



Civil Resolution Tribunal

Date Issued: August 13, 2021

File: SC-2021-002440

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Westside Preparatory Society (dba The Westside School) v. Abdulla*,
2021 BCCRT 890

B E T W E E N :

WESTSIDE PREPARATORY SOCIETY doing business as THE
WESTSIDE SCHOOL

APPLICANT

A N D :

FAIZ HAMID ABDULLA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about payment for school fees.

2. The applicant, Westside Preparatory Society doing business as The Westside School (Westside), says the respondent, Faiz Hamid Abdulla, owes tuition expenses to Westside. Westside says Mr. Abdulla failed to pay \$590 for the 2019-2020 school year and reversed a \$3,120 credit card charge for 2020-2021 tuition fees. Westside claims \$4,002.24 for unpaid tuition, a credit card charge-back fee, and contractual interest.
3. Mr. Abdulla admits he reversed the \$3,120 credit card charge. He says Westside agreed to refund the fee when he withdrew his daughter from school, but it failed to do so. Mr. Abdulla did not address Westside's \$590 claim.
4. Westside is represented by an employee or member. Mr. Abdulla represents himself.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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.
9. Westside objects to Mr. Abdulla's submission of evidence after the deadline to do so had passed. I find Westside is not unfairly prejudiced by the lateness of the evidence, as it had the opportunity to view the evidence and respond in its reply submissions. Further, I find Westside was likely already aware of the evidence, as it is a series of emails sent from the Westside president and administrative staff. Keeping in mind the CRT's mandate, which includes flexibility, I accept Mr. Abdulla's late evidence.

ISSUE

10. The issue in this dispute is whether Mr. Abdullah must pay Westside outstanding tuition fees, bank charges, or contractual interest and, if so, how much?

EVIDENCE AND ANALYSIS

11. In a civil claim like this one the applicant, Westside, must prove its claims on a balance of probabilities (more likely than not). I have reviewed both parties' submissions and weighed their evidence, but only refer to that necessary to explain my decision.
12. Mr. Abdulla's child (A) attended Westside school for the 2017-2018, 2018-2019 and 2019-2020 school years. On January 31, 2020 Mr. Abdulla paid \$3,120 to Westside as a first payment toward A's 2020-2021 tuition. On June 29, 2020 Mr. Abdulla cancelled A's enrollment for 2020-2021 and requested a refund of the payment, which Westside did not provide. Mr. Abdulla successfully challenged the \$3,120 credit card charge which reversed the payment to Westside on November 25, 2020. None of this is disputed.

13. It is also undisputed that Westside encountered financial difficulties in the spring of 2020 and advised parents, including Mr. Abdulla, that it was uncertain whether the school would remain open for the 2020-2021 school year.

2019-2020 Tuition

14. Westside says Mr. Abdulla has not paid \$590, which is the last installment of A's \$11,790 tuition for the 2019-2020 school year. Based on Westside's February 6, 2019 invoice, I find Mr. Abdulla owed Westside the final \$590 installment for 2019-2020 tuition by February 1, 2020. Westside reminded Mr. Abdulla of the outstanding amount in an April 27, 2020 email. Westside's June 16, 2021 statement of account for A showed \$590 remained outstanding.
15. Mr. Abdulla says he always met his financial obligations to Westside but as noted above does not specifically address Westside's \$590 claim. In a January 15, 2021 email to Westside Mr. Abdulla said he was happy to pay the \$590 if it was outstanding from A's 2019-2020 tuition. I find Westside has proven the \$590 fee is outstanding and find that Mr. Abdulla must pay it.

2020-2021 Tuition

16. Westside provided a copy of a Student Participation Agreement signed by MP on August 28, 2017 which, it says, is A's parent. Mr. Abdulla does not dispute that MP is A's other parent or otherwise argue that he is not bound by the agreement. I find MP likely signed the agreement on both her own behalf, and on behalf of Mr. Abdulla, as A's parents. So, I find Mr. Abdulla is bound by the agreement.
17. Under the agreement, tuition fees are not refundable if a student leaves Westside before the end of the school year for any reason. Further, all unpaid fees remain payable, unless Westside expressly agrees otherwise.
18. I disagree with Mr. Abdulla that Westside expressly agreed to refund his \$3,120 payment in a July 1, 2020 email. The email says Westside will "give you back your cheque for the June installment". Westside's December 2, 2019 invoice broke down

tuition fees into the January 31, 2020 first payment, and further installments, one of which was due on June 1, 2020. So, I agree with Westside that the July 1, 2020 email was likely a mistaken reference to returning a post-dated cheque for the June 2020 installment, rather than an agreement to issue Mr. Abdulla a cheque for his January 31, 2020 payment. On balance, I find Westside did not agree to refund Mr. Abdulla's \$3,120 initial payment for A's 2020-2021 tuition.

19. In a January 15, 2021 email to Mr. Abdulla, Westside said it had not pursued the unpaid 2020-2021 tuition fees, due to Westside's extraordinary circumstances, which I infer means Westside's financial difficulties and uncertain future. So, I find Westside expressly agreed not to pursue the balance of A's \$12,500 tuition fees for 2020-2021, as it was entitled to do under the agreement. However, in the email Westside demanded repayment of the \$3,120 reversed charge so I find it specifically did not waive its right to recover the initial 2020-2021 tuition installment of \$3,120.
20. Mr. Abdulla says Westside nullified the agreement because it failed to disclose to the parents that the directors and management were possibly involved in fraudulent activity, that the school was close to bankruptcy, and that the school might not be operating in September 2020. Based on Westside's emails to the parents, including Mr. Abdulla, I find it did disclose all of these things as early as April 2020. In any event, here I find that failing to disclose the school's circumstances is not a breach of the parties' agreement. So, I find the agreement, and the refund policy, are binding.
21. While I acknowledge Mr. Abdulla's argument that he had to find an alternate school for A, given Westside's uncertain future, I find that does not mean Westside must refund his non-refundable initial payment for A's 2020-2021 tuition fee.
22. Based on the December 2, 2019 invoice I find the initial installment was \$3,000 plus a 4% credit card fee, which equals \$3,120. As Mr. Abdulla reversed the credit card charge in that amount, it remains owing. So, I find Mr. Abdulla must repay \$3,120 to Westside.

Credit Card Charge Back Fee

23. According to Westside's credit card service records, the service provider charged Westside a \$25 fee when it reversed Mr. Abdulla's \$3,120 payment on January 8, 2021. The portion of the parties' agreement provided by Westside does not say that parents are responsible for any bank fees or credit card fees charged to Westside for non-payment. So, I find Mr. Abdulla is not responsible for the charge under the contract.
24. Nor is there any indication that Mr. Abdulla was negligent in challenging the credit card charge which resulted in the charge back fee. Neither party provided copies of the documents or information sent to the credit card company as part of the dispute process. I find Westside has not proven that Mr. Abdulla intentionally, or negligently, caused Westside to incur the charge back fee. So, I find it has failed to prove Mr. Abdulla must pay the charge back fee.

Interest and CRT Fees

25. Westside claims contractual interest on the outstanding tuition fees at 24% per year.
26. The portion of the parties' agreement submitted by Westside does not address interest for outstanding balances. Although Westside does note 24% annual interest on its 2019-2020 and 2020-2021 invoices, contractual interest cannot unilaterally be imposed on an invoice (see *N.B.C. Mechanical Inc. v. A.H. Lundberg Equipment Ltd.*, 1999 BCCA 775). Rather, it must be contractually agreed to, which I find Westside has not proven here. So, I dismiss Westside's claim for contractual interest.
27. However, the *Court Order Interest Act* applies to the CRT where there is no contractual interest agreement. I find Westside is entitled to pre-judgment interest on \$590 from the February 1, 2020 due date and \$3,120 from the November 25, 2020 charge back date, both to the date of this decision. This equals \$17.81.
28. 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 Westside was generally successful, I find it is entitled to reimbursement of \$175 in CRT fees. I find Westside is not entitled to the \$12.27 it claims for registered mail expenses because it has not provided any evidence of the expense.

ORDERS

29. Within 30 days of the date of this order, I order Mr. Abdulla to pay Westside a total of \$3,902.81, broken down as follows:
 - a. \$3,710 in debt,
 - b. \$17.81 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
30. Westside is entitled to post-judgment interest, as applicable.
31. 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.

32. 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