

**ONTARIO SUPERIOR COURT OF JUSTICE**

**SMALL CLAIMS COURT**

**SC-18-928 and  
SC-18-928-D1**

**B E T W E E N :**

**PRESTIGE MONTESSORI**

**-and-**

**MUHAMMAD AND AMINA SHAHZAD**

**REASONS FOR JUDGMENT**

**Plaintiff Counsel----Krysten Fisher**

**Defendant's Counsel—Katelyn Bell**

**Deputy Judge C. Hoffman**

**Trial Dates: September 17, 2019 and February 10, 2020**

**Judgment Released: \_\_\_\_\_ Burlington Small Claims Court**

1. The Plaintiffs allege a breach of contract for tuition fees regarding the Defendants 3 year old daughter, (referred to as "Z"), in the amount of \$8,100.00 which represents the remainder of tuition from October-June 2018. The Defendants later filed their own claim in the amount of \$20,148.00, alleging breach of contract, unconscionable clauses in the contract which are against public policy, (in the alternative frustration of contract), as well as unjust enrichment and unfair business practices. This Defendant's claim seeks repayment of the tuition monies already paid,



deposit, reimbursement for alternative child care, school uniform fees, damages for missed work, and punitive damages for emotional distress.

2. The first witness called was Claudia Abramowitz, she is the co-owner of Prestige (along with her husband Joel), has a Masters degree in Education, approximately 20 years experience in the Montessori method and is also a teacher at Prestige in the Upper-casa. She gave evidence that the Montessori method (in which she is accredited) is an individualized education plan, students work at their own pace in an academic setting: teachers would submit lesson plans, themes, crafts to her for approval; if there was an issue with a child the teacher would go to her or her husband and not directly to the parent; the school is only allowed to have a total of 59 students, 99 per cent of their business comes from referrals.

3. Both parties agree that Z began her time at Prestige in late March, 2018 when she was then 2 years old and was enrolled part-time in the Pre-Casa section in the mornings (meant for children less than 3 years old). Z later attended a summer program at Prestige and then also enrolled for the fall calendar year of 2018 when she was to enter Lower-Casa for children 3-3.8 years old on a full-time basis. The significance of the change of programs for our case was that in Pre-Casa the children had an informal dress code (blue clothes) but upon turning 3yrs it changed into a mandatory uniform, which included a shirt with a logo (the parents were required to buy the uniform from a supplier—this policy was in place since 2011; the uniform manufacturer changed in 2017). Another significant change to full time was that instead of just 1 snack being provided by the school caterer, “The Lunch Lady”, now 2 snacks and 1 lunch would be provided to Z and would adhere to the Halal standards.

4. According to both Claudia and Joel Abramowitz, Z was only allowed entry into the late part of the school year in March 2018, on the condition she enroll for the fall 2018-2019 school year—they both deny that September would only be on a “trial basis” and testified their school has never provided such trials in the past or to this date. Despite Ms. Shahzad’s initial belief during her tour of the school that a trial basis was available, by the time her husband spoke to Joel Abramowitz it was clear that was not the case. A package of materials were provided after that tour which set out the fees, schedule, meals, calendar and Enrolment Agreement. This Enrolment Agreement was signed by both parents on July 3, 2018 with paragraphs 2, 4 and 8 being most relevant for this case (Exhibit 1-Tab 1). This Agreement

states that all deposits and tuition non-refundable whether a child was “removed for any reason, at any point throughout the school year, there is still an obligation to pay for the full school years tuition...” (and these key points are emboldened). The Agreement acknowledges receipt of the Parent/Family Handbook (which sets out the mandatory school uniform policy in addition to other expectations and information— and was also emailed on March 9, 2018) after the parents paid the \$1,000 deposit to ensure the fall slot would be reserved for Z.

5. On the evidence, it seems clear that Z enjoyed her spring and summer classes at Prestige, especially her then teacher Ms. B (other than perhaps some slight adjustment issues early on that resolved themselves quite rapidly). There was open dialogue between Ms. Shahzad and the pre-Casa teacher. Eventually there was a transition to Lower-Casa and Z’s new teacher would be Ms. M for the new school year. On the first day of school, Sept. 4, 2018, Z did not wear the new logo uniform but instead wore a plain blue tshirt dress in the same school colour. Her mother testified the logo tunic was heavy and uncomfortable, and she had not yet had time to sew a more comfortable patch underneath. Z did wear the school pants, however, and I accept her mother’s evidence that she took her child to school that day in order to explain the uniform issue (which is corroborated by the caregiver who waited in the car). I prefer Ms. Shahzad’s testimony that she did in fact have a conversation with Ms. M that morning (and did not see the Abramowitz’s) wherein that teacher’s response was very kind and supportive: “it’s ok...it’s important that she comes to school”. This would be a key event for Ms. Shahzad to recall and one that she further referenced in the audio recording that was later taken at the Prestige meeting on Sept. 6, 2018.

6. Z’s caregiver, Ms. Sibal, later attended for the afternoon pick-up on Sept. 4, 2018 and her evidence was that Mr. Abramowitz told her for tomorrow “to please come with the uniform”. This message was not conveyed to the parents by Ms. Sibal, and the following morning on Sept. 5, 2018, Z entered the caregiver’s car directly to go to school with her 2 sisters again not in full uniform (Ms. Sibal did not enter the house or have conversation with the parents that morning). Notably, although the Prestige manual often references “open communication” with the parents and Mr. Abramowitz testified the teachers are to communicate directly with him-- the school did not contact the Shahzad’s on September 4<sup>th</sup>, nor was any follow up conducted regarding Ms. Shahzad’s conversation with Z’s teacher

Ms. B about Z's issue with the uniform. This communication should have been conducted by the school directly to the parents, not through a caregiver (for whom English was not her first language) since the uniform issue seems very important for Prestige and its mandatory nature is set out in the Parent Handbook. Tellingly, Joel Abramowitz in his evidence in chief recounts his conversation with Ms. Sibal from the day before: "And I said, but in any case, for tomorrow I need her to be in uniform, or she may not be allowed back because of the uniform policy."

7. On the issue of what happened on the September 5th morning drop off, which may have lasted only a couple of minutes at most--we have the position of the Abramowitz's that when Ms. Sibal approached the school with Z she was told of the need to be in uniform and offered options of either going back to get it and bring back, or leave the child at school and return with so the school would put it on. At trial, neither Abramowitz could specifically recall Z's reaction to these statements--but on all of the evidence Z rushed back to the car and the caregiver followed. In the audio of the Sept. 6, 2018 school meeting (which was surreptitiously taped by the Shahzad's, Abramowitz does confirm Z was crying after the conversation at 2 different points in the tape).

8. Ms. Sibal testified that Joel opened the school door (with Z behind her) saying "Zara is not coming in without wearing uniform...Joel said she couldn't come in the school...she's not coming in the school without wearing a uniform". Upon hearing these words, Z started crying and went back to the car with Ms. Sibal following who comforted her and proceeded to take Z's sisters to school and Z home to alert Ms. Shahzad. Ms. Sibal testified that Z was a quiet and happy child who had been excited to go to school and that being told she could not enter the doors upset her intermittently that morning. She did not recall being given the option of leaving Z at school while she went to retrieve the uniform at home. I find that even though the Abramowitz's believe they stated Z could remain at school, in the confusion and crying of a 3 year old child on the 2<sup>nd</sup> morning of school that offer was not effectively communicated. I further accept the Shazad's evidence that their older children also confirmed that Z was crying and very upset. Ms. Sibal and Z were both left with the impression that they had to leave the school as they did not have the uniform.

9. Further troubling is that Prestige did not contact either parent to confirm Z had not entered the school on Sept. 5, 2018, nor inquire as to how

she was doing after the upsetting morning event. It was not until Amina Shahzad requested an urgent meeting by email on September 6, 2018 at 9:58 am that the school responded. The reply by Ms. Abramowitz (Exhibit 1-Tab 7), rightly concerned the Shahzad's because although it referenced Z's earlier happy times at Prestige it also states: "...The one problem that there is from what we are told by the nanny is that Z. refuses to wear her uniform. As you know we are a full uniform school and therefore the children must come dressed in their uniform. There can be no exception to this rule. This policy and has been in place for 10 years now. What I can suggest is to try to get her to wear only the uniform at home until she gets used to wearing it. If we can help in any other way, please let us know". This email had the effect of reinforcing to the Shahzad's that Prestige was rigid in their position and would not gradually transition their 3 year old in a positive and nurturing manner regarding the uniform (as had been set out and relied upon in the Handbook and other school materials).

10. Ms. Abramowitz testified that it often takes "a minimum of 3 days" for a child to adjust to the new school year "if it lasts a little bit longer, then each child is different, and that's the beautiful thing with Montessori is each child is different...if anything was to stand out, then the teacher would have approached me and said we're having a little bit of difficulty with a child.." Mr. Abramowitz, although an administrator and not a teacher, also testified regarding normalizing children to the school routine: "...it takes time, and we go through that with every parent, that it takes time. Some children it may take a week, some may be three days, some may (take) two weeks".

11. Therefore, Prestige should not have been so strident on the 2<sup>nd</sup> day of school and while in the presence of Z, when they had zero communication with her parents regarding the uniform issue. Furthermore, Ms. Abramowitz also testified that Z was the only student that year being picked up and dropped off by someone other than a parent. The school was also aware that Z's caregiver's first language was not English. With a school of only 59 students, Prestige should have communicated directly with Z's parents while the child was not present and definitely not at the school doors on the 2<sup>nd</sup> day of school in front of a 3 year old child who wanted to go to school.

12. I take no issue with Prestige's qualifications as a school in business for over 15 years that is fully licensed, MACTE (Montessori) approved, and complies with Ministry of Education guidelines (even if some corrections may have been made after Ministry visits and that there had been a separate

issue with a teacher being terminated for prevaricating credentials). I do not put much weight, if any, on the various school reviews proffered by both sides. No business will have perfect ratings and Ms. Abramowitz in general came across a caring and professional educator. I also put no reliance on the suggestion that because Prestige chose not to join various Montessori groups they are somehow a deficient school; furthermore, this information was readily available prior to the Agreement being signed by the Shahzad's who are a very educated and professional couple.

13. What I do take issue is with how this specific case was handled by Prestige regarding Z and the uniform--both in the tone and paucity of communication. In their own materials, Prestige asks parents to not approach them with concerns in front of the children, so there must be a reciprocal duty of both parties to comply with that key part of the contract. Although it was likely a very busy time for Prestige at the start of the school year, I find they magnified the uniform aspect and over-reacted without following its own guidelines in the Parent Handbook. Both Abramowitz' fairly testified they should have communicated earlier with the Shahzad's, and that apology was also referenced in the Sept. 6, 2018 meeting.

14. The Prestige materials that form the expectations of both parties to the Enrolment Agreement make "open communication" "acceptance and respect of the whole child" important principles. Further, the Parent Handbook (Exhibit 1-Tab A) at #4 P.8 and re-stated at P. 24 notes the following is a Prohibited Practise:

"Use of harsh or degrading measures or threats or use of derogatory language directed at or used in the presence of a child that would humiliate, shame or frighten the child or undermines his or her self-respect, dignity or self-worth".

Also at P. 23: "Prestige Montessori strongly discourages "classroom door" type interviews, as they are unproductive and quite disruptive. It is important to note that such discussions should never be held in the presence of the child".

15. In this specific case, I find the tone and nature of the demands made to Z (just barely 3 years old at the time) and her nanny on the second morning of school was a harsh or degrading measure that did humiliate Z such that she was crying and refused to return to school later that day and in some of the days that followed. The Shahzad's had no notice from the school that this would turn into such an issue, no phone call, email or notebook entry in

Z's school book. As far as Ms. Shahzad was concerned, she had cleared the problem with her child's understanding teacher on the first day of school. The lack of follow-up communication in the following 2 days until the Shahzad's requested an urgent meeting also understandably added to their concerns, as did the formal tone of Ms. Abramowitz's email which again stressed the emphasis of the uniform and left the subjective and objective impression that Z should get used to wearing it while staying at home (not school). I accept the evidence of the Shahzad's that they respected the uniform policy, had followed it themselves when younger and also with their 2 other children—but they expected the situation to be handled with more care and a gradual transition.

16. At the meeting, Prestige did clarify they would allow Z back in school and attempt to put the uniform on there if it was still a problem, although at times the tone of the conversation on behalf of the school was overly strident and at times interruptive. There could and should have been more concern expressed toward Z. I accept the testimony of the Shahzad's that after the meeting and in consideration of all that had occurred they no longer had a level of comfort and trust in the school for Z to return to Prestige. Although no medical documents were entered into evidence, I accept the Shahzad's testimony that Z was brought to a physician after the incident due to her anxiety and were advised to avoid discussing school. After taking a couple weeks off work, the Shahzad's decided to not enroll Z in any school but instead have the nanny care for her full-time during the year.

17. I find the Shahzad's were within their rights to terminate the Enrolment Agreement due to a breach of contract. It was a reasonable expectation of the Shahzad's that key portions of the Parents Handbook would be followed such that some gradual transition or alternatives regarding the uniform were better pursued with open communication with the parents and in the absence of the child. A mandatory uniform policy does not override the Prestige promises which include offering a warm and nurturing environment, especially on the 2<sup>nd</sup> day of school for a 3 year old child. For all of the above stated reasons I find there was a fundamental breach of the Agreement. As noted in *Syncrude Canada Ltd. v. Hunter Engineering Co.*, (1989) 35 B.C.L.R. (2d) 145 (S.C.C.) a fundamental breach occurs "where the event resulting from the failure by one party to perform a primary obligation has the effect of depriving the other party of substantially the whole benefit" that was within the intention of the parties to the contract.

17. Given the above finding of a fundamental breach in this specific case, excision is the appropriate remedy, It would be unreasonable and unfair to hold the Shahzad's to the signed contract in these circumstances and be forced to send Z back to Prestige or owe the full year's tuition even if she did not return. The events subsequent to the signing of the Agreement cause this Court to decline to enforce that clause, and for all of the reasons stated, Prestige's Plaintiff's claim is dismissed.

18, Turning now to the Shahzad's Defendant's claim for various amounts and damages, I find they are not entitled to the \$1,000 deposit back. Prestige held the fall spot for Z on the basis of that deposit and also contracted with a third party lunch company for Halal meals which could not be cancelled. There was some evidence that the teacher's salary was tied to the number of children in the class, and I further accept that it would have been difficult at that time of year to replace Z's spot. There is a rationale supporting the non-return of a true deposit in order to bind both parties to the bargain and a motive to perform the rest of the contract (*Comonsents inc. v. Hetherington Welch Design*, [2006] O.J. No. 4030 (Ont. S.C.J.) I also decline to find the school uniform fee made to a third party should be repaid by Montessori.

19. As indicated earlier, I do find Z was initially upset due to the incident and likely for a few days later, but other than a brief reference about a physician recommending school not be discussed—there was an absence of medical evidence to support the exemplary and/or punitive damages being sought and they are declined. The misrepresentation that occurred in this case was not done with fraudulent intent or bad faith, but rather was a result of careless and rigid implementation of the uniform policy without regard for the primacy of the more important objectives in the Parent Handbook (ie. fulsome discussions with teachers and parents in the absence of Z).

20. The parents chose to each take a limited absence from work in order to be with Z for a couple weeks and also re-hired the nanny full-time for the rest of the year. There was a prior concern that Z may not have been ready for full day school (as evidenced by the Shahzad's attempt to have enrollment on a trial basis), and it was obviously within parental discretion after the Prestige incident to return to the former caregiving arrangements. In all of the circumstances, I assess damages for reimbursement of alternative child care and parental employment losses (for Sept. 5-6) limited to \$1,100.00. It was reasonable for a parent to return home when their 3 year



old was so upset, as was it reasonable that both parents stay home the following day to attend the urgent school meeting (further requiring the nanny). The September tuition already paid is also owing to the Shahzad's in the amount of \$900.00. Therefore, the Defedant's claim succeeds in part, and total damages will be assessed at \$2,000.00.

21. I thank counsel for the assistance during this trial and encourage both parties to resolve any outstanding issues of costs and disbursements between themselves. If this cannot be accomplished, I would ask for submissions (no more than 3 pages in length) to be emailed to the Clerk of this Court within 75 days after this decision is released. If more time is required due to any Covid-19 or other issues, an extension may be accommodated after receipt of such request emailed to the Clerk of this Court to my attention.



---

Deputy Judge C. Hoffman

Date: 13 May -20