



Civil Resolution Tribunal

Date Issued: August 16, 2021

File: SC-2021-001167

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dipierro v. Pacific Link Education Centre Ltd.*, 2021 BCCRT 892

BETWEEN:

RACHELE DIPIERRO

APPLICANT

AND:

PACIFIC LINK EDUCATION CENTRE LTD. and
UVANU INTERNATIONAL CONSULTING LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about course fees. The applicant, Rachele Dipierro, says she paid the respondent, Uvanu International Consulting Ltd. (Uvanu), \$2,500 for a course with the respondent, Pacific Link Education Centre Ltd. (Pacific Link), but later found out

that the course was not what she wanted. Ms. Dipierro says that Uvanu and Pacific Link misled her and have refused to refund her money. She asks for an order that the respondents pay her \$2,500.

2. Pacific Link says that, according to the contract Ms. Dipierro signed, she is not entitled to a refund. Pacific Link also says that it was not involved with Uvanu's dealings with Ms. Dipierro. Uvanu says that it is not responsible for Pacific Link's policies or Ms. Dipierro's claimed damages.
3. Ms. Dipierro is self-represented. Pacific Link is represented by an employee and Uvanu is represented by a director.

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.
8. As part of the CRT's process, parties are advised to submit their evidence within a specified time frame. Ms. Dipierro and Pacific Link both provided evidence, and Uvanu did not. Ms. Dipierro submitted additional late evidence. Both respondents were given the opportunity to comment on this late evidence, but neither did so. As the CRT's mandate includes flexibility and as the respondents had an opportunity to respond to the late evidence, I find there is no breach of procedural fairness in admitting the late evidence. However, as with the other evidence before me, I will refer to only what I find to be relevant and necessary to provide context to my decision.

ISSUE

9. The issue in this dispute is whether the respondents misled Ms. Dipierro such that she is entitled to a refund of the \$2,500 course fee.

EVIDENCE AND ANALYSIS

10. Uvanu provides consulting services to international students who wish to study in Canada. Its services include connecting students with educational institutions. Pacific Link offers courses to international students.
11. On July 30, 2020, Ms. Dipierro exchanged emails with a Pacific Link employee about whether its courses would be appropriate for her planned course of study in Canada. The emails discussed Ms. Dipierro's intention of taking a particular childcare course, and whether she would need to take what the parties referred to as a preparatory "pathway" program first. The Pacific Link employee provided Ms. Dipierro with information about its courses and a free English test, and the possibility that she might not need the pathway program.

12. Ms. Dipierro then consulted with Uvanu. Although the details of her interaction with Uvanu's employee are not clear, Ms. Dipierro filled out an application form and a contract for an "Online Academic Preparation Program" at Pacific Link. The pre-printed forms contained different information about Pacific Link's refund policy. The application form indicated that she would receive a refund if she withdrew from the program within one week of its start, but the contract stated that tuition and fees were non-refundable.
13. On the same day, Ms. Dipierro paid Uvanu \$2,500. Uvanu retained \$512.50 of this amount as its commission, and forwarded the balance of \$1,987.50 to Pacific Link for the course fee.
14. When Ms. Dipierro started the program, she quickly determined it was not suitable for her. There is no dispute that she withdrew from the program within the first week.
15. Ms. Dipierro exchanged emails with Pacific Link and Uvanu about her request for a refund and her belief that she had not been provided with accurate information about the program before she enrolled. The parties discussed the possibility of a partial refund, and Ms. Dipierro commenced this dispute when they were not able to come to an agreement.
16. Ms. Dipierro says that Uvanu misled her about the nature of the program she was applying for and Pacific Link did not provide her with information about it. She states that she paid attention only to the long refund policy on the application form and did not realize that the contract stated that the program would be non-refundable. According to Ms. Dipierro, the application form and the contract should contain the same policy. Her position is that the different policies and incomplete information about the program amounted to "misleading selling of the program".
17. Pacific Link says that, according to the contract Ms. Dipierro signed, there is no refund for the course. Pacific Link says that, by signing the contract, Ms. Dipierro acknowledged that she had read and understood the refund policy, and she is not eligible for a refund.

18. Uvanu says that the employee who dealt with Ms. Dipierro was a friend of hers who is no longer with its organization. According to Uvanu, Ms. Dipierro obtained all the required information about the program and then paid her tuition. Uvanu denies that it sold Ms. Dipierro a “different program”.
19. Ms. Dipierro did not specifically dispute the binding nature of the contract she signed. Given her submission that she was misled about the nature of the program, I find Ms. Dipierro is arguing negligent misrepresentation. As the applicant in a civil proceeding, Ms. Dipierro must prove her claims on a balance of probabilities. To prove negligent misrepresentation, Ms. Dipierro must establish the following elements of the test set out in *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC), [1993] 1 SCR 87:
 - a. that the respondents owed her a duty of care,
 - b. that the respondents made representations that were untrue, inaccurate or misleading,
 - c. that the respondents acted negligently in making the misrepresentation,
 - d. that she reasonably relied on the negligent misrepresentation, and
 - e. her reliance on the misrepresentation caused her claimed damages.
20. I am satisfied that both respondents had a duty of care to provide Ms. Dipierro with accurate information. The key consideration is whether they made representations that were untrue, inaccurate or misleading.
21. Although its employee provided her with some information by email, Pacific Link was not involved in Ms. Dipierro’s course selection or registration process, as these were done through Uvanu. It is not clear why the application form and contract contained different refund policies or whether Uvanu provided Ms. Dipierro with the correct forms for her circumstances. However, each document specifically set out its terms. Although Ms. Dipierro says that she focused on the refund policy in the application form, there is no indication that she was not given an opportunity to read the contract before she signed it. I find that the evidence does not support the conclusion that

Pacific Link made any untrue, inaccurate or misleading representations to Ms. Dipierro.

22. Ms. Dipierro says, and Uvanu denies, that it provided her with inaccurate information about the program for which she registered. In support of her position, Ms. Dipierro submitted a June 2, 2021 unsigned, typed statement from an unidentified person who said that Uvanu did not provide Ms. Dipierro with the correct information about the program she enrolled in at Pacific Link. The author stated that they did not wish to be identified because they did not want to be involved in the dispute and they were concerned about a possible negative impact on their relationship with Uvanu. Without knowing the identity of the author or how they came to have information about Ms. Dipierro's dealings with Uvanu, I am unable to give weight to this statement. Although Ms. Dipierro suggests that the author may now be willing to provide a signed statement, this is not in evidence.
23. Ms. Dipierro provided evidence about the names of the courses she had access to through Pacific Link's online portal being different than the one she registered for. According to Ms. Dipierro, the courses to which she had access were called "Living in a Canadian Community" and "British Columbia Experience".
24. As noted above, the contract Ms. Dipierro signed was for an "Online Academic Preparation Program". Although the contract stated that the program outline was attached to it, the evidence does not contain a copy of the outline. Without this information, I cannot determine what courses were included with that program or make a conclusion about whether Ms. Dipierro received the courses contemplated by the contract. I find that the available evidence does not prove that Uvanu made any untrue, inaccurate or misleading representations to Ms. Dipierro.
25. I find that the evidence before me does not show that either Uvanu or Pacific Link misrepresented the program or its contents to Ms. Dipierro. Without this element of the test, the claim for negligent misrepresentation is not established. Accordingly, I dismiss Ms. Dipierro's claim for damages.

26. 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 Ms. Dipierro was not successful, I dismiss her claim for reimbursement of CRT fees. The respondents did not pay CRT fees, and neither made a claim for dispute-related expenses.

ORDER

27. I dismiss Ms. Dipierro's claims and this dispute.

Lynn Scrivener, Tribunal Member