



# Civil Resolution Tribunal

Date Issued: September 17, 2020

File: SC-2020-004010

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Van Hoepen v. Chilliwack Golf and Country Club Holdings Ltd.*,  
2020 BCCRT 1048

B E T W E E N :

DANIELLE VAN HOEPEN

**APPLICANT**

A N D :

CHILLIWACK GOLF AND COUNTRY CLUB HOLDINGS LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about the return of a deposit for a wedding venue. The applicant, Danielle Van Hoepen, says she hired the respondent, Chilliwack Golf and Country Club Holdings Ltd. (Chilliwack Golf), to provide various services for her wedding

scheduled for June 5, 2020. As a result of the Covid-19 pandemic, Ms. Van Hoepen says Chilliwack Golf was unable to fulfil its contractual obligations and she seeks the return of the \$2,500 deposit she paid.

2. Chilliwack Golf says the deposit was non-refundable, but that it offered to hold Ms. Van Hoepen's wedding with fewer guests or to apply the deposit to a later date if Ms. Van Hoepen re-scheduled her wedding. Chilliwack Golf says Ms. Van Hoepen declined its offers and demanded the deposit refunded, which it declined to do.
3. Ms. Van Hoepen is self-represented. Chilliwack Golf is represented by its general manager.

## **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 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.
5. 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.
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. 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 CRT considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether the parties' contract was frustrated, such that Ms. Van Hoepen is entitled to a return of the \$2,500 deposit.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant Ms. Van Hoepen 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. Van Hoepen entered into a contract for Chilliwack Golf to provide various services for her wedding. The services included providing the venue, DJ, decorator, and all food and beverages served at the wedding. While the total cost for these services is not before me, it is undisputed that Ms. Van Hoepen paid a \$2,500 deposit on April 5, 2019.
11. The terms of the contract Ms. Van Hoepen signed indicated that a minimum of 100 guests was required to book the wedding with Chilliwack Golf and a non-refundable \$2,500 deposit was required to confirm the event booking. The contract stated that in the event of a cancellation, the \$2,500 was "non-refundable and non-transferable under any circumstances". The contract also stated that \$1,500 would be regarded as a down payment towards the total cost of the event and \$1,000 would be refunded 5 business days after the event assuming no damages or outstanding balance was owing.
12. Chilliwack Golf submitted email correspondence between it and Ms. Van Hoepen from April and May 2020. These emails show that on April 7, Chilliwack Golf told

Ms. Van Hoepen that it was hoping the government-imposed restrictions on social gathering sizes would be lifted in time for Ms. Van Hoepen's wedding but offered at that time to re-schedule her wedding to 2021. On April 23, Chilliwack Golf wrote Ms. Hoepen confirming the 50-person restriction on social gatherings was extended through the summer. It told Ms. Hoepen it was working on wedding packages for 50 guests, but if she did not want to restrict the size of her wedding, it was working to re-schedule weddings to 2021. Ms. Van Hoepen responded that due to the changes, she would not be moving ahead with the planned wedding and asked about a refund of her deposit.

13. Chilliwack Golf replied to Ms. Van Hoepen on April 29, confirmed the deposit was non-refundable, and asked if Chilliwack Golf could do anything to keep her wedding at its venue. On May 4, Ms. Van Hoepen responded that she had decided to move forward with Chilliwack Golf's venue for her wedding "as originally planned", which included 120 guests.
14. On May 8, 2020, Chilliwack Golf advised Ms. Van Hoepen that it was still in the process of determining whether it could host smaller weddings of 50 people, but given it was, at that time, unable to host weddings of any size, it again offered to re-book Ms. Van Hoepen's wedding in 2021. Ms. Van Hoepen responded that because Chilliwack Golf was unable to fulfill its end of the contract, she wanted her deposit refunded.
15. Ms. Van Hoepen says that Chilliwack Golf was unable to provide the venue for her wedding due to Covid-19, so her deposit should be refunded. Chilliwack Golf says that in addition to planning sessions with Ms. Van Hoepen in person, by email, and by phone, it had already paid retainers to third-party vendors for the wedding, including the DJ, baker, and decorator, each of whom had also already consulted with Ms. Van Hoepen. It also says that it was ultimately able to offer its clients wedding packages for 50 or fewer guests in 2020, although when this package became available was not before me. In any event, I find that Chilliwack Golf made efforts to work with Ms. Van Hoepen to re-schedule her wedding, but Ms. Van

Hoepen did not make any inquiries with Chilliwack Golf about her options for re-scheduling, including other available dates or for a wedding with few guests.

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, and makes performance of the contract something radically different from that which was originally agreed: see *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58 at paragraph 53. If frustration occurs, the parties are relieved from their future obligations under the contract, but it is not void *ab initio*, or void from the beginning of the contract.
18. The non-binding CRT decision of *Bal v. Infinite Entertainment Sound and Lighting Inc.*, 2020 BCCRT 865 also considered the impact of Covid-19 on a contract for wedding services. In *Bal*, the Vice Chair found that while the Covid-19 pandemic and government restrictions on gatherings was unforeseeable at the time the parties entered into their contract, they did not radically change the contract from the parties' original agreement. I agree with this reasoning, as discussed further below.
19. For a contract to be frustrated, it must be truly pointless to continue to perform the terms of the contract, not just inconvenient, undesirable, or because there is increased hardship or expense for one or both parties: *Wilkie v. Jeong*, 2017 BCSC 2131. Chilliwack Golf was willing and able to fully perform its contractual obligations with Ms. Van Hoepen on a re-scheduled date in 2021. It was also developing options to hold the wedding on the original date or at a later date in 2020 with a smaller group, despite its original minimum attendance requirement, but I find Ms. Hoepen declined to inquire about these other opportunities.

20. Ms. Van Hoepen submits that it was “not an option” to re-schedule her wedding to 2021 but does not further explain this submission. While I accept that re-scheduling her wedding would likely be inconvenient and may involve unexpected additional expenses, I find the parties’ fundamental obligations under the contract were not dependent on the originally scheduled wedding date. So, it was still possible for the contract to be performed on a future date, which would not render it something radically different from what the parties had originally contemplated.
21. Ms. Van Hoepen also says because Chilliwack Golf cancelled her event, she was “forced” to have a small family wedding. I find it is inaccurate to say that Chilliwack Golf cancelled Ms. Van Hoepen’s wedding. Due to an Order of the Provincial Health Officer, gatherings of more than 50 people were prohibited. Ms. Van Hoepen declined Chilliwack Golf’s offers to re-schedule her 120-guest wedding and, therefore, it was Ms. Van Hoepen who cancelled her wedding with Chilliwack Golf.
22. Further, given Ms. Van Hoepen’s willingness to proceed with a smaller wedding and Chilliwack Golf’s efforts to provide a wedding with fewer guests, I find the 100 guest minimum was not an essential term of the contract and the government-imposed gathering restrictions did not radically change the parties’ agreement or make the contract impossible to perform.
23. On the evidence before me, I find the contract was not frustrated. Therefore, the existing cancellation terms of the contract apply.
24. Based on the parties’ contract, as discussed above, Ms. Van Hoepen is not entitled to any refund of the \$2,500. The contract says in the event of a cancellation the entirety of the \$2,500 deposit is non-refundable ***under any circumstances***. Even though the contract contemplates treating a \$1,000 portion of the \$2,500 as a damage and security deposit if the event proceeds, I find that Ms. Van Hoepen cancelled her wedding and, therefore, the terms of the contract preclude any refund of the \$2,500 deposit.

25. As a result, I dismiss Ms. Van Hoepen's claim for a refund. I acknowledge Chilliwack Golf's prior offers to apply the deposit to a future event, which Ms. Van Hoepen refused. Given this dispute proceeded and Ms. Van Hoepen submitted that she already had a wedding at another venue, I find Chilliwack Golf is not bound by its earlier offers.

26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Van Hoepen was unsuccessful and so I dismiss her claim for CRT fees. Chilliwack Golf did not pay any fees and neither party claimed any dispute-related expenses, so I make no order.

## **ORDER**

27. I dismiss Ms. Van Hoepen's claims and this dispute.

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Kristin Gardner, Tribunal Member