

COUR DU QUÉBEC

« Division des petites créances »

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE LAVAL
LOCALITÉ DE LAVAL
Chambre civile

N° : 540-32-022200-099

DATE : The July 21st, 2011

SOUS LA PRÉSIDENCE DE L'HONORABLE RAYMOND SÉGUIN, J.C.Q.

TAHEREH FALLAHI

[...] Ste-Dorothée, Laval, (Québec) [...]

Demanderesse

c.

SUZANNE S. ROGIC (Beauté internationale, Académie de Carmétologie)

1215, boul. Curé-Labelle
Laval, (Québec)
H7V 2V8

Défenderesse

JUDGMENT

[1] The Plaintiff explains the cause of her action as follows:

- « 1. On June 17th, 2009, she registered at an esthetic program and signed a contract with the defendant; such program was to begin on the 28th of June for a period of nine consecutive months ending on the 29th day of February 29, 2010.

2. *Because she was not satisfied with the program, she decided to cancel the contract on August 5th, 2009 (as mentioned in her registered letter dated August 27th, 2009) by informing a supervisor of the school of her decision (due to her conflicting work schedule).*
3. *On the 29th of August 2009, a cancellation form (under Consumer protection act. S. 190) was sent to the defendant.*
4. *After a few attempts, she finally made an agreement with the defendant to be reimbursed the sum of \$689,13 for a cosmetic package and the cancellation of the contract.*
5. *The months already paid that is the sum of \$287,74 for the month of July 2009 and another sum of \$287,74 for the month of August should be paid back to her, because of the cancellation of the contract. »*

[2] The defendant contests on the following grounds:

« Services have been rendered to the plaintiff from June 17th to August 29th 2009 that is before she cancelled the contract. »

[3] Furthermore, the defendant submits a cross demand of \$7 000,00 on the ground that the plaintiff showed no respect to the school by attacking the reputation of the school.

[4] After analysis, the Tribunal concludes that the demand is partially founded and the cross demand is dismissed for the following reasons.

[5] According to the provisions of the contract, under section "Compulsary clause from the consumer protection law (By-laws 46)" when the consumer cancels the contract, the following measures must be applied:

« 12. (ev) Compulsary clause from the consumer protection law:

By-laws 46 concerning the applicability of the law. A Contract for the lease of services involving sequential performances, other than a contract entered into a merchant who operates a physical fitness studio or by an itinerant merchant, must contain those following compulsory clause:

"Clause required under the Consumer Protection Act, art. 190 of the law. (Contract for the lease of services involving sequential performance).

The consumer may cancel this contract at any time by sending the form attached hereto or another notice in writing for that purpose to the merchant.

This contract may be cancelled, without further formality, upon the sending of the form of notice.

If the consumer cancels this contract before the merchant has begun the performance of this principal obligation, the consumer has no charge or penalty to pay.

If the consumer cancels this contract after the merchant has begun the performance of this principal obligation, the consumer must pay only:

a) the price of the services rendered him, computed on the basis of the rate stipulated in the contract and;

b) the less of the following 2 sums: \$50, or a sum presenting not more than 10% of the price of the services that were not rendered him. »

[6] Considering that the plaintiff attended the school courses from the 29th of June to the 5th of August 2009 (the date she stopped attending school) which represents 37 days of school, she is responsible for one month and 7 days of school fees, which represents an amount of (\$287,74 + 7/30 of 287,84 being \$67,14) \$354,88.

[7] To that amount of \$354,88 we must add the \$50,00 penalty for cancellation as provided by the contract for a total of \$404,88. Since two payments have been cashed by the defendant totalling \$575,48, we conclude that an amount of (\$575,48\$ - \$404,88) \$166,60 was over paid by the plaintiff.

[8] The indemnity of \$7000,00 claimed by the defendant in her cross demand was not sustained by satisfactory evidence; accordingly it will be dismissed.

THEREFORE THE TRIBUNAL:

CONDEMNNS the defendant to pay to the plaintiff the amount of \$166,60 with legal interest and the additional indemnity provided by the law, as of August 27, 2009 to the date of the formal demand, plus the judicial fees of \$69,00.

RAYMOND SÉGUIN, J.C.Q.

Date d'audition : 14 juillet 2011