Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Onaba v. Hart's Aviation B.C. Inc.*, 2022 BCCRT 87

B E T W E E N :

ABOSEDE ONABA

APPLICANT

A N D :

HART'S AVIATION B.C. INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about a flight lesson. The applicant, Abosede Onaba, purchased a flight lesson from the respondent, Hart's Aviation B.C. Inc. (Hart), as a gift for her son. Hart cancelled the flight because of mechanical issues with its airplane and told Ms. Onaba it would have to be re-booked. Ms. Onaba says she booked the Hart flight

specifically for July 4, 2021, her son's birthday, so she requested a refund, which Hart refused. She claims a refund of $185.76 for the cancelled July 4, 2021 flight lesson.

2. Hart says it has a "no refunds" policy, so Ms. Onaba needed to reschedule the lesson. Hart says it owes her nothing.

3. Ms. Onaba is self-represented in this dispute. Hart is represented by its owner, Curt Hart.

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.

ISSUE

8. The issue in this dispute is whether the parties agreed to a flight lesson specifically on July 4, 2021, or that there were no refunds for rescheduling due to mechanical failure, and whether Ms. Onaba is entitled to a $185.76 refund as a result.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Ms. Onaba as the applicant must prove her claims on a balance of probabilities, meaning "more likely than not". I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision. I note that after submitting its Dispute Response, Hart chose not to provide further submissions despite having an opportunity to do so.

10. The undisputed evidence is that Ms. Onaba contacted Hart on June 15, 2021 about booking a flying lesson for her son. Text messages in evidence show that Ms. Onaba said, "I want to book specifically for July 4th". Hart responded the same day, "OK thank you very much" and asked for payment. It is undisputed that Ms. Onaba sent $185.76 to Hart by e-transfer on June 15, 2021, for which Hart provided a receipt with the same date. In response to the receipt, Ms. Onaba sent a text saying, "it will be his birthday that day", which I infer meant her son's birthday. Hart did not comment on the birthday. I find there was no formal written contract for the agreed flight lesson, and that its terms were based on the parties' text messages and the receipt.

11. The receipt was for "FLIGHT LESSON – JULY 4, 2021 @ 6:30 pm". Text printed on the bottom of the receipt said that, "Your flight is weather dependent, so please ensure that your booking is confirmed on the day of your flight". Ms. Onaba did not object to the weather dependency written on the receipt.

12. I find that Hart knew Ms. Onaba wanted a flying lesson specifically on July 4, 2021 and was made aware that it was a gift for a birthday on that date. As further explained below, I find Hart agreed to provide a flying lesson on that specific date, subject only

to weather, and that it reasonably knew, or should have known, that other dates would not work for Ms. Onaba.

13. Given the above, I find that the July 4, 2021 lesson date was a primary obligation of the parties' agreement. I find that Ms. Onaba argues, essentially, that Hart fundamentally breached that primary obligation and the agreement by failing to provide a flight lesson on that date.

14. A fundamental breach is where a party fails to fulfill a primary obligation in a contract, in a way that deprives the other party of substantially the whole benefit of the contract (see *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC) and *Bhullar v. Dhanani*, 2008 BCSC 1202). If there is a fundamental breach, the wronged party may terminate the contract immediately, and does not have to perform any more terms of the contract (*Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BCCA) at paragraph 23).

15. Hart contacted Ms. Onaba on the day before the scheduled July 4, 2021 flight lesson, and said there was a mechanical issue with Hart's airplane and the lesson would have to be rescheduled. Ms. Onaba responded that a flight on a different date was of no use to her, because it was purchased specifically for her son's birthday. As noted, Hart refused her refund request.

16. Hart says it told Ms. Onaba "many times" and "from the start" that the flight might have to be rebooked if mechanical issues occurred. Hart's submissions and text messages after the lesson cancellation say that it told Ms. Onaba that there were no refunds, and that it even put that on the receipt it gave her. Ms. Onaba denies this. I find the evidence does not support a finding that Hart told Ms. Onaba there were no refunds, including where a flight had to be rescheduled for mechanical failures. As noted, I find the receipt said the lesson was subject to weather, but I also find it did not say it was subject to mechanical failures. Contrary to Hart's submission that the receipt said no refunds, I find neither the receipt nor text messages said no refunds were available.

17. Hart also says its website said all flights were non-refundable and could be rebooked due to poor weather or safety concerns. However, Ms. Onaba says Hart did not refer her to its website, and that she was not aware of any "no refunds" policy until after she had paid for the lesson and Hart issued its receipt. I find the evidence does not show that Ms. Onaba knew, or should have known, about an alleged "no refunds" policy posted on Hart's website. Further, Hart submitted no direct evidence, such as a dated screenshot of its website or similar evidence, showing that its website displayed the alleged "no refunds" policy.

18. On the evidence before me, I find that the parties did not agree that Ms. Onaba would not be entitled to a refund if the July 4, 2021 lesson could not proceed due to mechanical failure. I find that Hart breached its primary obligation to provide a flight lesson on the July 4, 2021 lesson date. I find this was a fundamental breach of the parties' agreement. In the circumstances, I find that Ms. Onaba was entitled to terminate the agreement and receive a refund for the lesson that Hart failed to provide. I allow Ms. Onaba's claim for a $185.76 refund.

CRT FEES, EXPENSES, AND INTEREST

19. The *Court Order Interest Act* applies to the CRT. I find Ms. Onaba is entitled to pre-judgment interest on the $185.76 owing, reasonably calculated from the July 3, 2021 flight cancellation date to the date of this decision. This equals $0.46.

20. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Ms. Onaba was successful in her claim but did not pay CRT fees. Neither party claims CRT dispute-related expenses. So, I order no fee or expense reimbursements.

ORDERS

21. Within 15 days of the date of this decision, I order Hart to pay Ms. Onaba a total of $186.23, broken down as follows:

a. $185.76 in debt for a payment refund, and

b. $0.47 in pre-judgment interest under the *Court Order Interest Act*.

22. Ms. Onaba is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

23. 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.

24. 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