



Civil Resolution Tribunal

Date Issued: February 28, 2022

File: SC-2021-006889

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shoung Fitness Enterprises Inc. v. Taylor*,
2022 BCCRT 215

B E T W E E N :

SHOUNG FITNESS ENTERPRISES INC.

APPLICANT

A N D :

STUART TAYLOR

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is an employment dispute.
2. The applicant, Shoung Fitness Enterprises Inc. (Shoung), seeks \$5,000 in damages from the respondent, Stuart Taylor, for alleging breaching the non-solicitation clause

in the parties' employment contract. Mr. Taylor says the clause is not enforceable and he also denies soliciting any of Shoung's customers.

3. Shoung is represented by its owner or director and Mr. Taylor is self-represented.

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 Mr. Taylor breach the employment contract's non-solicitation clause?
- b. If so, to what extent, if any, is Shoung entitled to the claimed damages?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Shoung must prove its claims on a balance of probabilities (which means "more likely than not"). I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. Shoung operates a personal training center, Innovate Fitness, and hired Mr. Taylor to work as a fitness "coach" in April 2020. On July 5, 2021, Mr. Taylor resigned from his employment with Shoung and began to work as an independent trainer under the business name "Work Move Play" (WMP) out of another gym. Some of Shoung's clients who had trained with Mr. Taylor while he was employed by Shoung continued to train with Mr. Taylor at the other gym after he resigned. These facts are not in dispute.
11. The parties' signed employment contract had a non-solicitation clause. Under that clause, Mr. Taylor agreed that for 4 months after his employment ended he would not "solicit any customer or client of the Company, to transfer such customer's business from the Company to any other person or entity". Further, Mr. Taylor agreed not to persuade or entice any Shoung employee to leave their employment.
12. Shoung alleges that Mr. Taylor breached the non-solicitation clause by soliciting its customers to train with him elsewhere within 4 months of his employment termination, which Mr. Taylor denies.
13. Mr. Taylor says that following his termination, he started to work as an independent trainer at another gym and 4 customers "sought him out" and contacted him on their own volition to ask to keep training with him. He says he never influenced or induced these customers to leave Shoung's training center. Mr. Taylor also says that the non-

solicitation clause is unenforceable, but he gave no reason and made no specific argument about why not.

14. Mr. Taylor submitted witness statements from each of the 4 customers that trained with him after he left his employment with Shoung. Each witness statement is somewhat different, but they all stated that they were not contacted or solicited by Mr. Taylor and that they contacted Mr. Taylor themselves after they learned he left because they wanted to keep training with him. Shoung did not submit any evidence to refute these statements and so I accept this is what occurred. I return to this below.
15. Shoung argues that Mr. Taylor still breached the non-solicitation clause because these 4 customers “transferred” from Shoung to keep training with Mr. Taylor through WMP.
16. I find Mr. Taylor did not breach the non-solicitation clause simply because some Shoung customers transferred to WMP. As defined by Merriam-Webster.com “to solicit” means to approach with a request or plea or to strongly urge something. To establish that Mr. Taylor breached this clause, Shoung would need to produce some evidence showing that Mr. Taylor requested, urged, or induced the customers away from Shoung and there is no such evidence here.
17. In *Direct Lending v. Blanchette*, 2019 BCSC 1068, which is binding on me, the court refused to find a former employee financial advisor solicited customers, even though the advisor had phoned the employer’s customers and told them she left her employment and gave them her new services and contact information. The court held that the advisor only gave the information so the customers could decide what to do next, whether to continue to work with that advisor and so, it found she did not “solicit” them.
18. There is no evidence in this proceeding that Mr. Taylor ever initiated contact with Shoung’s customers let alone solicited them to leave Shoung. I am persuaded by the witness statements that the customers who kept training with Mr. Taylor elsewhere did so voluntarily and on their own initiative.

19. In its submissions, Shoung makes an additional allegation that was not in the Dispute Notice that started this proceeding. Shoung alleges that Mr. Taylor breached the non-solicitation clause because a Shoung employee, KB, resigned on August 9, 2021, and allegedly joined Mr. Taylor to train its customers at another gym. There is no statement from KB or any evidence about why KB left her employment. Mr. Taylor says he understands KB left her employment with Shoung for reasons unrelated to him and says KB is not associated with his business. In the absence of any evidence, I find Shoung has not proven that Mr. Taylor persuaded or enticed KB to leave her employment with Shoung.
20. Shoung submitted an email that its facility manager “TD” sent to Shoung’s owner on July 1, 2021 that Mr. Taylor threatened to “screw them over”. Mr. Taylor denies making this threat. Shoung did not also submit a statement from TD to support its manager’s email statement nor explain why not. While a hearsay statement in an email is admissible under the CRT rules, without a witness statement from TD to support it and in the face of Mr. Taylor’s denial, I put little weight in it. In any event, even if Mr. Taylor did make this threat, I find it does not show that he solicited Shoung’s customers or enticed KB to leave.
21. In summary, I find Shoung has not established on a balance of probabilities that Mr. Taylor solicited its customers or persuaded or enticed KB to leave her employment. So, I find Mr. Taylor did not breach the non-solicitation clause in the parties’ employment contract and I dismiss Shoung’s claim.
22. 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. Following that general rule, I find Shoung is not entitled to any reimbursement.
23. Mr. Taylor did not pay any CRT fees but seeks \$302.40 for reimbursement of legal fees to consult with a lawyer about this dispute. CRT rule 9.5(3) says the CRT will only order reimbursement of legal fees in extraordinary circumstances in small claims

disputes and I find no extraordinary circumstances exist here. So, I decline to award Mr. Taylor reimbursement of his legal fees.

ORDER

24. I dismiss Shoung's claims and this dispute.

Trisha Apland, Tribunal Member