



Civil Resolution Tribunal

Date Issued: August 4, 2020

File: SC-2020-002805

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bal v. Infinite Entertainment Sound and Lighting Inc.*, 2020 BCCRT 865

BETWEEN:

HARROOP BAL

APPLICANT

AND:

INFINITE ENTERTAINMENT SOUND AND LIGHTING INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about the return of a deposit for wedding DJ services. The applicant, Harroop Bal, says she and her husband, KK, hired the respondent, Infinite Entertainment Sound and Lighting Inc. (Infinite), to perform various services at their wedding reception scheduled for March 29, 2020. As a result of the Covid-19

pandemic, Ms. Bal says they had to cancel their event and she seeks the return of the \$1,750 deposit they paid to Infinite.

2. Infinite says the deposit was non-refundable, but that it offered to apply the deposit to a postponed event date, which Infinite says KK agreed to. Infinite says Ms. Bal did not like that agreement, and demanded the deposit refunded, which it declined to do.
3. Ms. Bal is self-represented. Infinite is represented by an employee.

JURISDICTION AND PROCEDURE

4. 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 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT'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 British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
6. 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.

7. In resolving this dispute the CRT may make one or more of the following orders, where permitted by 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

8. The issue in this dispute is whether the parties' contract was frustrated, such that Ms. Bal is entitled to a return of the \$1,750 deposit.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Ms. Bal bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. It is undisputed that Ms. Bal and KK entered into a contract for Infinite to provide various wedding services for their March 29, 2020 wedding reception. Services included rental and use of several pieces of audio-visual equipment, lighting and haze machine, a white vinyl dancefloor with personalized graphics, stage, and DJ services. The package's total cost was \$3,500, with a 50% deposit (\$1,750) due on signing and the remaining 50% (\$1,750) due on March 22, 2020, one week before the event.
11. The terms of the contract also indicated that \$875 of the initial \$1,750 deposit was non-refundable, with the other \$875 refundable until February 29, 2020. The contract's terms stated that Ms. Bal and KK could cancel the contract any time up to 30 days before the event (so, February 29, 2020, as noted above) to qualify for the

\$875 refund, and that the other \$875 non-refundable deposit could be used towards a future event to take place within 60 days.

12. It is undisputed the \$1,750 deposit was paid on January 19, 2020. From January 19 to March 14, 2020, the evidence shows Infinite performed various preparatory services for Ms. Bal. These services including designing custom graphics for the vinyl dancefloor, and mixing numerous songs for Ms. Bal to perform a dance at the reception.
13. On or about March 11, 2020, KK spoke to Infinite and advised they needed to cancel the reception due to incoming Covid-19 pandemic restrictions on gatherings of more than 50 people. It is undisputed that there were about 450 guests expected for the March 29, 2020 reception.
14. Infinite says when it was advised of the cancellation, it offered Ms. Bal and KK several options, including the ability to delay the services for up to 18 months, to apply the deposit to a less expensive event (such as a reception for 50 people), or that the clients could sell their deposit to a third party and Infinite agreed to honour the deposit as transferred. Infinite says although KK agreed with the options presented, Ms. Bal was unhappy, and subsequently demanded a full refund.
15. Ms. Bal says that due to the Covid-19 pandemic restrictions on gathering, the contract has been frustrated such that it cannot be performed, and therefore she is entitled to a refund. Infinite says the parties are bound by the contract, and that the \$1,750 is non-refundable. Infinite further says the work it already performed in anticipation of the event more than accounts for the \$1,750 already paid, and therefore Ms. Bal is not entitled to any refund.
16. It is undisputed the parties' contract did not contain a "force majeure" clause, which is where the parties agree about what will happen in the event of unforeseen circumstances (such as the Covid-19 pandemic) preventing someone from fulfilling a contract. In the absence of such a clause, the common law doctrine of frustration applies.

17. A contract is frustrated when an unforeseeable event occurs, for which the parties made no provision, where the contract becomes a thing radically different from that which was originally agreed (see: *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58 at paragraph 53).
18. Here, it is undisputed the Covid-19 pandemic and the government imposing restrictions on gatherings was unforeseeable at the time the parties entered into the contract. Additionally, as noted above, there was no provision in the contract dealing with such a situation. The question then is if the Covid-19 pandemic changed the contract so radically from the parties' original agreement, and I find it did not.
19. I say this because although the government restrictions on gatherings of more than 50 people limited Ms. Bal's intended reception attendance, this does not render the parties' contract impossible. Rather, Infinite was willing and able to perform the contract, either with a smaller group in attendance on the original March 29, 2020 date, or some future date within 18 months. For a contract to be frustrated, it must be truly impossible to continue to perform the terms of the contract, not just inconvenient, undesirable, or uncomfortable (see: *Wilkie v. Jeong*, 2017 BCSC 2131). Although I acknowledge Ms. Bal's wish for a large wedding reception, as noted above, just because an event (the Covid-19 pandemic restrictions on gathering) has made performance of a contract undesirable does not mean the contract is frustrated. I find the restriction on gathering did not radically change the parties' agreement, which was not based on the requirement of any minimum attendance. I find the contract was not frustrated. Therefore, the existing cancellation terms of the contract apply.
20. Based on the parties' contract, as discussed above, Ms. Bal is not entitled to any refund of the \$1,750. First, the \$875 was non-refundable in any event, and second, the remaining \$875 is not refundable given Ms. Bal's cancellation request came after the February 29, 2020 (30 days before the event date) cancellation refund deadline. As a result, I dismiss Ms. Bal's claim for a refund. I acknowledge Infinite's

prior offers to apply the deposit to a future event, which Ms. Bal refused. Given this dispute proceeded, I find Infinite is not bound by its earlier offers.

21. Given my findings above, I do not need to address Infinite's argument relating to payment for work completed under the contract. I make no findings about Infinite's entitlement to payment for work done under the agreement beyond the deposit paid.
22. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Ms. Bal was not successful, I find that she is not entitled to reimbursement of her paid tribunal fees. Infinite did not pay tribunal fees, and neither party claimed dispute-related expenses.

ORDER

23. I order Ms. Bal's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair