



Civil Resolution Tribunal

Date Issued: March 10, 2021

File: SC-2020-006695

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fisher v. International College of Medical Intuition Inc.*, 2021 BCCRT 275

B E T W E E N :

RINA FISHER

APPLICANT

A N D :

INTERNATIONAL COLLEGE OF MEDICAL INTUITION INC. and
DR. MARILYN PARKIN

RESPONDENTS

A N D :

RINA FISHER

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about payment for a medical intuition course.
2. The applicant and respondent by counterclaim, Rina Fisher, says she agreed to participate in a medical intuition course instructed by the respondent and applicant by counterclaim, Dr. Marilyn Parkin, in 2017. Dr. Parkin is the founder and director of the respondent, International College of Medical Intuition Inc. (ICMI), which provided the medical intuition course. ICMI is not a party to the counterclaim.
3. Ms. Fisher says she paid ICMI \$4,856.25 for half the course tuition fees, but she became dissatisfied with the course part-way through it and requested a refund. Ms. Fisher says Dr. Parkin agreed to provide a full refund to be paid in monthly installments, but then made only a single payment. Ms. Fisher claims \$4,056.25, for the outstanding agreed refund balance.
4. Dr. Parkin says Ms. Fisher is not eligible for a refund under ICMI's refund policy, and she (through ICMI) refunded Ms. Fisher a small amount under duress. Dr. Parkin counterclaims for \$4,856.25, for payment of the unpaid half of the course fee.
5. Ms. Fisher is represented by a lawyer, Matthew Canzer. Dr. Parkin represents herself and ICMI.

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, and I find that there are no significant issues of credibility or other reasons that might require an oral hearing. 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.

ISSUES

10. The issues in this dispute are:
 - a. Were Ms. Fisher's claims and Dr. Parkin's counterclaims filed out of time?
 - b. If not, is Ms. Fisher entitled to a refund of the outstanding balance of the paid course fees?
 - c. If not, does Ms. Fisher owe Dr. Parkin \$4,856.25 for the other half of the tuition fees?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Ms. Fisher must prove her claims on a balance of probabilities. Dr. Parkin must prove her counterclaim on the same

standard. I have read all of the parties' evidence and submissions, refer to them only to the extent necessary to explain my decision.

Background

12. It is undisputed that Dr. Parkin runs a program in medical intuition through her college, ICMI. Ms. Fisher enrolled in a 3-month program at ICMI from September 1 to November 30, 2017. The program included 2 days of in-class instruction (14 hours), plus distance education for the remainder of the course. The tuition was \$9,000 plus a \$250 non-refundable deposit and GST, for a total of \$9,712.50. Payment terms were that half (\$4,856.25) was due upon registration and the balance (\$4,856.25) was due on November 1, 2017.
13. Ms. Fisher paid ICMI \$4,856.25 by e-transfer on August 29, 2017. Ms. Fisher attended the 2 days of in-class instruction with Dr. Parkin on September 18 and 19, 2017. On September 24, 2017, Ms. Fisher advised Dr. Parkin that she wanted to withdraw from the course and requested a refund.
14. On February 14, 2018, Dr. Parkin sent Ms. Fisher an email setting out the terms of an agreed refund. The terms stated that ICMI would refund the paid \$4,856.25, with payments of a minimum of \$800 per month beginning March 15, 2018, and on the 15th of each month until paid in full.
15. The parties agree that ICMI made a single \$800 payment to Ms. Fisher on March 15, 2018. On April 16, 2018, Dr. Parkin advised Ms. Fisher that the April payment would be delayed, and on May 4, 2018 Dr. Parkin confirmed there would be a further delay. On July 5, 2018, Ms. Fisher advised Dr. Parkin that she wanted complete repayment of the outstanding refund by July 31, 2018. On July 29, 2018, Dr. Parkin confirmed repayment would not be made as requested.
16. There is no evidence before me that the parties had any further communication about the agreed tuition refund after July 29, 2018.

Are the parties' claims out of time?

17. The *Limitation Act* applies to disputes before the CRT. A limitation period is a period within which a person may bring a claim. The basic limitation period under section 6 of the *Limitation Act* is 2 years from the date a claim is discovered. If that period expires, the right to bring the claim ends, even if the claim would have otherwise been successful. Section 8 of the *Limitation Act* provides that a claim is discovered by a person when they knew, or reasonably knew, they had a claim against the respondent and that a court or tribunal proceeding was an appropriate remedy.
18. I turn first to consider whether Ms. Fisher's claims are out of time.
19. Ms. Fisher indicated in the Dispute Notice that she first became aware of her claim on July 29, 2018, when Dr. Parkin told her ICMI would not be refunding the course fees, as agreed. Ms. Fisher submitted her application for dispute resolution with the CRT on August 31, 2020, which is more than 2 years after Dr. Parkin's July 29, 2018 email. Ms. Fisher acknowledges that the limitation period for her claims expired on July 29, 2020, but submits her claim was not out of time because the government suspended limitation periods in response to the COVID-19 pandemic.
20. On March 18, 2020, the British Columbia provincial government declared a state of emergency. On April 8, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order 98/2020 under the *Emergency Program Act*, which suspended mandatory limitation periods for actions and claims commenced in the Provincial Court, Supreme Court, or Court of Appeal. However, the order suspending limitation periods did not apply to disputes commenced in a tribunal such as the CRT. The Ministerial Order said that tribunals may waive, extend, or suspend a mandatory time period.
21. This Ministerial Order remains in place and on July 10, 2020 the *COVID-19 Related Measures Act* (CRMA) came into force. Section 3(5) and item 7 of Schedule 2 of the CRMA, confirms that the CRT's ability to waive, extend, or suspend mandatory time

periods extends during the state of emergency. For clarity, under the CRMA, the CRT's authority to extend timelines is discretionary, not mandatory.

22. As the parties did not address the CRT's discretion to extend timelines in their submissions, through CRT staff I asked the parties for further submissions on the limitation issue. Ms. Fisher submits that she was unable to file her CRT claim on time because of the cumulative effect of several stressors, including issues surrounding the pandemic and trauma in April related to the anniversary of a family tragedy. Ms. Fisher submits she felt psychologically unable to initiate an adversarial process and ultimately retained Mr. Canzer to assist with bringing her CRT claim.
23. The CRT is an online tribunal and has been open and operating normally during the state of emergency. I find that the discretion granted by the Ministerial Order for tribunals to extend limitation periods generally requires evidence that the COVID-19 pandemic itself somehow contributed to an applicant filing their dispute after the applicable limitation period.
24. While I acknowledge that Ms. Fisher likely experienced some level of stress and psychological disruption during the onset of the pandemic in March 2020 and around the April anniversary, I find these factors do not sufficiently explain why she was unable to bring her claim before July 29, 2020. Ms. Fisher did not provide any medical or other evidence that her psychological distress was of such a degree and duration that it impacted her ability to apply for dispute resolution on time. Importantly, Ms. Fisher also did not provide any evidence about when she first sought legal assistance for her claim.
25. In the absence of supporting evidence, I find Ms. Fisher has not shown how the COVID-19 pandemic prevented her from filing her CRT application after the pandemic's onset, such as in May, June, or July 2020. Therefore, I decline to exercise my discretion to extend the limitation period under the Ministerial Order. I find Ms. Fisher's claims are out of time and statute-barred by the *Limitation Act*. I dismiss Ms. Fisher's claims.

26. I turn now to Dr. Parkin's counterclaim.
27. First, it is unclear whether Dr. Parkin has standing to bring her counterclaim for payment of the outstanding balance of the course tuition. The evidence shows that Ms. Fisher paid the initial deposit to ICMI, not to Dr. Parkin in her personal capacity. Neither party provided any enrollment documentation confirming who Ms. Fisher contracted with about paying the tuition. However, nothing turns on this issue because even if Dr. Parkin did have standing to bring her counterclaim, I find she is out of time to do so.
28. As noted, the second half of Ms. Fisher's tuition was due on November 1, 2017. It is undisputed that Dr. Parkin did not demand payment of the outstanding \$4,856.25 at any time before submitting her CRT application. Dr. Parkin says she only brought her counterclaim in response to Ms. Fisher's claim.
29. Section 22(1) of the *Limitation Act* says that if a claim is started within the limitation period, a "related claim" such as a counterclaim, may be started even if the limitation period for the counterclaim has expired. As I have found Ms. Fisher's claim was not started within the applicable limitation period, section 22(1) of the *Limitation Act* does not apply to Dr. Parkin's counterclaim.
30. I find Dr. Parkin's claim had to be filed within 2 years from the date she discovered it. I find that by November 2, 2017, at the latest, Dr. Parkin discovered Ms. Fisher was not going to pay the second half of the course tuition fees. So, I find the limitation period for Dr. Parkin to bring her claim expired on November 2, 2019. This is well before the government imposed a state of emergency or issued the applicable Ministerial Order discussed above.
31. Dr. Parkin did not submit her CRT application until October 28, 2020. Therefore, I find Dr. Parkin's counterclaim is also out of time and statute-barred by the *Limitation Act*. I dismiss Dr. Parkin's counterclaim.
32. 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. As the parties have been unsuccessful in their claim and counterclaim, I dismiss their claims for reimbursement of CRT fees and dispute-related expenses.

ORDERS

33. I dismiss Ms. Fisher's claim.

34. I dismiss Dr. Parkin's counterclaim and this dispute.

Kristin Gardner, Tribunal Member