



Civil Resolution Tribunal

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File: SC-2018-007275

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Huxley et al v. Isabelle's Bridal (North Shore) Ltd.*, 2019 BCCRT 432

B E T W E E N :

Kirk Huxley, Erin Huxley, and Kathleen Huxley

APPLICANTS

A N D :

Isabelle's Bridal (North Shore) Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicants Kirk Huxley, Erin Huxley, and Kathleen Huxley bought a wedding dress from the respondent, Isabelle's Bridal (North Shore) Ltd. The dress was for Erin Huxley. Kirk and Kathleen Huxley are Erin's parents.

2. The applicants say the dress was too small, and despite the respondent's promises it remained too small even after alterations. The applicants also say the respondent's hemming drastically altered the look of the dress, as the edging at the bottom was not replaced.
3. The applicants seek refunds of \$1,200 for the dress, \$250 for a belt, and \$658 in alteration fees.
4. The respondent denies liability. It says the dress was ordered based on Erin Huxley's measurements at the time of the purchase in August 2017, and by the time of the third fitting in September 2018 Erin's measurements had increased and the dress no longer fit. The respondent says it offered to alter the dress again, but Erin declined.
5. The applicants are represented by Kirk Huxley. The respondent is represented by Kasia Bulva, a principal or employee.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 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.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018

BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

8. 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.
9. Under 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

10. The issues in this dispute are whether the applicants are entitled to a refund for the wedding dress, the belt, or the alteration fees.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicants bear 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.
12. Based on the evidence before me, I find the applicants have not proven their claims that the dress was unwearable, and that the alterations were negligently performed.
13. At the time of the wedding dress purchase on August 11, 2017, Erin Huxley signed a written contract. This contract is titled in bold, uppercase letters "ALL SALES FINAL – ALTERATIONS EXTRA". It says that ordered items are not subject to cancellation. It also states as follows:

It is understood that size ordered is closest manufacturer size to customer's measurements at time of ordering. Custom fitting will likely be required. Sizes ordered are at the buyer's discretion.

14. The contract further states that if for any reason the buyer fails to claim or accept the goods purchased, they must still provide full payment.
15. Erin Huxley says that when she attended her final fitting on September 29, 2018, the dress was unwearable. She says that while it almost fit at her previous fitting on September 22, 2018, the dress was now too tight in the back and sagging in the front. Erin Huxley says the sales person insisted on measuring her again, and insisted that her measurements had increased by 2 inches, which made her feel "fat shamed". All 3 applicants provided statements indicating that Erin could not have gained weight in that week, as she was suffering from a flare-up of a chronic illness.
16. The respondent says its seamstress offered to attempt to alter the dress again while the respondent waited, and that while the seamstress was working on the dress Erin said she did not want it anymore and left. The respondent says that while she was waiting, Erin tried on a new dress, and said she no longer wanted the original dress and instead wanted a new one.
17. Erin Huxley provided a different version of these events. She says she was offered the options of adding a corset to the back of the dress (which she did not want), purchasing a new dress, or booking an appointment the following week to see what could be done with the original dress. Erin says she was upset and felt her dress was ruined. She says rebooking a new appointment to try to redo the dress was not viable, as the appointment would be only 9 days before the wedding.
18. I find that the decision to refuse any further alterations and abandon the purchased dress was not reasonable in the circumstances. The applicants did not provide any photos of the dress as it was on September 29, 2018, to prove that it was unfixable and "ruined". The contract specifically states that alterations will be required, that all sales are final, and that ordered items (such as the dress) cannot be cancelled.

19. Although it is understandable that Erin Huxley was frustrated and upset by the fact that her dress did not fit 2 weeks before her wedding, she has not provided evidence to establish that this was the respondent's fault, or that it could not have been fixed by the respondent, or by another tailor.
20. There is also no photo or other evidence to confirm that the dress's hem was improperly altered. The respondent says the dress was properly hemmed, and matched that in the sample dress Erin Huxley originally tried on. The applicants provided no evidence, other than Erin Huxley's statement, to prove otherwise.
21. I therefore find the applicants are not entitled to any refund for the wedding dress.
22. I also find the applicants are not entitled to any refund for the belt. There is no indication in the evidence or submissions that there was anything wrong with it, or that it could not have been worn with another dress. As noted on the contract and the respondent's invoice, it was purchased with the understanding that all sales are final.
23. Finally, I find the applicants are not entitled to any refund for alterations. The applicants claim \$685 for alterations, but provided no receipt or invoice to support this amount. There is a partial copy of a receipt for \$642, but I cannot tell what it is for, or when it was paid. Also, I find the respondent did significant work on the dress at Erin Huxley's request, such as adding tulle sleeves. Since the applicants chose to abandon the dress, and have not proved it was unwearable or unfixable, I find they are not entitled to any refund for the alteration work performed.
24. For these reasons, I dismiss the applicants' claims, and this dispute. I make no order for the respondent to provide the dress to the applicants, as they did not request this alternate remedy, and the parties' allows the respondent to re-sell goods not picked up.
25. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss the

claim for reimbursement of tribunal fees. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

ORDER

26. I dismiss the applicants' claims and this dispute.

Kate Campbell, Tribunal Member