Civil Resolution Tribunal

Date Issued: July 12, 2021

File: SC-2021-002063

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Corda v. Rothewood Academy Ltd.*, 2021 BCCRT 762

B E T W E E N :

GORAN CORDA

APPLICANT

A N D :

ROTHEWOOD ACADEMY LTD. and 1103124 B.C. LTD.

RESPONDENTS

A N D :

GORAN CORDA

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This is a dispute about a daycare contract. The applicant, Goran Corda, signed an agreement with "Rothewood Academy" to provide daycare services for his child. Mr. Corda paid a deposit, and paid additional daycare fees in advance. Shortly after agreeing to the contract and making those payments, Mr. Corda told the respondents he was cancelling the contract and requested a refund of the $3,115 he paid, which the respondents refused. Mr. Corda claims a $3,115 refund from the respondents.

2. The respondents, Rothewood Academy Ltd. (RAL) and 1103124 B.C. Ltd. (110), say that 110 operates a "Rothewood Academy" daycare franchise, and that RAL is the franchisor. The respondents say RAL was not involved in the daycare contract, which they say is between 110 and Mr. Corda, so RAL has no responsibilities to Mr. Corda. 110 says Mr. Corda's deposit was non-refundable and 1 month's cancellation notice was required, so it owes no refunds. 110 counterclaims $224.72 from Mr. Corda, which it says is the unpaid balance of the first month of daycare fees. Mr. Corda denies owing anything to 110.

3. Mr. Corda is self-represented in this dispute. RAL and 110 are both represented by the same employee or principal.

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. Did either or both of the respondents agree to Mr. Corda's daycare contract?

    b. Were a cancellation notice period and non-refundable fee payment required under the parties' contract, and if not, do the respondents owe Mr. Corda a $3,115 refund?

    c. Does Mr. Corda owe 110 an additional $224.74 for daycare fees?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Corda must prove his claims on a balance of probabilities. 110 must prove its counterclaim to the same standard. I have read all the parties' submitted material but refer only to the evidence and arguments that I find relevant and necessary to provide context for my decision.

Which of the respondents agreed to the contract?

10. Given that this is a contract dispute, it is important to determine who agreed to the daycare contract. All the agreements, correspondence, receipts, and similar evidence in this dispute are with a daycare named "Rothewood Academy", except for one payment receipt that was issued by "Rothewood Academy White Rock". Although RAL's name, "Rothewood Academy Ltd.", is very similar to "Rothewood Academy", RAL and 110 are not mentioned by name in any contract-related documents in evidence, including the daycare contract between "Rothewood Academy" and Mr. Corda.

11. None of the parties submitted evidence showing whether either or both respondents did business under the "Rothewood Academy" name, or showing the respondents' incorporation or ownership information. The respondents share the same representative and mailing address in this dispute.

12. As noted, the respondents say RAL is a franchisor of multiple Rothewood Academy daycare locations and was not involved in the daycare contract at issue. The respondents say that only 110 contracted with Mr. Corda. Mr. Corda named both RAL and 110 as respondents in this dispute, but does not distinguish between RAL and 110 in his submissions. Mr. Corda does not directly dispute the respondents' explanation of their roles in the Rothewood Academy daycare, or that 110 and not RAL was a party to the daycare contract.

13. On the evidence and submissions before me, I find 110 was undisputedly a party to the daycare contract, and that it operated the Rothewood Academy location Mr. Corda's child was to attend. Given that Mr. Corda does not dispute that RAL was simply a Rothewood Academy franchisor and was not involved in the daycare contract, I find that Mr. Corda has not met his burden of proving that RAL was a party to the contract. I find that RAL was not a party to that agreement, and is not liable to Mr. Corda under the contract, so I dismiss the claims against RAL. I will refer to 110 as the "daycare" below, and will consider whether it owes Mr. Corda a refund.

Does 110 owe Mr. Corda a refund, or does he owe additional fees?

14. The undisputed evidence is that Mr. Corda met with daycare representatives on March 5, 2021 and discussed the terms of its services. Mr. Corda paid a $200 application fee and $1,915 deposit that day. The receipt for that payment indicated that both the application fee and deposit were non-refundable. The daycare contract, discussed below, said that a non-refundable deposit of 1 month's tuition was required at the time of registration to secure a childcare space. The daycare says, and Mr. Corda does not deny, that the parties discussed the non-refundable nature of the deposit and application fee. The daycare gave Mr. Corda a contract, which he signed on March 8, 2021. Mr. Corda's spouse returned the contract to the daycare on March 8, 2021 and paid $1,000 toward March 2021 daycare fees.

15. It is also undisputed that within a few hours after returning the signed contracts and paying $1,000 on March 8, 2021, Mr. Corda contacted the daycare and said he was cancelling the contract because he had found a less expensive daycare option elsewhere. 110 says the payments were not refundable, and identified past CRT decisions it says support its position.

16. Mr. Corda says the daycare had not commenced its services or incurred any related expenses at the time he requested cancellation, so he is entitled to a refund regardless of what the contract says. However, Mr. Corda does not deny that he freely agreed to the contract. He signed 4 acknowledgements stating that he had read, understood, and agreed to follow the daycare's undisputed Fees and Enrollment Policy, "parent package policy and procedures", and non-refundable security deposit policy, all of which I find are part of the daycare contract. So, I find the parties are bound by the contract's agreed terms. I find the contract is enforceable despite Mr. Corda's later dissatisfaction with its price and its cancellation and refund terms, and regardless of whether the services had begun or the daycare had incurred any related expenses.

17. I find that under the daycare contract, the $200 application fee was non-refundable, so Mr. Corda is not entitled to a refund for it.

18. The contract also says that Mr. Corda must maintain a deposit of 1 month of daycare fees (called "tuition") at all times, which was to be used for the last month of fees. I find the contract says that 1 calendar month's written notice was required to withdraw Mr. Corda's child from the daycare, and that after receiving that notice, the daycare would use the deposit for the last month of fees. The contract says that in lieu of the 1-month prior notice, 1 month's daycare fees must be paid. The contract clearly states that the 1-month deposit is non-refundable.

19. The contract says that withdrawals from the daycare are effective on the first of the month, upon 1 month's prior written notice. The contract gives an example that notice must be received by April 30 for a May 1 withdrawal, which is 1 day's prior notice. However, I find that the rest of the contract says 1 month's prior notice was required, which is not disputed. So, I find the example of 1 day's prior notice is a drafting mistake that is inconsistent with the contract's other terms, and I find that example is not part of the parties' agreement.

20. Here, I find Mr. Corda gave written cancellation notice on March 8, 2021, after he had agreed to the contract, delivered it to the daycare, and made payments. The daycare says that Mr. Corda's daycare fees were $1,565 per month, but it is undisputed that Mr. Corda paid $1,915 for the deposit and $1,000 toward March 2019 fees. I find that under the contract, the daycare was only entitled to a deposit of 1 month's fees, which is $1,565. I find that Mr. Corda is not entitled to a refund of the required $1,565 deposit. However, I find that Mr. Corda overpaid the deposit by $350. I find the contract does not say that deposit overpayments or other, non-deposit daycare fees were non-refundable.

21. The contract says that childcare fees are due on the first day of each month. Here, it is undisputed that the daycare services were to begin in mid-March 2021, and that fees for that month were to be prorated based on the service start date. The contract does not say when the daycare services began. The daycare says that its services began on March 8, 2021 when it provided an orientation to Mr. Corda's spouse and his child. The daycare submitted a $1,000 March 8, 2021 receipt for "tuition March

started on 8th". It is unclear whether the daycare provided the receipt to Mr. Corda or his spouse, and I find this receipt alone does not prove the parties agreed to a March 8, 2021 start date. Mr. Corda submitted evidence from his spouse's employer showing she was scheduled to return to work on March 15, 2021. The daycare does not directly deny Mr. Corda's submission that it was closed on March 15 and March 16, 2021, and Mr. Corda says that daycare services were to begin on March 17, 2021. Having weighed the evidence, I find the agreed daycare services were to begin on March 17, 2021. I find the daycare fees for March 2021 are prorated based on 15 out of 31 calendar days, which equals $757.26.

22. I find that Mr. Corda's March 8, 2021 cancellation notice was given less than 1 month before April 2021. The contract required 1 calendar month's cancellation notice. So, I find Mr. Corda's March 8, 2021 notice meant the last day of daycare services would be April 30, 2021, which was the end of the first full calendar month after the notice. I find Mr. Corda was responsible for daycare fees until April 30, 2021, even if he did not take advantage of those services. I find those fees were $757.26 for a partial month in March 2021 and $1,565 for the full month of April 2021, which equals $2,322.26. I find Mr. Corda paid a total of $2,915 for daycare fees, including the deposit for the last month of fees. So, I find Mr. Corda overpaid by $592.74.

23. I find that Mr. Corda owed and paid the $1,565 non-refundable last month deposit for daycare fees. Given my above finding that the contract did not prohibit refunds of deposit overpayments or other daycare fees, I find that 110 owes Mr. Corda a $592.74 refund for his overpayments. I find Mr. Corda does not owe 110 anything, so I dismiss 110's counterclaim for $224.72 in additional March 2021 daycare fees.

CRT FEES, EXPENSES, AND INTEREST

24. Under the *Court Order Interest Act*, Mr. Corda is entitled to pre-judgement interest on the $592.74 owing. I find pre-judgment interest is calculated from April 1, 2021, the due date of the last month of daycare fees, until the date of this decision. This equals $0.75.

25. 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. Corda was generally successful in his claims against 110, but not RAL. However, his claim was allowed for $592.74, which is less than the $1,000 refund he says the daycare offered and he refused. In these circumstances, I find it appropriate to depart from the CRT's usual practice, given that Mr. Corda chose not to accept the daycare's greater compensation offer. I find Mr. Corda is not entitled to reimbursement of the $175 he paid in CRT fees. 110 was unsuccessful in its counterclaims, so I find it is not entitled to any fee reimbursement. Neither party claimed any CRT dispute-related expenses.

ORDERS

26. Within 15 days of the date of this order, I order 110 to pay Mr. Corda a total of $593.49, broken down as follows:

    a. $592.74 in debt for overpaid daycare fees, and

    b. $0.75 in pre-judgment interest under the *Court Order Interest Act*.

27. Mr. Corda is entitled to post-judgment interest, as applicable.

28. I dismiss Mr. Corda's claims against RAL. I dismiss 110's counterclaims.

29. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

30. 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.

Chad McCarthy, Tribunal Member