Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Bramley v. Sunwing Vacations Inc./Vacances Sunwing Inc. doing business as Selloffvacations.com*, 2018 BCCRT 204

B E T W E E N :

Alan Bramley

APPLICANT

A N D :

Sunwing Vacations Inc./Vacances Sunwing Inc. doing business as Selloffvacations.com

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a Puerto Vallarta, Mexico vacation prize offered by the respondent Sunwing Vacations Inc. /Vacances Sunwing Inc. doing business as Selloffvacations.com (Sunwing). In August 2016, the applicant Alan Bramley

entered the respondent's contest draw at its Abbotsford Airshow booth, and won the vacation prize.

2. In particular, the applicant says he won the free "all-inclusive vacation", after filling out a slip and depositing it in the box for the draw. The applicant began this dispute because he says the respondent wrongly demanded payment of taxes and fees equal to about 40% of the vacation's value. The applicant therefore did not take the vacation.

3. The applicant claims $4,320 to cover the $3,500 value of the vacation prize and $820 for associated taxes and fees that he would have spent had he redeemed the prize. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.

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

7. Under the Act and tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are whether the respondent has improperly demanded payment of fees and taxes for the vacation, and if so, what is the appropriate remedy. The relevant analysis involves consideration of the respondent's admitted mistaken advice to the applicant, after he won, that there were no 'additional costs'.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

10. Generally speaking, the law of contract applies to prize-winning contests (see *Ross v. British Columbia Lottery Corporation*, 2014 BCSC 320, citing *G.A.S.P. v. Manitoba Licensing Lotteries Board*, (1980) 6 W.W.R. 367 (Man C.A.)):

> The general rule of the law of contracts that where an offer or promise for an act is made, the only acceptance of the offer that is necessary is the performance of the act, applies to prize-winning contests. The promoter of such a contest, by making public the conditions and rules of the contest, makes an offer, and if before the offer is withdrawn another person acts upon it, the promoter is bound to perform his promise.

11. The entry form for the vacation draw, which I find is what the applicant used to enter the contest, refers the applicant to the respondent's website "for full contest rules and details". I accept that when the applicant entered the contest, the contractual requirements of offer, acceptance, and consideration were met. The applicant did not pay any money to enter the contest. However, I find the

consideration element was met by the applicant agreeing to receive certain promotional correspondence and be the subject of a publicity release, as explained on the entry form and in the contest rules.

12. I also accept that at the time of entering the contest, the contest rules set out the terms that bound the parties about what the vacation prize included. I accept the respondent's evidence that it had the complete set of contest rules nearby the contest entry box, which the applicant did not expressly dispute, saying only that he did not "see any paperwork" nearby. I find having the complete set of rules nearby is the most likely scenario.

13. The contest rules said the vacation prize had blackout dates. In addition, the rules stated that the prize winner was "solely responsible for all incidental costs and expenses" not specifically referred to in the prize description, including certain fees and taxes and other expenses collectively defined in the rules as "Expenses". The contest rules also state that the vacation prize was non-refundable and had no cash surrender value. The rules also provided a broad indemnity precluding any litigation against the respondent related to the vacation prize.

14. The rules also stated that the prize winner must not seek reimbursement for the defined Expenses. Further, the prize was available for redemption within one year.

15. In his reply submission, the applicant says that the entry form's suggestion that he go online to see the rules was impossible because the only place that the website is shown is on the entry form that went into the respondent's contest entry box. I do not accept this argument, as nothing prevented the applicant from making enquiries about the rules, both before and after he deposited his completed entry form in the box. I note the applicant does not suggest the rules were ambiguous or that he could not have understood them. I find the applicant had a reasonable opportunity to review the respondent's contest rules.

16. I find by choosing to enter the respondent's contest, the applicant accepted the contest rules, as summarized above, including that in order to redeem the vacation prize the applicant would have to pay any associated taxes, fees, and surcharges.

17. The crux of this dispute turns on what happened next. The applicant says that in late August 2016, he went to the respondent's office and asked if there were any additional costs to take the vacation, as he was suspicious of a scam. The respondent agrees that at this office visit, its agent mistakenly told the applicant that the vacation prize won was inclusive of any taxes. I will refer to this as the 'no additional costs' conversation. The respondent does not particularly argue that its agent's comments were limited to no extra taxes. In other words, for the purposes of this decision, I accept that the respondent's agent told the applicant that there would be 'no additional costs'.

18. Thus, the central issue in this dispute is whether this 'no additional costs' conversation altered the contest terms such that the respondent could not properly require the applicant to pay the Expenses. In other words, was the agent's mistaken 'no additional costs' advice an enforceable amendment to the original contract? I find the answer is no, for the reasons that follow.

19. On February 24, 2017, the applicant contacted Sunwing about dates for travel, and the respondent gave him a list of 'blackout' dates. The applicant followed up at the end of March 2017.

20. After an exchange about available dates, on April 4, 2017, the respondent's agent wrote the applicant and apologized for its late August 2016 error when it said there were no 'additional costs' and referred the applicant to the contest's rules. The applicant says this was the first time there was any mention of 'extra costs'. Apart from the contest rules that I have found bound the applicant when he entered the contest, I accept the applicant's evidence.

21. On April 25, 2017, the respondent gave the applicant a Declaration and Release form, a winner's letter, and Contest rules and regulations, which I accept was the

first time he received any documentation from the respondent. The applicant refused to sign the release.

22. I turn then to my analysis. First, I find that the applicant paid nothing, and gave no consideration, for the mistaken “no additional costs” amendment term, if it can be called that, which arose after the original contest contract was completed. What the applicant had bargained for was set out in the rules referenced on the entry form that he had completed, as discussed above. Given there was no consideration for the alleged ‘no additional costs’ amendment, I find that term is not an enforceable contract.

23. Second, I find the ‘no additional costs’ amendment was a common mistake. In contract law, there is what is known as “the law of mistake”. As discussed in *Hannigan v. Hannigan*, 2007 BCCA 365, citing *Ron Ghitter Property Consultants Ltd. v. Beaver Lumber Co.* (2003), 2003 ABCA 221, there are 3 types of mistake: common, mutual, and unilateral. Common is where the parties make the same mistake. Mutual mistake occurs when both parties are mistaken, but their mistakes are different. In a mutual mistake, the parties misunderstand each other and are “not on the same page”. Unilateral mistake is where only one of the parties is operating under a mistake. In other words, if the other party is not aware of the one party’s erroneous belief, then the case is mutual mistake. If the other party knows of it, it is a unilateral mistake.

24. The presence or absence of an agreement is one of the foundational differences among the 3 types of mistake. In the case of a mutual or unilateral mistake, the existence of an agreement is denied, and so there is no real offer and acceptance and thus the transaction must necessarily be void. With common mistake, the agreement is acknowledged and what remains to be determined is whether the mistake was so fundamental as to render the agreement void or unenforceable on some basis. Whether or not the mistake goes to the root of the contract is often important. A “fundamental” mistake is one that involves a fact which, “constitutes the underlying assumption on which the entire contract was based” (see *Munro v.*

Munro Estate (1995), 1995 Canlii 1393 (BCCA), as cited in *Berthin v. Berthin*, 2015 BCSC 78).

25. As noted above, the applicant alleges that the respondent's agent verbally told the applicant, after he entered the draw and won the prize, that there were no additional costs. I find that was a common mistake. This is because the applicant had failed to read the rules as referenced on the entry form and the respondent's agent was similarly unaware of them. I find the mistake was a "fundamental" one because it goes to the heart of what the applicant would have to pay to receive the vacation prize. In all of the circumstances, quite apart from the lack of consideration, I find the 'no additional costs' amendment to be unenforceable because it was a fundamental, common mistake.

26. Again, at the time the applicant entered the contest, the contract's correct terms were disclosed to him, including that he would need to pay associated fees, taxes, and surcharges if he were to take the vacation prize. I recognize the applicant was concerned about added expenses, and that is why he made the inquiries he did in August 2016. However, the parties' later common mistake about 'no additional costs' does not entitle the applicant to the vacation's value.

27. Third, the contest rules clearly provide that the vacation prize is non-refundable and has no cash value. Nothing in the 'no additional costs' conversation changes that, even if it was an enforceable amendment. These terms preclude the applicant's claims for the value of the vacation prize. Here, I note the respondent offered the applicant the vacation on the terms set out in the contest rules, and the applicant declined.

28. I turn to the applicant's purchase of travel insurance, for which he claims reimbursement. Based on the documentation before me, on March 3, 2017 the applicant paid $328 for travel insurance that first required his joining the National Association of Federal Retirees on February 28, 2017 at a $62.04 cost. The respondent had on February 27, 2017 emailed the respondent to respond to his inquiry about travel dates, and noted it was awaiting information about "applicable

taxes and any fees associated". The travel insurance provided emergency medical coverage for any out of province/Canada trips of 17 days or less, until September 1, 2017 when the policy expired. I find the applicant did not reasonably rely upon the 'no additional costs' term, which I have found above was unenforceable. Even if I am incorrect in this respect, I find the indemnity and liability clause in the contest rules, which I find bound the applicant upon entering the contest, is broad enough to preclude this type of claim.

29. In summary, I conclude that the applicant is not entitled to any remedy in this dispute. He declined to redeem the vacation in accordance with the terms set out in the contest rules. The respondent's agent's advice that there were "no additional costs" was not an enforceable contractual term. The applicant's claim for damages, and in particular the value of the vacation prize, is precluded by the indemnity and liability clause in the contest rules.

30. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful in this dispute I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

31. I order that the applicant's dispute is dismissed.

Shelley Lopez, Vice Chair