



Civil Resolution Tribunal

Date Issued: August 30, 2019

File: SC-2019-002682

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Finkelstein v. Campbell et al*, 2019 BCCRT 1031

B E T W E E N :

KENNETH FINKELSTEIN

APPLICANT

A N D :

SHAWNA JONES and MIRROR ME PHOTO BOOTH LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about a deposit paid for photo booth services.
2. The applicant Kenneth Finkelstein entered into an agreement (contract) with the respondents Shawna Jones and Mirror Me Photo Booth Ltd. (Mirror Me) for photo

booth services for his son's bar mitzvah (event). Mr. Finkelstein says that he cancelled 69 days before the event, but the respondents did not return his deposit. Mr. Finkelstein claims his \$603.23 deposit.

3. The individual respondent was identified as Shawna Jones in the Dispute Notice but identified herself as Shawna Campbell in both Dispute Responses. I requested and obtained Mr. Finkelstein's agreement to refer to her as Shawna Campbell in these reasons. Ms. Campbell says this is her current legal name but did not provide documentary proof. Because she is still identified as Shawna Leigh Jones in the BC Company search for Mirror Me, I have left the style of cause as it appears in the Dispute Notice.
4. Ms. Campbell says that the contract included a non-refundable 50% booking fee and a term that cancellations less than 90 days prior to the event would forfeit all payments. The respondents say that Mirror Me is entitled to keep the deposit under the contract's terms. The respondents ask that the dispute be dismissed.
5. The applicant is self-represented. The respondent Ms. Campbell represents herself and the respondent Mirror Me, where she is the principal.

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* (CRTA). 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. 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.

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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

10. The issue in this dispute is whether Mr. Finkelstein is entitled to a refund of the \$603.23 deposit.

EVIDENCE AND ANALYSIS

11. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. This means that to succeed, Mr. Finkelstein must prove he is entitled to a refund of his deposit. I have addressed the evidence and submissions only as I find necessary to provide context for my decision.
12. A preliminary issue arises about whether Ms. Campbell is properly named as a respondent. The evidence shows that Mr. Finkelstein's contract was with Mirror Me, and that he dealt with Ms. Campbell as its principal and not in her personal capacity. As a result, I dismiss the claims against Ms. Campbell.

13. On February 16, 2019, Mirror Me issued a \$1,206.45 invoice to Mr. Finkelstein for photo booth services for the event. The invoice does not mention a non-refundable deposit or any other cancellation terms.
14. On February 17, 2019, Mr. Finkelstein paid a deposit of \$603.23 to Mirror Me's email address, by e-transfer.
15. On February 18, 2019, Ms. Campbell and Mr. Finkelstein signed, and agree that they entered, a written contract for photo booth services to be provided at the May 25, 2019 event. There is no dispute between the parties about the terms of the contract which included:
 - a. a non-refundable booking fee of 50% of the total or \$400, "whichever is greater", and
 - b. cancellations made less than 90 days before the event would forfeit all payments received.
16. On March 17, 2019, Mr. Finkelstein emailed Ms. Campbell to tell her that he was cancelling the contract. He gave a reason for cancelling, the details of which are not relevant to this dispute. While Mr. Finkelstein acknowledged that the contract provided the deposit was non-refundable, he asked for a refund because he was providing more than two months' notice.
17. On March 31, 2019, Ms. Campbell emailed Mr. Finkelstein saying that she would be "happy to provide a refund" if she obtained another booking for May 25, 2019. Mr. Finkelstein replied saying that because of Ms. Campbell's refusal to cooperate, he would be starting legal proceedings.
18. The issue in this dispute is whether the \$603.23 deposit was refundable. The contract says it was not. However, the contract is also subject to British Columbia's consumer protection laws.
19. Section 17 of the *Business Practices and Consumer Protection Act* (BPCPA) defines a future performance contract as an agreement for services where the full

amount is not paid, or where services are not supplied in full, at the time of the contract.

20. Mr. Finkelstein paid a deposit, but not the full amount owing, when entering the contract in February 2019. Services were to be provided May 25, 2019. For these reasons, I find that the contract is a future performance contract.
21. Section 23 of the BPCPA says that a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than one year after the date the consumer receives a copy of the contract, if the contract does not contain the information required under section 19, as discussed below.
22. Section 19 of the BPCPA lists information that must appear in a future performance contract. Section 19(b) requires that the contract must include the supplier's business address and, if different the supplier's mailing address. I find that the contract here contains a contact email and phone number for Mirror Me, but no business address. I find that the business address must be complete, such that it could be used as a mailing address, to meet the requirements of section 19(b).
23. The terms of a contract do not override mandatory legislation such as the BPCPA. (see *Saalfeld v. Steve Anonby dba Hot Tubs Galore*, 2018 BCCRT 354 at paragraph 26)
24. Because the contract did not meet the BPCPA requirements for a future performance contract, I find the contract is invalid to the extent it contradicts the BPCPA. Specifically, as discussed below, I find the terms establishing a non-refundable deposit and a 90-day cancellation window invalid.
25. Section 27 of BPCPA says that where a contract is cancelled under section 23, the supplier must refund the consumer all money received under the contract, without deduction, within 15 days after notice of cancellation is given.
26. As a result, I find that Mr. Finkelstein was entitled to cancel the contract anytime within one year of February 18, 2019, when he received a copy of it. He did so on

March 17, 2019, including a reason for cancellation as required under section 54 of the BPCPA. I find Mr. Finkelstein's email of March 17, 2019 to be valid cancellation under the BPCPA.

27. For these reasons, I find that Mirror Me must refund Mr. Finkelstein his deposit of \$603.23, within 15 days of this decision.
28. The *Court Order Interest Act* applies to the tribunal. Mr. Finkelstein is entitled to pre-judgment interest on the \$603.23 from March 17, 2019, the date he cancelled the contract, to the date of this decision. This equals \$5.38.
29. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. Mr. Finkelstein did not claim dispute-related expenses.

ORDERS

30. Within 15 days of the date of this order, I order the respondent Mirror Me Photo Booth Ltd. to pay the applicant a total of \$733.61, broken down as follows:
 - a. \$603.23 as a refund of the deposit,
 - b. \$5.38 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.
31. The applicant is entitled to post-judgment interest, as applicable.
32. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

33. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Julie K. Gibson, Tribunal Member