



Civil Resolution Tribunal

Date Issued: March 26, 2024

File: SC-2022-006182

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *EMB Education Corp. v. Baxmann*, 2024 BCCRT 316

B E T W E E N :

EMB EDUCATION CORP.

APPLICANT

A N D :

LANDON BAXMANN and MEGAN HARVILLA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This dispute is about daycare fees. The respondents are former spouses, whose children attended daycare with EMB Education Corp. until August 2020. EMB says that when the respondents withdrew their children from its care, it transferred the balance of the respondents' daycare fees to Landon Baxmann, but mistakenly

overpaid them. EMB claims reimbursement of \$3,956.47 from Landon Baxmann for the overpaid refund.

2. EMB also claims \$145.10 from Megan Harvilla for a balance it says she owes. Miss Harvilla says she has already paid her outstanding balance, and denies owing EMB anything further.
3. EMB is represented by a director. Miss Harvilla is self-represented. Landon Baxmann did not file a Dispute Response and is in default, as discussed further below.

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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
6. 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 court.
7. Where permitted by CRTA section 118, 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. Whether Landon Baxmann must return EMB's \$3,956.47 alleged overpayment, and
- b. Whether Miss Harvilla must pay EMB \$145.10 in outstanding daycare fees.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, EMB must prove its claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision. EMB did not provide final reply submissions, despite having an opportunity to do so.

Overpayment to Landon Baxmann

10. Records in evidence show that EMB e-transferred \$4,557.30 to Landon Baxmann on September 1, 2020. EMB says it made a mistake with the decimal point, and that it only intended to transfer \$455.73. EMB says this amount was for a \$600.83 balance it owed Landon Baxmann, less \$145.10 it says Miss Harvilla owes it in outstanding fees.
11. EMB claims reimbursement of \$3,956.47 from Landon Baxmann. This represents the transferred amount, less the \$600.83 that EMB acknowledges it owes Landon Baxmann. As discussed below, EMB is separately pursuing Miss Harvilla for the \$145.10 in outstanding fees.
12. Although EMB does not use this wording, I find it argues that Landon Baxmann was unjustly enriched by the mistaken transfer. The legal test for unjust enrichment requires an applicant to prove that 1) the respondent was enriched, 2) the applicant suffered a corresponding deprivation, and 3) there is no "juristic reason", or valid basis, for the enrichment.¹

¹ *Kerr v. Baranow*, 2011 SCC 10.

13. As noted, Landon Baxmann is in default. This means that they did not file a Dispute Response or participate in this proceeding, despite being served with EMB's Dispute Notice.
14. Generally, liability is assumed when a party is in default. I find it reasonable to do so here. There is no dispute that Landon Baxmann was enriched by receiving the funds, and EMB was deprived of them. There is no indication that there is any valid basis for Landon Baxmann to retain EMB's mistakenly transferred funds. So, I find Landon Baxmann must pay EMB damages of \$3,956.47 for unjust enrichment.

Outstanding Fees

15. EMB claims \$145.10 in daycare fees from Miss Harvilla. EMB did not elaborate on this claim in its submissions, and it did not respond to Miss Harvilla's submission that she has already paid her outstanding balance.
16. In support of this claim, EMB provided a breakdown of how it calculated the claimed amount, and text messages with Miss Harvilla in which she denied owing anything further. EMB provided no other evidence in support of this claim, such as a contract or invoice. As Miss Harvilla says she has fully paid EMB, in the absence of further evidence of an outstanding balance, I dismiss EMB's claim against Miss Harvilla.

CRT FEES, EXPENSES, AND INTEREST

17. The *Court Order Interest Act* applies to the CRT. EMB is entitled to pre-judgment interest on the \$3,956.47 in damages against Landon Baxmann from September 1, 2020, the date of the transfer, to the date of this decision. This equals \$301.
18. Under CRTA section 49 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. EMB was successful in its claim against Landon Baxmann, so I find it is entitled to reimbursement of \$175 in CRT fees. EMB also provided receipts for \$57.98 in courier

and registered mail expenses to serve the Dispute Notice to Landon Baxmann. I find these amounts reasonable, and order Landon Baxmann to reimburse EMB for them.

ORDERS

19. Within 21 days of this decision, I order Landon Baxmann to pay EMB a total of \$4,490.45, broken down as follows:
 - a. \$3,956.47 in damages,
 - b. \$301 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$232.98, for \$175 in CRT fees and \$57.98 in dispute-related expenses.
20. EMB is entitled to post-judgment interest, as applicable.
21. I dismiss EMB's claims against Miss Harvilla.
22. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Alison Wake, Tribunal Member