



Civil Resolution Tribunal

Date Issued: June 8, 2020

File: SC-2020-000491

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ciprani (dba Ciprani's Bridal Shop) v. Alphonse*, 2020 BCCRT 635

B E T W E E N :

TIZIANA CIPRANI (Doing Business As CIPRANI'S BRIDAL SHOP)

APPLICANT

A N D :

ARIANE ALPHONSE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about the sale of bridal party dresses. The applicant, Tiziana Ciprani (dba Ciprani's Bridal Shop), says that the respondent, Ariane Alphonse, did not pay

the outstanding amount for bridal party dresses. The applicant claims \$1,652.28 as the amount owing for the dresses. The applicant represents herself.

2. The respondent says that she never had a signed contract with the applicant. She says that she paid a deposit on January 18, 2019 for her wedding dress, but the applicant told her, despite the deposit, 50% had to be paid on all the dresses before placing the order. She says the respondent also told her that the other 50% was due after the dresses were altered.
3. The respondent says that in April 2019 her sisters were measured for their dresses and she told the applicant at that time not to place the order yet because she was not completely sure about what dresses she wanted but the applicant ordered them anyway. She says she should not have to pay the amount the applicant is requesting as outstanding on all the dresses. The respondent represents herself.

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 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "she said, she said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the

court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether the respondent breached the terms of an agreement between the parties and whether she should have to pay the claimed balance owing for the dresses.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, the applicant must prove her claim on a balance of probabilities.
10. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
11. It is undisputed that there was no signed contract between the parties. The respondent gave the applicant a deposit on her wedding dress on January 18, 2019. She also picked out dresses for her bridesmaids. The respondent says that the applicant told her that a 50% deposit was due on the entire order before the order would be placed and then 50% was required after the alterations were done.

12. The respondent says that a 50% deposit was never paid on the entire order and so the applicant should not have placed the order. The applicant admits that a 50% deposit was not paid on the entire order. The respondent also says that she told the applicant that she was having doubts about the original dresses chosen because she thought they were too short. She further states she told the applicant that she did not have a firm date set for the wedding. I infer from this that the respondent was in no rush to get the dresses.
13. The respondent says that the applicant ordered the dresses anyway and then kept harassing her for payment so she told her in August 2019 that she could keep the dresses because she no longer wanted to deal with her.
14. The applicant does not dispute that there was no signed contract between the parties. She says that her “contract” is posted throughout the store. I accept that signage and the surrounding circumstances can set out the terms of a contract. In *Webster v. Robbins Parking Service Ltd.*, 2016 BCSC 1863, the Court considered whether signage in a parking lot set out the terms of a valid agreement. The Court stated that the elements required for a contract to be formed were outlined by Wong J. in *Reynen v. British Columbia Lottery Corp.*, [1997] B.C.J. No. 1485 at para. 44 (S.C):
 - a. the parties to the contract must be known
 - b. there must be *consensus ad idem* (a meeting of the minds) with respect to the expectations of the parties,
 - c. one party must offer and the other party must accept the terms of the contract,
 - d. consideration must flow from each of the parties,
 - e. there must be certainty as to the subject matter and specificity in respect of the substantive terms of the contract,
 - f. there must be mutuality between the parties.

15. I find that the signage in the applicant's store and the surrounding circumstances do not satisfy these requirements. Specifically, the signage did not set out that its terms were part of a contract. Rather, I note that what the applicant calls a contract is actually referred to as a policy on the signs posted throughout the store. The applicant says that she informs every person that is purchasing a dress the terms of the policy out loud. She says she then asks every purchaser if they understand and that she then makes sure that they say yes.
16. The applicant has provided pictures of her policy signs that she argues make up the terms of the contract. In submissions she says that the terms of the contract are that a 50% deposit is placed on each of the dresses, a colour and style have been chosen, and measurements are taken, then the order is placed.
17. I find this is not all that the policy signs say. The signs say that the purchaser must choose a dress and get measured, then a 50% non-refundable deposit is required on the entire dress order. This is similar to what the applicant outlined in her submissions. However, the policy goes on to say that the supplier takes ten weeks to make the dresses and that the purchaser can make installment payments during this time prior to shipping. The policy also says that the entire order must be paid for in full before "shipping is allowed." The wedding party is then notified of the arrival and the dresses must be picked up during regular business hours.
18. The applicant admits that she placed the order even though the 50% deposit was not paid. She says she did this because she felt badly that one of the bridesmaids could not afford to put down the deposit. She does not suggest that the respondent told her to place the order and the applicant did not provide any evidence that the respondent gave her permission to do so.
19. The respondent says that it was actually 2 bridesmaids who had not put down the deposit. She also points out that the applicant has admitted that she did not follow her own policy when she ordered the dresses without the 50% deposit on all of the

dresses. The applicant disputes this and says it was only one bridesmaid who had not paid her deposit. I find it irrelevant whether it was 1 or 2 bridesmaids who had not paid their deposit.

20. The root of this dispute is about the terms of the parties' agreement and whether they were breached. The applicant says that the policy set out the terms and then the respondent verbally agreed. While verbal agreements are still enforceable, the reality is that they are typically much harder to prove than written agreements.
21. As noted, the applicant says that she made sure that every member of the bridal party verbally confirmed that they understood. She has provided no proof of this. Further, the applicant does not say that she makes every client verbally agree that the remaining 50% of the cost must be paid before the dresses are shipped from the supplier, even though this is written on the policy signs. The posted policy states that the dresses will not be shipped unless the dresses are paid in full.
22. On a reading of the policy, I take shipping to mean from the supplier to the applicant because right after this the policy says that the wedding party will then be notified that the dresses have arrived and can be picked up. Therefore, I find shipping does not mean from the applicant to the respondent but from the supplier to the applicant. However, it is undisputed that the remaining 50% of the dresses' cost was not paid. Therefore the applicant should not have arranged for shipment of the dresses.
23. Based on the evidence, I find that the applicant has not proved that the respondent breached or even agreed to the terms of the alleged agreement. Posting a policy sign states the terms of a policy, it does not have the clarity to set out that these are the terms of a binding agreement. Policies can be changed, applied in a discretionary fashion, and are not binding agreements. They do not have the same significance as a term of a contract. Also, there is no proof that the respondent acknowledged that the policy would apply to her.
24. Further, whether a policy or the terms of an agreement, the applicant admits to breaching them herself. She placed the order although she had not received a 50%

deposit on all the dresses. She did not have the right to do this under the terms of her own policy. Additionally, she arranged for shipping of the dresses even though she had not received the remaining 50% that her policy sign says is required.

25. Based on the evidence, I find that the applicant has not proved that the respondent breached the terms of their agreement and therefore she is not entitled to the amount she says is outstanding on the dresses.

26. 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. As the applicant was unsuccessful, she is not entitled to reimbursement of her tribunal fees. The applicant also requests reimbursement for time she closed her store to deal with this dispute. Even if the applicant was successful on this dispute, I would not have awarded this expense as the tribunal typically does not reimburse parties for time spent on the dispute. The respondent did not pay fees or claim expenses.

ORDERS

27. I dismiss the applicant's claims and this dispute.

Kathleen Mell, Tribunal Member