



# Civil Resolution Tribunal

Date Issued: November 1, 2022

File: SC-2022-001937

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dang v. Mikulich*, 2022 BCCRT 1195

BETWEEN:

LY DANG

**APPLICANT**

AND:

DIMITRI MIKULICH

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Chad McCarthy

### INTRODUCTION

1. This dispute is about dance lessons. The applicant, Ly Dang, paid the respondent, Dimitri Mikulich, \$2,000 for several dance lessons. Ms. Dang says Mr. Mikulich provided substandard instruction, which she says also caused injuries and pain in her hips, back, and feet, and emotional distress. So, she stopped taking the paid lessons,

but Mr. Mikulich refused to refund her money. Ms. Dang claims a full \$2,000 refund. Mr. Mikulich says his instruction was appropriate and he owes nothing.

2. The parties are each self-represented in this dispute. For the reasons set out below, I dismiss Ms. Dang's claim because it is out of time under the *Limitation Act* (LA).

## **JURISDICTION AND PROCEDURE**

3. These are the CRT's formal written reasons. 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.
4. 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.
5. 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.
6. 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.
7. The CRT gave the parties an opportunity to provide additional submissions about whether Ms. Dang applied for CRT dispute resolution within the applicable limitation

period under the LA. The parties each provided submissions, and Ms. Dang also submitted additional text message evidence. I allow that evidence because I find it is relevant, Mr. Mikulich did not object to it, and it is fair to do so.

## **ISSUES**

8. The issues in this dispute are:
  - a. Is Ms. Dang out of time under the LA to bring this dispute?
  - b. If not, did Mr. Mikulich break the parties' agreement, and must he refund Ms. Dang \$2,000?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Ms. Dang must prove her claims on a balance of probabilities, meaning "more likely than not." I have read the parties' submissions and evidence, but refer only to the evidence and arguments I find relevant to provide context for my decision. Apart from his Dispute Response filed at the outset of this proceeding, and additional comments on the limitation issue, Mr. Mikulich did not provide submissions in response to Ms. Dang's submissions, despite having an opportunity to do so.
10. Ms. Dang undisputedly paid Mr. Mikulich \$2,000 for 2 sessions of 10 or 11 dance lessons each. Ms. Dang says she paid Mr. Mikulich in January 2020, although undisputed attendance records in evidence show that Ms. Dang began the lessons in November 2019. Ms. Dang says that before she paid Mr. Mikulich, he verbally promised to refund her money if she was dissatisfied after 2 or 3 lessons. Mr. Mikulich denies promising a refund.
11. Ms. Dang undisputedly attended several lessons, but did not complete the first session. Ms. Dang says she requested a refund after 3 lessons because she could not continue due to physical pain. I find attendance records show the third lesson was on November 23, 2019, noting again that Ms. Dang says she paid Mr. Mikulich in

January 2020. Ms. Dang says Mr. Mikulich instead offered to refund \$1,000 for the second session if she completed the first session, which Mr. Mikulich denies.

12. Ms. Dang says she attended another 3 lessons, after which the pain became intolerable. Ms. Dang says she then attended 2 more lessons, although I find the attendance records show she only attended a total of 6 lessons with Mr. Mikulich, the last one on January 31, 2020. Ms. Dang says she “cancelled” the remaining lessons with Mr. Mikulich after the last lesson she attended, which I find was on January 31, 2020. Ms. Dang says she again requested a refund from Mr. Mikulich, who refused. Ms. Dang admits that she continued to take lessons with a different instructor at the same dance facility.
13. For the following reasons, I find Ms. Dang’s claim is outside the applicable limitation period, and her claim is out of time.
14. A limitation period is a time period in which a person may bring a claim. When the limitation period expires, the right to bring the claim ends, even if the claim would have been successful.
15. Under section 13 of the CRTA, the LA applies to the CRT as if it was a court. The LA says that a debt claim must be started within 2 years of when it was “discovered”. Under LA section 8, a claim is “discovered” on the first day when the person knew, or reasonably ought to have known, all of the following:
  - a. That injury, loss, or damage had occurred,
  - b. That the injury, loss, or damage was caused by or contributed to by an act or omission,
  - c. That the act or omission was performed by the person against whom the claim is made, and
  - d. That a court (or CRT) proceeding would be appropriate for seeking a remedy.

16. Here, the limitation period stopped running when Ms. Dang applied for CRT dispute resolution on March 15, 2022. This means that if Ms. Dang “discovered” her claim before March 15, 2020, the claim is out of time.
17. In her Dispute Notice, Ms. Dang says that she first became aware of her claim in January 2020. Further, the parties agree that Mr. Mikulich refused Ms. Dang’s refund request on February 7, 2020. Ms. Dang submitted a February 7, 2020 text message from Mr. Mikulich that said “No sorry no refunds” because she had begun lessons with a different instructor. I find this undisputed refund refusal is persuasive evidence that Ms. Dang knew about her claimed loss no later than February 7, 2020.
18. Ms. Dang says that Mr. Mikulich continued to refuse her refund requests after February 7, 2020. I find there is no evidence that Mr. Mikulich acknowledged liability for the alleged debt after that date, so I find the limitation period was not extended under section 24 of the LA.
19. Ms. Dang says the facility where the lessons took place temporarily closed due to the COVID-19 pandemic. I find none of the evidence shows that the closure was before February 7, 2020, or that it was a reason she requested a refund. I also note that although the courts of BC were subject to a mandatory limitation period suspension during the pandemic, the CRT had discretion about whether to suspend it, but only until September 28, 2021 (see for example *Brown v. Lambert*, 2022 BCCRT 888 at paragraphs 19 and 20). That date passed long before Ms. Dang applied for CRT dispute resolution on March 15, 2022. Further, Ms. Dang does not argue that COVID-19 prevented her from filing her CRT application sooner. So, I find the CRT no longer has the legal authority to extend the limitation period, and even if it did, I would decline to do so in these circumstances.
20. Ms. Dang says she sought medical therapy for dance-related injuries and pain beginning in mid-2020. I find nothing turns on that, because she says she experienced those symptoms, and believed they were related to Mr. Mikulich’s lessons, before February 7, 2020. Ms. Dang also says she sought assistance from a different dance instructor in obtaining a refund from Mr. Mikulich, and similar

assistance from the owner of the facility in December 2020. Ms. Dang says this timeline shows she discovered her financial loss, physical injuries, and need for a CRT proceeding, during the period from mid-2020 to December 2020.

21. With respect, I disagree. Ms. Dang discovered her claim under the LA when she had “actual or constructive knowledge of the material facts upon which a plausible inference of liability” of Mr. Mikulich could be drawn (see *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31). A claim’s discoverability does not depend on knowledge of the exact extent of the loss. Rather, it is sufficient to know that some loss has occurred (see *Peixeiro v. Haberman*, 1997 CanLII 325 (SCC)).
22. On the evidence and submissions before me, I find Ms. Dang knew some loss occurred no later than February 7, 2020. Specifically, I find Ms. Dang’s undisputed “cancellation” of any further lessons beyond February 7, 2020, and Mr. Mikulich’s undisputed refund refusal on that date, show that Ms. Dang was aware by that date that Mr. Mikulich had allegedly caused or contributed to her claimed loss. I also find Ms. Dang reasonably ought to have known on that date that a court or CRT proceeding against Mr. Mikulich was an appropriate means of seeking a remedy for her claimed loss. Absent a written acknowledgement of liability for the debt by Mr. Mikulich, Ms. Dang’s efforts to pursue the debt or negotiate its payment do not extend the limitation period (see *Arbutus Environmental Services Ltd. v. South Island Aggregates Ltd.*, 2017 BCSC 1 at paragraph 19).
23. For the above reasons, I find that Ms. Dang discovered her claim under the LA no later than February 7, 2020. That was before March 15, 2020. So, I find Ms. Dang’s claim is out of time under the LA. Accordingly, I dismiss Ms. Dang’s claim.

### ***CRT Fees and Expenses***

24. 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. Although Ms. Dang was unsuccessful, neither party paid

any CRT fees nor claimed any CRT dispute-related expenses. So, I order no reimbursements.

## **ORDER**

25. I dismiss Ms. Dang's claim, and this dispute.

---

Chad McCarthy, Tribunal Member