



Civil Resolution Tribunal

Date Issued: May 27, 2021

File: SC-2020-009570

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ginn v. Official Tamara Tee Online Inc.*, 2021 BCCRT 570

B E T W E E N :

HERBERT GINN

APPLICANT

A N D

OFFICIAL TAMARA TEE ONLINE INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Herbert Ginn, bought an online course from the respondent, Official Tamara Tee Online Inc. (Tamara Tee), which cost \$1,997 (all amounts are USD). After completing part of the course, Mr. Ginn asked for a refund. Tamara Tee refunded Mr. Ginn \$1,338 but refused to give a full refund. Mr. Ginn claims the remaining \$659.

2. Tamara Tee says that Mr. Ginn was not entitled to a refund because he had watched over 30% of the online course material. Tamara Tee says that its “Money Back Guarantee” is only valid if a customer has watched less than 30% of the material. Tamara Tee says that it gave Mr. Ginn a partial refund as a goodwill gesture and owes nothing more. It asks that I dismiss Mr. Ginn’s claims.
3. Mr. Ginn is self-represented. Tamara Tee is represented by its owner.

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 pay money or to do or stop doing something. The tribunal’s order may include any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether Mr. Ginn is entitled to a full refund of his online course fees.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Mr. Ginn as the applicant must prove his 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. Tamara Tee offers an online course about how to sell products through Amazon. Mr. Ginn came across Tamara Tee's course through an online ad. The course cost \$1,997, which Mr. Ginn paid by credit card on May 13, 2021. None of this is disputed.
11. Tamara Tee provided a video showing how customers, including Mr. Ginn, purchase the course through its website. The signup page includes a "Money-Back Guarantee", which says that customers can receive a full refund as long as they request it within 7 days of purchase and have not watched more than 30% of the course's content. Mr. Ginn does not dispute the video's accuracy, so I accept that it shows how he purchased the course. I address below the issue of how much Mr. Ginn had watched when he requested a refund.
12. Terms and conditions on a website are binding on a customer as long as the website owner takes reasonable steps to bring them to the customer's attention before they enter into a contract. I addressed this issue in my previous decision *Smart Technologies Consultants Ltd. v. Dysys Media Solutions Inc.*, 2019 BCCRT 1181, and I find the same reasoning applies here. I find that the refund policy was prominently displayed beside where Mr. Ginn entered his name and email address to register for the course. I therefore find that the refund policy is part of the parties' contract. Mr. Ginn does not dispute this point.

13. On May 20, 2021, Mr. Ginn determined that the course was “not for him” and asked for a refund. Tamara Tee emailed him back the same day and said that it had reviewed the “stats” and determined that he was not eligible for a refund. Tamara Tee noted that Mr. Ginn had not viewed the entire course and encouraged him to continue.
14. The parties’ entire email conversation is not in evidence, but on May 23, 2020, Tamara Tee offered to refund \$1,338. Tamara Tee based this offer on the fact that Mr. Ginn had watched 33% of the online course, as \$1,338 is 67% of the \$1,997 purchase price. Mr. Ginn says that he accepted the partial refund under duress. Tamara Tee says that it gave the partial refund as a goodwill gesture even though he was not entitled to any refund under the refund policy.
15. Tamara Tee provided a video of the online platform it uses to provide course material to its customers. Mr. Ginn’s customer page on this platform shows that he had viewed 33% of the course content.
16. Mr. Ginn does not dispute that he eventually watched 33% of the course content. His primary argument is that Tamara Tee’s May 20 email was misleading and deceptive. He says that Tamara Tee sent it to trick him into watching more videos and push him over the 30% threshold in the refund policy. He says that at the time he sent his refund request, he had not watched more than 30% of the course material.
17. I disagree that there was anything misleading or deceptive about Tamara Tee’s May 20 email. While Tamara Tee did not say specifically how much Mr. Ginn had watched, I find that it reasonably communicated that he had watched too much to qualify for a refund. I find that there is no other way to interpret Tamara Tee’s statement that it had “reviewed your stats in your account” and determined that Mr. Ginn did not qualify for a refund. While the rest of the email strongly encouraged Mr. Ginn to continue with the course by watching more content, it did so after telling him that he could not get a refund anyway.

18. Mr. Ginn does not say how long he spent watching videos before and after his refund request. The only evidence about whether Mr. Ginn had passed the 30% threshold is Tamara Tee's May 20 email, which is arguably self-serving. However, the burden is on Mr. Ginn to prove that he is entitled to a refund. I find that Mr. Ginn has not provided any evidence that would allow me to conclude that he had watched less than 30% of the course content when he requested the refund. For that reason, I find that Mr. Ginn was not entitled to any refund.
19. I find that I do not need to address Mr. Ginn's allegation that he only accepted the partial refund under duress. Because of my finding that Mr. Ginn was not entitled to any refund at all, the partial refund was a gratuitous payment. In any event, I find that there is no evidence of any duress or undue pressure in the emails before me.
20. Finally, Mr. Ginn argues that he should get a refund because he did not use or apply any of the course material. He says that the information is only useful to people with an Amazon account, which he does not have. I reject this argument. I find that Tamara Tee's refund policy gave Mr. Ginn a reasonable opportunity to determine whether the course materials would be valuable to him by allowing him 7 days to review a significant portion of the course. I find that there is no legal basis to order a refund just because Mr. Ginn ultimately did not find the information useful.
21. 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. Mr. Ginn was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. Tamara Tee did not claim any dispute-related expenses or pay any CRT fees.

ORDER

22. I dismiss Mr. Ginn's claims, and this dispute.

Eric Regehr, Tribunal Member