part-time with gradual entry starting on June 1. They also say that since they arranged for gradual entry, they were not required to finalize a part-time schedule. I accept that the parties had agreed on a schedule based on the email.

32. Second, Baby Smart also says that it could not accommodate drop-ins due to limits on how many children could be present. Mr. Way says that on June 1 the applicants' son was the only child present at the daycare. I give no weight to Baby Smart's argument since it did not provide evidence about what its enrollment or maximum limits were.

33. Third, Baby Smart says the applicants were required to provide a cheque for the first month's fees and post-dated cheques, which they did not do. The applicants say that aside from the $500 deposit, which they paid, Baby Smart did not request any further payments before the start date. The applicants deny that post-dated cheques were required since Baby Smart accepted payment by e-transfer. Since the parties agreed to a per diem rate, I find it does not make sense for the applicants to provide post-dated cheques since the fees could change from month to month.

Remedies

34. The applicants say that Baby Smart placed them "in an impossible situation" by breaching the agreement. They say they were unable to arrange for permanent daycare until September 30. In the interim, they relied partially on another paid daycare provider and also friends and family for childcare. The applicants seek $2,640 in damages based on Baby Smart's daycare rate of $55 for the 48 days from June 1, 2020 until September 30, 2020 that paid daycare was not available.

35. The general rule for assessing damages for a breach of contract is that the innocent person is entitled to the amount of money that would put them in the same position as if the contract had been performed (see *Water's Edge Resort v. Canada (Attorney General),* 2015 BCCA 319 at para. 39).

36. Ms. McGowan says she "unofficially" worked reduced hours on days that no childcare was available since she was also looking after her son. The applicants did not provide any evidence of reduced income or increased daycare expenses and so I find they did not suffer any economic losses due to the breach.

37. There are some situations, known as "peace of mind" contracts, where substantial damages are allowed for unnecessary mental distress where the subject matter of the contract is itself to provide pleasure, relaxation or peace of mind: *Jarvis v. Swan Tours Ltd*., [1973] Q.B. 233, 3 W.L.R. 954, [1973] 1 All E.R. 71 (C.A). I find this is not one of those situations. The subject matter of this contract is childcare services. Peace of mind is not the very matter contracted for.

38. However, in non "peace of mind" contracts, damages may still be recovered for inconvenience and discomfort caused by a breach if they are a sensory experience as opposed to mere disappointment and they are reasonably foreseeable. This would include the discomfort of a buzzing noise from a vehicle, and the inconvenience of repeatedly physically taking a vehicle for repairs (see *Wharton v. Tom Harris Chevrolet Oldsmobile Cadillac Ltd*., 2002 BCCA 78 at paragraph 57 and 60).

39. I accept that the inconvenience of repeatedly arranging for childcare over several months with different people, and the discomfort of working while also looking after a child meet the factors in *Wharton*. I find the inconvenience and discomfort if Baby Smart refused to provide daycare services was reasonably foreseeable since Baby Smart knew the applicants needed childcare so Ms. McGowan could return to work. On a judgment basis, I award the applicants $250 for the additional inconvenience.

40. Baby Smart denies the applicants suffered any losses. It says that since Mr. Way dropped off their son, then his job, not Ms. McGowan's, would have been impacted by the lack of daycare and there is no evidence that Mr. Way's job was impacted. It also says the applicants benefited from not paying daycare expenses during this time.

41. I find whether Mr. Way or Ms. McGowan dropped off their son is irrelevant since the reason the applicants were seeking daycare was so Ms. McGowan could return to work. I agree that the applicants saved $2,640 by not paying for daycare during the 48 days that Ms. McGowan looked after their son while she worked for home ($55 per day x 48 days). However, I find this would apply to an award for monetary loss, not one for additional inconvenience and discomfort arising from a contract breach.

INTEREST, CRT FEES, AND EXPENSES

42. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the $250 in damages from June 2, 2020 the date of contract breach, to the date of this decision. This equals $0.99.

43. 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. Since the applicants were partially successful, I find they are entitled to reimbursement of 50% of the CRT fees, which is $87.50. the applicants did not seek dispute-related expenses.

ORDERS

44. Within 14 days of the date of this order, I order Baby Smart to pay the applicants a total of $338.49, broken down as follows:

    a. $250 in damages,

    b. $0.99 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $87.50 in CRT fees.

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

46. 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.

47. 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.

Rama Sood, Tribunal Member