



Civil Resolution Tribunal

Date Issued: November 5, 2019

File: SC-2019-002640

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kumar et al v. Midda Productions Ltd.*, 2019 BCCRT 1258

BETWEEN:

RONAK KUMAR and SHARON KUMAR

APPLICANTS

AND:

MIDDA PRODUCTIONS LTD.

RESPONDENT

AND:

RONAK KUMAR and SHARON KUMAR

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicants and respondents by counterclaim, Ronak Kumar and Sharon Kumar, hired the respondent and applicant by counterclaim, Midda Productions Ltd. (Midda), to photograph and video their wedding and pre-wedding events. There is no dispute that the Kumars paid Midda the total agreed price of \$5,436.00 for its services.
2. The Kumars say Midda breached the contract by failing to perform the agreed services in full or on time. The Kumars claim a total of \$3,000: \$1,000 for failure to do the bride & groom portrait session, \$1,450 for an allegedly poor video with no guest interviews, and \$550 for a “late fee”. Midda denies the claims and says it fully performed the contracted services, which had no firm product delivery date.
3. Midda initially brought a counterclaim for non-payment of extra services and slander. However, Midda withdrew the counterclaim during the Civil Resolution Tribunal’s (tribunal) facilitation phase and so, I will not comment on it further other than noting the tribunal has no jurisdiction over defamation or slander.
4. The Kumars are represented by Ronak Kumar. Midda is represented by its principal or employee, Amit Kumar.

JURISDICTION AND PROCEDURE

5. These are the tribunal’s formal written reasons. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties’ submissions called each other’s credibility into question, I

find I am properly able to assess and weigh the documentary evidence and submissions before me on the written submissions and without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

7. 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.
8. 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.

ISSUES

9. The issues in this dispute are whether Midda breached the contract by failing to perform the services in full or on time, and if so, whether, and to what extent, the Kumars are entitled to:
 - a. a refund of \$2,450 from the total amount they paid for Midda's services, and
 - b. payment of \$550 as a late fee.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Ronak and Sharon Kumar bear the burden of proving their claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. Midda is a company that provides professional photograph and video services. The parties' signed contract shows that the Kumars bought a "wedding photo & video" package from Midda covering 4 separate "events" held in August, November and December 2018. The Kumars provided submissions on several alleged problems with the standard and quality of Midda's services over those 4 events. However, their requested remedies are limited to Midda's failure to provide the agreed services for the 4th event, which was the December 1, 2018 wedding ceremony and reception, and delay in delivering the finished product (photographs, videos, and photobook).

Wedding Portraits and Video

12. The parties' signed contract in evidence says the 4th event would include, "Photography + Videography + Cinematography + Interviews". It also stipulates a "Bride Groom Portrait Session" and other unrelated items.
13. The parties agree that a portrait session was included in the contract price but dispute whether it was ever done during the 4th event. I find Midda is the party best able to show it was done, but it provided no evidence of the session such as copies of the portraits. Based on Midda's lack of evidence, I draw an adverse inference. I find it more likely than not that Midda failed to conduct the portrait session, and so I find it breached the parties' contract. I discuss damages for the breach below.
14. The Kumars also say Midda failed to include interviews in their wedding video as agreed and the finished video quality is poor. The Kumars say they expected interviews because they are one of the contract deliverables and Midda had shown them an example video that included interviews. The Kumars say the interviews

were unique and influenced them to hire Midda because they would have captured their guests' advice and comments on their wedding day, many who had traveled from overseas. The example video in evidence includes several interviews with guests, which I find personalized the end product as described by the applicants.

15. Midda does not dispute having shown the Kumars an example video with interviews, but it says video interviews were not part of the Kumars' purchased package price. Midda says the "interviews" listed in the contract were for a "storyline" only and were never meant to be in the video itself. Yet I find no evidence that Midda had actually carried out any interviews during the 4th event whether for a storyline or otherwise. It produced no recording of the interviews.
16. It is undisputed that Midda wrote the contract. I find the terms were mostly written to its benefit. Given this, I find Midda should have clearly defined the word 'interviews' if it meant something other than recording guest interviews. In any event, considering Midda's example video, I find it more likely than not that video interviews were intended to be a deliverable in the parties' contract. I find Midda breached the contract by failing to interview guests and by not including interviews in the wedding video.
17. Apart from having no interviews, I found overall that the Kumars' video was inferior and unfinished as compared to the example and what I find an ordinary person would expect of a professional videographer. I infer from the images that Midda did little to capture the best shots or edit the video because there were many sustained shots of people distracted or with body language unsuitable for a wedding video. I find it was an implied term of the parties' contract that Midda would produce a video consistent with the standards of its profession. I find it did not produce a professional quality video. I find Midda breached the contract by producing a sub-standard video product.
18. In its submissions, Midda offered to do the interviews and portraits now. The Kumars decline because they say the wedding is over, they cannot recreate it, and many guests returned home overseas. Normally, the tribunal will not grant specific

performance where monetary compensation will suffice. I find not only that compensation is sufficient, but it is the remedy the Kumars reasonably seek. I find the Kumars are entitled to a refund. The question is how much.

19. The total contract price of \$5,436 is not broken down by event or deliverable. As mentioned, the Kumars ask for a total of \$2,450 for the sub-standard video (\$1,450) and missing portraits (\$1,000). It is undisputed that Midda normally charges about \$1,490 for an engagement portrait session. I allow the claimed amount of \$1000 for the missing portraits. The Kumars still have a video of their wedding, but I find its value diminished by the missing interviews and unprofessional quality. On a judgment basis, I am satisfied in the circumstances that \$1,450 is reasonable compensation for the video. I find that Midda must reimburse the Kumars a total of \$2,450 in damages for breach of contract.

Product Delivery – Late Fee

20. As for the product delivery, Midda admits that the items were delivered after the estimated dates in the contract. The photographs and video were delivered about 17 days after the estimated date and the photobook took much longer. However, the contract does not provide for “late fees”. Further, the contract delivery date was an estimate and there is no evidence the parties discussed a firm delivery date. I find the Kumars have not established that Midda breached the contract by late delivery. Even if it had, I find the Kumars have not shown that they suffered any loss apart from inconvenience. I dismiss the Kumars’ claim for a \$550 late fee.

Interest, Fees, and Dispute-Related Expenses

21. The *Court Order Interest Act* applies to the tribunal. The Kumars are entitled to pre-judgment interest on the \$2,450 refund from August 1, 2018 to the date of this decision. This equals \$55.34.
22. 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 Kumars were mostly successful in this dispute, I will allow \$125 as reimbursement of their tribunal fees. The Kumars claimed no dispute-related expenses.

ORDERS

23. Within 30 days of the date of this order, I order Midda to pay Ronak and Sharon Kumar a total of \$2,630.34, broken down as follows.
 - a. \$2,450.00 in damages,
 - b. \$55.34 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125.00 in tribunal fees.
24. The Kumars are entitled to post-judgment interest, as applicable.
25. The Kumars' claim for \$550 in late fees is dismissed.
26. 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.

27. 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.

Trisha Apland, Tribunal Member