



# Civil Resolution Tribunal

Date Issued: July 20, 2020

File: SC-2020-000558

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pires v. Newlands Golf & Country Club Ltd.*, 2020 BCCRT 801

B E T W E E N :

PEDRO PIRES and KIRAN SANDHU

**APPLICANTS**

A N D :

NEWLANDS GOLF & COUNTRY CLUB LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about a contract for wedding services and personal injury.
2. The applicants, Pedro Pires and Kiran Sandhu, say the respondent, Newlands Golf & Country Club Ltd. (Newlands), failed to provide satisfactory wedding services, as agreed upon. The applicants also say the respondent failed to properly install a

dance floor and vinyl wrap, which led to Mr. Pires falling and injuring his left hip. The applicants claim \$1,171.52 for unsatisfactory photography, \$729.12 for unsatisfactory catering, \$1,087.24 for failing to properly install a dance floor, \$95.98 for unapproved specialty wine, and \$605 for unsatisfactory wine service. The applicants also claim \$1,311 for Mr. Pires' hip injury and general "pain, stress and strain", which I infer is a claim for mental distress.

3. The respondent agrees it erred in serving specialty wine to the wedding guests but denies the remaining alleged contract breaches. The respondent says it already reimbursed the applicants \$1,087.24 for half the cost of the dance floor wrap as a gesture of good faith. It says the remainder of its wedding reception services were satisfactory and denies it owes the applicants any further refund.
4. The applicants each represent themselves. The respondent is represented by an employee.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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.
7. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT 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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did the respondent breach the contract by failing to provide sufficient photography, catering, wine service, or dance floor and, if so, what is the appropriate remedy?
  - b. Is the respondent responsible for Mr. Pires' left hip injury and, if so, what is the appropriate remedy?
  - c. Are the applicants entitled to damages for mental distress and, if so, how much?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim, such as this one, the applicants must prove their claims on a balance of probabilities. Although I have reviewed all the parties' submissions and evidence, I refer only to that which explains and gives context to my decision. Although the respondent provided submissions on each issue, it did not provide any evidence, despite being given the opportunity to do so.
11. On October 27, 2018 the respondent entered into an agreement with the applicants to provide wedding reception services at its premises on October 18, 2019. The applicants met with AW, the respondent's catering services coordinator, on August 25, 2019 to discuss wedding details. In addition, Ms. Sandhu emailed back and forth with AW several times leading up to the wedding. All of this is undisputed.

12. I find the October 27, 2018 agreement, the August 25, 2019 detail meeting discussion, and the emails between Ms. Sandhu and AW all form part of the terms of the contract between the applicants and the respondent. The applicants provided portions of the October 27, 2018 agreement but neither party provided the entire document. I agree with the applicants that it is an implied term of the contract that the respondent would perform its obligations honestly and in good faith (see *Bhasin v. Hrynew*, 2014 SCC 71). I further find the contract implies that the agreed upon services would be performed in a professional manner (see *Wei v. Lang*, 2019 BCCRT 246, which is not binding on me but I find helpful).
13. The respondent's October 22, 2019 invoice identifies a "Club Wed" package for 150 guests, plus more for additional services, tips, and taxes, for a total cost close to \$30,000 to the applicants.

### ***Photography***

14. The respondent says the Club Wed package includes pre-ceremony, ceremony and reception photo coverage over 6 hours, plus a finished album. Based on the October 22, 2019 invoice I find the applicants paid an additional \$600 for 3 extra hours of photo coverage, plus \$750 to receive digital copies of all the photos.
15. The applicants say the respondent's photographer, SM, was hard to find at various times before and after the wedding. This is supported by the statements of 2 of Mr. Pires' family members, who say SM failed to take certain family photos. The applicants also say they had to recreate their grand entrance for SM as she missed it.
16. SM met with the applicants in November 2019 and gave them 566 photos. The applicants say SM told them, at the November meeting, that she typically takes between 100 and 150 photos per hour and edits them. The applicants argue they received far less photos from SM than they expected.
17. The respondent says there was no guarantee about the quantity of photos. As noted, the applicants did not provide a copy of their contract with the respondent.

SM's comments about shooting 100 to 150 photos per hour were made after the wedding and, as such, I find SM or Newlands did not agree to provide any specific amount of wedding photos to the applicants.

18. The applicants provided an April 24, 2020 letter from Mehdi Nowrooz, a professional wedding photographer and videographer with 10 years of experience. Under CRT Rule 8.3, I accept Mr. Nowrooz as an expert for the purpose of providing an opinion on the quality of SM's wedding photographs. Mr. Nowrooz says he has photographed weddings at the respondent's location. Mr. Nowrooz observed SM's photos were grainier than expected of a professional wedding photographer.
19. The applicants provided a sample of SM's photos from the wedding, samples of other photos from SM's social media site, and the applicants' engagement photos, taken by SM. From my review of the applicant's photos, I agree that SM's wedding photos are slightly blurry and of lesser quality than the other examples of photos previously taken by SM. Based on Mr. Nowrooz's opinion I find some of SM's wedding photos are below the expected standard of a professional wedding photography. However, I note these are only a few of SM's 566 photos and that Mr. Pires' family members stated that some of the photos taken were "very pretty".
20. On balance, I find SM failed to provide the expected degree of professional services, in quality of photos, and in failing to capture specific events. As SM is the respondent's employee, I find the respondent breached its contract with the applicants by failing to provide satisfactory wedding photography.
21. Based on a portion of the contract provided by the applicants, I find the respondent agreed to provide one large engagement portrait. I accept as true the applicants' statement they did not receive that portrait, contrary to their agreement with the respondent.
22. The applicants ask for \$1,171.52, the value of 5.23 hours of work they say SM did not provide. Given the respondent did not agree to a certain number of photos, I

disagree with this calculation method. On a judgment basis I find the applicants are entitled to \$500 for insufficient photography services.

### **Catering**

23. Based on the October 22, 2019 invoice I find the applicants paid \$729.12 for a custom menu pre-dinner reception. The applicants say they asked AW to provide cutlery in the August 25, 2019 details meeting. The respondent says the applicants had a cocktail reception, which does not need cutlery. It did not address the applicants' custom menu, which I accept included specific foods that would be messy to eat without cutlery. Further, the respondent has not provided any evidence contradicting that AW agreed to provide cutlery. Overall I find the respondent agreed to provide cutlery for the reception.
24. I do not accept the respondent's argument that staff provided forks to those guests who asked for them, as the respondent provided no supporting evidence, such as a statement from the staff working that day. Although the applicants were not present at the pre-dinner reception, they provided 4 wedding guest statements saying there were no staff present during the pre-dinner reception.
25. I find the respondent failed to provide cutlery during the pre-dinner reception, contrary to its agreement. However, it did provide the custom menu ordered and the applicants failed to prove the food was not eaten at all. On a judgment basis, I find the applicants are entitled to a refund of \$380, approximately half the \$729.12 they paid for the custom menu.

### **Wine Service**

26. The respondent acknowledges that it provided 2 bottles of premium wine to wedding guests in error and agrees to reimburse the applicants the premium wine charge of \$95.98. I find this reasonable.
27. The applicants further say AW agreed, in the August 25, 2019 details meeting, to have 2 open bottles of wine on each table by 5:30 pm, as part of the Club Wed

package. The respondent says it told the applicants wine would be placed on the tables at 6:30 pm but provided no supporting evidence. I prefer and accept the applicants' statement for the following reasons.

28. The applicants say wine was still missing from some tables at 6:45 pm, and I find this to be true based on the applicants' time stamped photos and statements from wedding guests. Based on the applicants' submissions and wedding guest statements I also find the respondent failed to serve wine to the applicants and some wedding guests when asked to do so. Mr. Pires' says he saw several bottles of unopened wine at the bar close to midnight and that an employee of the respondent (SL) told him the wine was mistakenly not served during dinner. As the respondent has not provided any contradictory evidence, such as a statement from SL, I accept Mr. Pires' statement. Overall, I find the respondent failed to serve some of the agreed upon dinner wine.
29. The applicants also say that the host bar did not open until after 6 pm, which is supported by wedding guest statements. Based on the invoice, the bar was scheduled to open at 5:30 pm. Due to the late bar opening and lack of table wine, I find there were no drinks readily available for wedding guests until after 6 pm.
30. It is undisputed that the respondent removed open wine bottles from the tables at midnight, although the reception ran until 1 am. The respondent says it removed the wine because its liquor licence requires it to stop alcohol service at midnight. I agree with the applicants that the wine had already been served, by being opened and placed on the table. The respondent has not shown it had any obligation to remove the opened wine bottles under its liquor licence. Section 90(1) of the *Liquor Control and Licencing Regulation* says a licensee must take liquor from patrons within ½ hour after the end of liquor service, not at the time liquor service ends.
31. I find the respondent failed to provide the expected degree of wine and bar service at the wedding reception. The applicants acknowledge they do not know how many bottles of wine were not served and do not explain how they calculated \$605 in

damages. On a judgment basis I award the applicants \$200 for insufficient wine service.

### ***Dance Floor***

32. It is undisputed that the respondent designed and installed a monogrammed vinyl floor wrap directly over the carpet to be used as the dance floor. Based on a series of July and August 2019 emails between Ms. Sandhu and AW, I find that a custom designed vinyl “floor wrap” is what the parties contracted for. AW specifically told Ms. Sandhu the dance floor would be carpet and thereafter referred to a custom dance floor. On the evidence before me I find Newlands did not agree to provide a temporary hard surfaced dance floor in addition to the vinyl floor covering, as the applicants allege. Therefore, I find the respondent did not breach the agreement by failing to provide a temporary hard dance floor under the vinyl floor wrap.

33. Even if I had found that the respondent agreed, but failed, to provide a temporary hard dance floor, I would have not awarded any damages to the applicants, as the respondent has already reimbursed them \$1,087.24, which is half the cost of the vinyl floor wrap.

34. I dismiss the applicants’ claim for \$1,087.24 for the allegedly improper dance floor.

### ***Mr. Pires’ Hip Injury***

35. Mr. Pires says he slipped on the vinyl dance floor and fell on his left hip. I accept this to be true as it was witnessed by 2 of the wedding guests that provided statements.

36. Section 3 of the *Occupiers Liability Act* requires the respondent to take reasonable care to ensure its property was reasonably safe in the circumstances. The standard of care under the *Occupiers Liability Act* is the same standard of care for common law negligence, which is to protect others from an objectively unreasonable risk of harm (see *Agar v. Weber*, 2014 BCCA 297). Mr. Pires must show that there was a hazard on the floor, that hazard caused him to fall and that the respondent did not



take reasonable steps to ensure that such a hazard would not exist (see *Fulber v. Browns Social House Ltd.*, 2013 BCSC 1760).

37. The applicants' photos show that the guests' shoes sank into the vinyl flooring over the carpet and that the vinyl was uneven and rippled. Based on wedding guest statements, I accept that both men's and women's shoes slipped on, and got stuck in, the vinyl floor wrap. Mr. Pires says he spoke to SL about the vinyl floor as it started to lift and tear during the course of the evening, but SL said there was nothing he could do about it. As the respondent has not disputed Mr. Pires' statement, I accept it as true.
38. I find the respondent created a hazard by installing a vinyl wrap over carpet, which resulted in the wedding guests' shoes slipping and sticking in the floor wrap. As a wedding venue, I expect the respondent knew, or ought to have known, that installing the vinyl wrap this way could create a hazard. I further find the respondent, through its employee SL, knew the floor was uneven, lifting, and ripped but failed to take action to remedy the situation. I find that Mr. Pires' slipped and fell on the vinyl flooring due to its hazardous nature, as other wedding guests stated they removed their shoes and/or declined to dance as they felt the vinyl flooring was unstable. Overall, I find the respondent failed to protect the wedding guests, including Mr. Pires, from the objectively reasonable risk of slipping or tripping and falling on the vinyl floor wrap.
39. Based on an April 24, 2020 letter from Dr. Sigurdson, chiropractor, I find Mr. Pires sustained a left hip strain/sprain in the slip and fall resulting in hip pain. Based on a health care claims history Mr. Pires provided, I find he received chiropractic treatment once in October 2019 and once in November 2019 for his left hip. Based on the limited evidence in this case, I find Mr. Pires' sustained a very minor hip injury of short duration, with no evidence of disability. On a judgment basis I find \$500 in non-pecuniary damages (damages for pain and suffering) is appropriate for Mr. Pires' left hip sprain/strain injury.

## ***Mental Distress***

40. The applicants say the wedding was supposed to be outdoors and that AW changed it to indoors without consulting them. The applicants' photos show overcast weather but no rain. Based on a portion of the contract provided by the applicants I find the respondent agreed to confirm the location of the ceremony with the applicants at least 2 hours in advance but failed to do so here.
41. I accept Mr. Pires' statement that the respondent provided no clear direction for guests upon arrival, as this is supported by a wedding guest statement. Based on wedding guest statements and the wedding video, I find the applicants' grand entrance into the reception hall was delayed due to miscommunication and that when they did enter, their way to the head table was blocked by the roped off dance floor.
42. The applicants say AW told them she would take care of everything regarding the flow of events, however, she left at 5 pm and handed it off to SL who failed to communicate with the applicants. I find the respondent failed to provide a smooth wedding reception, as agreed upon.
43. The applicants say AW agreed to provide audio visual equipment, as part of the August 25, 2019 details meeting. The respondents say the equipment was not contracted for and was a last minute addition. Again, the respondents provided no supporting evidence such as a statement from AW. I accept that the applicants spent time prior to the wedding to create a slideshow, which supports their statement that AW said audio visual equipment would be provided.
44. I further find the respondent failed to set up and test the equipment prior to the wedding reception, based on the applicants' submissions and the guest statements. I find this resulted in delay and sound issues with the wedding slideshow and speeches throughout the event, as described by the guests. .

45. Based on emails between Ms. Sandhu and AW and the applicants' wedding photos, I find the respondent failed to deliver the agreed upon style of wedding cake and ice sculpture.
46. Based on the April 24, 2020 letter of Mr. Krause, counsellor, I find the applicants experienced higher levels of stress and anxiety following the wedding. Specifically, the applicants were disappointed with the photographer, the venue, and Mr. Pires' injury due to alleged improper installment of the dance floor.
47. The applicants say that, overall, the respondent failed to provide the agreed upon wedding reception and that they will not be able to recreate a positive wedding experience. They say the respondent's breaches of contract caused them pain, stress and strain on their relationship, which I find is essentially a claim for mental distress.
48. I find that the agreement between the applicants and the respondent was a contract for peace of mind in relation to the wedding and reception (see the non-binding decision of *Dame v. Riverside Banquet Halls Ltd.*, 2019 BCCRT 434, referring to *Graham v. Total Wedding Event Centre Ltd.*, 2015 CanLII 46106 (ON SCSM)). Damages for mental distress are available as remedies for breach of contract where the object of the contract is peace of mind, as is the case here (see *Wilson v. Sooter Studios Ltd.*, 1988 CanLII 3100 (BCCA)).
49. The applicants claim \$1,311 for their pain, stress, and suffering. I find part of that claim includes Mr. Pires' claim for pain and suffering for his left hip injury, which I have addressed above. On a judgment basis, I award the applicants a further \$811 for mental distress arising from the respondents' multiple breaches of the wedding contract.
50. In summary, I find the applicants are entitled to a total of \$1,986.90 for breach of contract damages, including \$811 for mental distress. Mr. Pires alone is entitled to further damages of \$500 for his hip injury.

51. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to \$27.67 in pre-judgment interest on \$3,047.47 from October 18, 2019, the date of the wedding, to the date of this decision. Under section 2 of the COIA, Mr. Pires is not entitled to pre-judgment interest on his award for non-pecuniary damages.
52. Under section 49 of the CRTA and CRT rules, the CRT 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 applicants are entitled to reimbursement of \$175 in CRT fees and \$200 in dispute-related expenses for MN's photography opinion. I further find Mr. Pires is entitled to reimbursement of \$50 in dispute-related expenses for Dr. Sigurdson's report.

## **ORDERS**

53. Within 14 days of the date of this order, I order the respondent to pay the applicants a total of \$2,389.65, broken down as follows:
  - a. \$1,986.90 as breach of contract damages,
  - b. \$27.67 in pre-judgment interest under the COIA, and
  - c. \$375 for \$175 in tribunal fees and \$200 for dispute-related expenses.
54. Within 14 days of the date of this order, I order the respondent to pay Mr. Pires a total of \$550.00, broken down as follows:
  - a. \$500 for left hip pain and suffering,
  - b. \$50 for dispute-related expenses.
55. The applicant is entitled to post-judgment interest, as applicable.
56. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

57. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Sherelle Goodwin, Tribunal Member