Civil Resolution Tribunal

Date Issued: August 21, 2024

Files: SC-2023-005654
and SC-2024-001094

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *AB v. XYZ Inc.*, 2024 BCCRT 803

B E T W E E N :

AB and CD

APPLICANTS

A N D :

XYZ INC.

RESPONDENT

A N D :

AB and CD

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Sarah Orr

INTRODUCTION

1. These disputes are about figure skating lessons. This decision relates to two linked disputes, SC-2023-005654 and SC-2024-001094. Although the party names are not identical in both disputes, I find the disputes involve the same parties and related issues, so I find they are a claim and counterclaim. I have issued one decision for both disputes.

2. In September 2022, AB and CD (the applicants) registered their daughter for the fall figure skating session at XYZ Inc. (the respondent). The applicants say the respondent breached its contract and policy, so they terminated their daughter's membership in mid-October 2022. The applicants claim a full refund of $1,159.09 for the fall session.

3. The respondent denies breaching its contract or policy. It says that according to its policy, it is not required to refund the applicants. It says it does not owe them anything. The respondent counterclaims $582.75 for unpaid private lessons it says its coaches provided to the applicants' daughter.

4. The applicants say the respondent's invoices for the private lessons are inaccurate, late, and the coaches providing the lessons were not qualified. The applicants say they do not owe the respondent anything because any amount owing for private lessons should be paid using their registration fees that the respondent has failed to refund.

5. The applicants are both self-represented, and the respondent is represented by its owner.

6. Although none of the parties requested it, I have anonymized the parties' names in the published version of this decision to protect the identities of non-party minor children.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.

9. 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 court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

10. 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

11. The issues in this dispute are:

    a. Are the applicants entitled to a full refund for their daughter's fall 2022 skating session?

    b. Do the applicants owe the respondent for private lessons?

EVIDENCE AND ANALYSIS

12. Since this is a civil proceeding the applicants must prove their claims on a balance of probabilities, which means more likely than not. Likewise, the respondent must prove its counterclaim to the same standard. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.

13. On September 9, 2022, the applicants paid the respondent $1,159.09 to register their daughter for the fall session of figure skating and off-ice exercise lessons. The session started on September 9, 2022 and was scheduled to end on December 17, 2022.

14. On October 15, 2022, the applicants terminated their daughter's membership and requested a pro-rated refund for the remainder of the fall session. The respondent did not issue a refund. The applicants now claim a full refund of $1,159.09 because they say the respondent breached its contract and failed to enforce its policies.

Are the applicants entitled to a full refund for their daughter's fall 2022 skating session?

15. The applicants' daughter started skating at the respondent in early 2022. The applicants say that during that year, two other skaters at the respondent were disruptive, behaved inappropriately, and distracted and intimidated their daughter. They say this negatively affected their daughter's performance on and off the ice. In the summer of 2022, the applicants expressed their concerns about these two skaters to the respondent. On August 18, 2022, the applicants met with the respondent's owner to discuss this issue.

16. The applicants say that during this August 18, 2022 meeting, the respondent's owner made 3 verbal promises to them. First, they say the respondent promised that the two skaters and their parents would be required to sign a code of conduct before registering for the fall session. Second, the applicants say the respondent promised that those two skaters would be separated and not be in the same sessions as each other for the fall session. Third, the applicants say the respondent promised that if the

two skaters' behaviour did not change, the respondent would ask them to leave the program.

17. The applicants say that based on these 3 promises from the respondent, they decided to register their daughter for the fall session. The applicants say that in the first week of the fall session the respondent breached the August 18, 2022 verbal agreement by failing to require the two skaters and their parents to sign a code of conduct, and by failing to separate the two skaters and prevent them from participating in the same skating sessions. They say the respondent later breached the verbal agreement by failing to ask the skaters to leave the program when their inappropriate behaviour continued. The applicants argue that because of these breaches of the verbal agreement, they are entitled to a full refund.

18. The respondent denies making any of the 3 alleged promises on August 18, 2022 as part of a verbal agreement. The only documentary evidence from that meeting is the respondent's owner's notes, and they do not mention any of the 3 alleged promises. Without more, I find the applicants have failed to prove that the respondent made any of the 3 promises as alleged, or that the respondent made any other misrepresentations that induced the applicants to register their daughter for the fall session. So, I find the applicants are not entitled to a refund on that basis.

19. The applicants also say the respondent failed to enforce its own policies with respect to the two skaters during the fall session. The respondent's policy in place at the relevant time stated that it intended to "provide a welcoming, safe and healthy atmosphere for all our skaters, coaches, and volunteers." The policy said that every skater, parent, and coach was expected to respect and follow the policy. The policy said that skaters should be at the rink on time, and that "Bullying, bad manners, profanity, improper behaviour or lack of consideration for others will not be tolerated". It also stated, "Un-sportsmanlike behaviour and/or abusive language on or off the ice will not be tolerated. Rowdiness, swearing and disrespect will also not be tolerated. These may result in the suspension of skating privileges."

20. The applicants say the respondent allowed the two skaters to breach its policy in the fall of 2022 by continuing their disruptive and inappropriate behaviour and by bullying their daughter. The applicants say they raised this with the respondent's coaches several times in the fall of 2022, but it took no action.

21. I disagree. I find the evidence shows that each time the applicants raised an issue with these skaters, the respondent responded and attempted to address the applicants' concerns. The applicants say the respondent never imposed any consequences for the skaters' behaviour, but I find the evidence shows otherwise. The skaters were undisputedly asked to leave the ice on several occasions, the respondent spoke to their parents on several occasions, and the respondent asked the skaters to take down a problematic Tik-Tok video they filmed while wearing respondent-branded clothing.

22. The respondent denies that any skaters bullied the applicants' daughter. It also says some skaters took issue with the applicants' daughter's behaviour, and it says one of the applicants confronted and swore at another skater. I find that none of the alleged inappropriate behaviour of either the applicants, their daughter, or other skaters is proven. However, I find the evidence shows the respondent responded to every complaint and attempted to resolve the issues by meeting with the applicants and parents of the other skaters on several occasions. Overall, I find the applicants have failed to establish that the respondent allowed its skaters to breach its policy, or otherwise failed to enforce its policy. So, I find the applicants are not entitled to a full refund on that basis.

23. The applicants also say that the respondent failed to rent any space for off-ice sessions, even though the applicants were paying for it. The respondent says this is irrelevant, and I agree. I find there is no evidence that the respondent promised to use or rent any specific space for its skaters' off-ice training, so I find this has no bearing on the applicants' entitlement to a refund.

24. On October 15, 2022, the applicants terminated their daughter's respondent membership by email and requested a pro-rated refund. On October 21, 2022, the

respondent responded by email stating, “We received your request and we’re looking into it. Please allow two weeks in order to see refund on your account. Sessions refund will include starting Monday, October 17th… We do require to clear all invoicing for private lessons with the [respondent] coaches”. On January 7, 2023, the applicants emailed the respondent to follow up on their refund request. On January 23, 2023, the respondent responded by email, “As per our original email response on October 21, 2022 we agreed we would pro-rate and refund the amount remaining to sessions starting October 17, 2022 providing all invoices for private lessons with [respondent] coaches were cleared… As of January 16, 2023, there is still an owing balance for private lessons.”

25. The respondent’s policy clearly states that it does not issue refunds except for medical reasons. However, I find the emails in evidence show that the respondent agreed to refund the applicants on a pro-rated basis starting October 17, 2022 to the end of the session, provided the applicants paid their outstanding balance for private lessons. Subject to any outstanding private lesson fees the applicants owe, which I address below, I find the applicants are entitled to a pro-rated refund of their registration fees from October 17, 2022 to the end of the session. I find this amounts to $745.13.

Do the applicants owe the respondent for private lessons?

26. The respondent says the applicants owe it $582.75 for private lessons it provided to their daughter between June and October 2022. The applicants say they do not owe the respondent for the private lessons for various reasons, each of which I address below.

27. First, the applicants say the respondent’s coaches who provided their daughter private lessons were unqualified. They say one of the coaches was not a certified skating coach and 2 others were not in good standing with Skate Canada. The respondent says it is not affiliated with Skate Canada and does not mandate Skate Canada training for its coaches. It says it is a private organization that recruits coaches based on its own specific requirements. The respondent also says the same

coaches had coached Stephanie since January 2022 and the applicants never raised any issues with them. The applicants do not specifically dispute any of this. There is also no evidence the parties' agreement required the respondent's coaches to have any specific certifications or to be in good standing with Skate Canada. So, I find the applicants have failed to establish that they are not required to pay for their daughter's private lessons because the respondent's coaches were unqualified.

28. The applicants also say some other skaters interrupted their daughter's private lessons. However, I find there is insufficient evidence to establish that any of the applicants' daughter's private lessons were interrupted to the extent that she did not receive any benefit from the lessons or is not required to pay for them.

29. Next, the applicants say the respondent sent the June and July 2022 invoices late, and failed to send the remaining invoices until it submitted them as evidence in this dispute. The respondent denies this and says it sent the applicants all invoices regularly except for the summer of 2022 when the owner was ill with COVID-19. Previous CRT decisions have found that invoices must be issued within a reasonable time (see for example *Glen Valley Electric Ltd. v. Derkson*, 2023 BCCRT 479).

30. The evidence shows the respondent sent the applicants the June 2022 invoice on October 11, 2022, and the July 2022 invoice on November 1, 2022. Given the respondent's evidence about its owners illness, I find it issued the June and July invoices within a reasonable time. However, the respondent provided no evidence that it sent the applicants the August, September, or October 2022 invoices before this dispute. I find the respondent has failed to show that it issued these 3 invoices within a reasonable time, so I find the applicants are not required to pay them.

31. The applicants also say that the respondent's invoices for the private lessons lack sufficient detail, as it is unclear which coach provided lessons on which date. However, there is no specific contractual or legal requirement for the invoices to include this information.

32. The applicants do not deny that their daughter received the private lessons included in the invoices for June and July 2022, and I find they have failed to establish any valid reason why they are not required to pay them. So, I find the applicants must pay the respondent for the June and July invoices, which amounts to $329.70. As noted above, I also find the respondent must refund the applicants $745.13. The net result is that the respondent owes the applicants $415.43.

33. The *Court Order Interest Act* applies to the CRT. However, I find the respondent agreed to refund the applicants only once they paid for their daughter's private lessons. Since they did not do so, I find there is no pre-judgment interest owing.

34. 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. I see no reason in this case not to follow that general rule. Since all parties were somewhat successful, I find each party must bear their own CRT fees. None of the parties claimed any dispute-related expenses.

ORDERS

35. Within 14 days of the date of this order, I order the respondent to pay the applicants $415.43 in damages.

36. The applicants are entitled to post-judgment interest, as applicable.

37. This is a validated decision and order. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Sarah Orr, Tribunal Member