



# Civil Resolution Tribunal

Date Issued: May 6, 2022

File: SC-2021-008996

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pear Tree Education Inc. v. D.N.*, 2022 BCCRT 546

BETWEEN:

PEAR TREE EDUCATION INC.

**APPLICANT**

AND:

D.N.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about tuition fees. The applicant, Pear Tree Education Inc. (Pear Tree), says the respondent parent, DN, signed a binding contract on March 3, 2021 for her child's continued education at Pear Tree for the 2021/2022 school year. Pear

Tree says the contract obliged DN to pay \$5,757 by May 31, 2021 even if the child later withdrew at any point from the school.

2. Pear Tree claims \$5,000 for the tuition payment, which is the Civil Resolution Tribunal's (CRT) monetary limit in small claims matters. Pear Tree abandons its claim over \$5,000.
3. DN says she only reluctantly signed the contract because of "pressure and threat" from the school. DN says even though she knew Pear Tree was not the right school for her child, she was worried that changing her school would negatively affect her.
4. I have anonymized DN's name in the published version of this decision, to protect the identity of her minor child.
5. Pear Tree is represented by its owner, Paul Romani. DN is self-represented.

## **JURISDICTION AND PROCEDURE**

6. 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). CRTA section 2 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.
7. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.

8. CRTA section 42 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.
9. 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**

10. The issue in this dispute is whether DN is obliged under the parties' contract to pay Pear Tree \$5,000 for the 2021/2022 school year tuition fees.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, as the applicant Pear Tree must prove its claim on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
12. On March 3, 2021, DN signed Pear Tree's contract for DN's child's enrollment at Pear Tree for the 2021/2022 school year. The contract required DN to pay a \$3,000 "Entrance Fee" and a \$5,757 "Enrolment Deposit" (Deposit), with the latter to be applied against the total annual tuition fee. This was DN's 2<sup>nd</sup> tuition contract with Pear Tree and the relevant terms were the same. None of this is disputed.
13. On May 12, 2021, DN emailed Pear Tree that her child would not be attending Pear Tree for the 2021/2022 school year. DN thanked Pear Tree for giving her child a "happy and fun year". In a subsequent email, DN explained that she was concerned about her child's academic progress and that she had been waiting for Pear Tree to test or assess her child, rather than just provide report cards. DN also complains that Pear Tree provided a late report card in December 2020 due to a technical

glitch. DN also complains that one of her child's teachers was absent from school due to illness and another time due to a family member's death. Pear Tree's emails to the parents about these absences show Pear Tree had other teachers lined up to lead the classes. I find none of this is evidence that Pear Tree had breached its contract with DN or acted improperly.

14. As noted above, DN essentially argues that she signed the contract under duress. I find duress is not established. Duress is a defence to the enforceability of a contract. If DN signed the parties' contract under duress, she may cancel the agreement if Pear Tree seeks to enforce its terms.
15. To establish the defence of duress, DN must show Pear Tree exerted pressure to such a degree that DN's true consent did not exist. There must be an improper element to the pressure that can be described as "unfair, excessive or coercive" (*Dairy Queen Canada, Inc. v. M.Y. Sundae*, 2017 BCCA 442 at paragraphs 52 to 54). The factors the courts weigh include:
  - (a) Did the person object,
  - (b) Did the person have an alternative course available, such as an adequate legal remedy,
  - (c) Did the person receive independent advice, and
  - (d) Did the person take steps to avoid the contract?
16. I find DN did not sign the tuition agreement under duress. She did not object and her alternative remedy was simply to have her child attend a different school. I find the evidence shows Pear Tree simply asked her to either sign the contract or advise if the child would not be attending. I do not agree with DN that this was unfair pressure. DN says she knew Pear Tree was not the right school for her child and yet she signed the contract anyway. I find her explanation shows she simply was unsure which was her best option, Pear Tree or a different school, but I find that does not establish legal duress here.

17. Under a bolded heading “Tuition Refund Policy”, the contract says that DN understood and agreed that tuition and fee payments not yet paid but owed under the contract are required to be paid “regardless of whether the student completes the academic year”. The contract further says that unless explicitly stated otherwise, the parent is responsible for paying 100% of the tuition as agreed to “regardless of any and all circumstances.” The listed exceptions are if the parent provided written notice of the student’s withdrawal by July 1, in which case the parent is not obliged to pay “any additional tuition fees, except the initial Deposit, which is non-refundable under all circumstances, even if the student withdraws before the July 1<sup>st</sup> deadline.” The “initial Deposit” is the Deposit noted above. None of this is disputed.
18. Under the contract’s terms, I find DN was obliged to pay the Deposit even though she withdrew her child. So, I find Pear Tree is entitled to the claimed \$5,000. I do not need to address the parties’ other arguments, which I find irrelevant to Pear Tree’s contractual entitlement to payment.
19. The parties’ contract specifies a late payment fee of \$5 per day. Given the \$5,000 limit, Pear Tree did not claim this. I find that fee is an administrative charge, not interest. In the absence of an agreement about interest, the *Court Order Interest Act* applies to the CRT. I find Pear Tree is entitled to pre-judgment interest on the \$5,000. Calculated from May 31, 2021 (the due date for Pear Tree’s May 3, 2021 invoice) to the date of this decision, this interest equals \$20.96. I note the CRT’s small claims monetary limit is exclusive of COIA interest and CRT fees.
20. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Pear Tree was successful, I find it is entitled to reimbursement of \$175 in paid CRT fees. No dispute-related expenses were claimed.

## **ORDERS**

21. Within 21 days of this decision, I order DN to pay Pear Tree a total of \$5,195.96, broken down as follows:

- a. \$5,000 in debt,
  - b. \$20.96 in pre-judgment interest under the COIA, and
  - c. \$175 in dispute-related expenses.
22. Pear Tree is entitled to post-judgment interest, 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 BC. 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 BC.

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Shelley Lopez, Vice Chair