



Civil Resolution Tribunal

Date Issued: October 8, 2020

File: SC-2020-004184

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *The Free Speech Club Ltd. v. 1005466 BC Ltd*, 2020 BCCRT 1136

B E T W E E N :

THE FREE SPEECH CLUB LTD.

APPLICANT

A N D :

1005466 BC LTD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shannon Salter, Chair

INTRODUCTION

1. The applicant, The Free Speech Club Ltd. (club), says it paid the respondent, 1005466 BC Ltd, \$315 as a deposit to use the respondent's pub, the Devil's Elbow Ale and Smoke House (pub), for an event on September 6, 2019 (event). The club says the pub's manager asked the club members to leave the event, and promised

to refund the deposit immediately. The club claims reimbursement of the \$315 deposit.

2. The pub says the club's members were asked to leave because they made anti-Semitic and homophobic comments and gestures. It also argues its contract was with the club's executive director, Angelo Isidorou, in his personal capacity, and not the club. For these reasons, it argues it should not have to refund the deposit.
3. The club is represented by Mr. Isidorou. The pub is represented by its principal, Paul Jacobs.

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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, 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. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate, which includes proportionality and the speedy resolution of disputes, I decided to hear this dispute through written submissions.
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

ISSUES

8. The issues in this dispute are whether the pub must refund the club's \$315 deposit, and whether the pub is entitled to an equitable set off or a set off for breach of contract.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this, the club as the applicant must prove its claims on a balance of probabilities. I have read all the evidence but refer only to evidence I find relevant to provide context for my decision.
10. On June 13, 2019, Mr. Isidorou emailed the pub's staff member, WL, about booking a September 6, 2019 event at the pub for his "organization". Mr. Isidorou signed the email as executive director of the club. In subsequent emails in the same thread, WL confirmed availability, discussed menus and billing arrangements, and then confirmed the booking. WL concluded with an email saying they would call Mr. Isidorou the following Tuesday for credit card details.
11. The pub argues the booking agreement was with Mr. Isidorou and not the club. I infer its argument is that the club has no standing to claim the refund, as it is not a party to the agreement. In support of this argument, the pub provided a form dated July 9, 2019, which includes Mr. Isidorou's name, phone number, email address, and the date, time, and number of guests for the booking. The form also includes Mr. Isidorou's credit card information, and a payment receipt for \$315.

12. Mr. Isidorou argues, and I agree, that he booked the pub on the club's behalf as its executive director. This is demonstrated by his statement about booking for his organization and by his signature block. I find the email thread constitutes the agreement between the parties, and the subsequent form was intended to provide the payment details WL referred to in the final email to Mr. Isidorou. I find nothing turns on the fact that Mr. Isidorou paid for this expense on the club's behalf, as its agent. I therefore find the booking agreement is between the club and the pub and the parties are properly named in this dispute.
13. It is undisputed that Mr. Isidorou paid the \$315 as a deposit, and that club guests were to pay their bills separately, with a \$500 minimum spend. It is also undisputed that shortly after arriving at the pub, staff asked the club's members to leave. The parties disagree about the reason for this, and I return to that issue later. Neither the emails nor the form discuss whether the deposit was refundable, however given my conclusion below about the pub's later agreement to refund it, I find that I do not need to decide this issue.
14. The club argues that in the same interaction where the club members were asked to leave, the pub's staff agreed to issue an immediate deposit refund. The club submitted a 30 second video recording in support of this agreement. The recording has audio of two voices, but no video recording of faces. The camera is focused on what appears to be a restaurant or pub table, equipped with chairs, a bucket of cutlery and stacks of plates, before later turning to what appears to be several pairs of seated legs. When asked by a first voice, "when did you say we get the refund?" a second voice states, "I believe [W] is still here and I can talk to her about putting that through immediately for you, like obviously that's a non-issue. We will take care of that and make sure you get the refund." The second voice then says they were going to "get the wheels in motion" for the refund right now, and that the others were welcome to take a few minutes to get organized. The same voice later says, "I do apologize about this, I know it's awkward for everybody, but it is just the decision that we've come to." The second voice offers to let others who arrive later know if the group moves to another place. The tone of both voices is calm and respectful.

15. Mr. Jacobs argues that the club has not proved that the video was made at the pub or that it recorded pub staff. However, Mr. Jacobs does not expressly deny the video was taken in the pub, and on balance I find it was. If it was not the pub or his staff, I find Mr. Jacobs would likely have said so.
16. On balance, I find that the video was recorded at the pub during the event and that a pub staff member agreed to issue an immediate refund in exchange for the club members leaving. I make this finding based on the images in the video, which are consistent with a restaurant or pub, as well as the fact that the second voice twice referred to a staff member with the same first name as WL, and noted that she would be issuing the refund. This is consistent with the fact that WL took the credit card payment from Mr. Isidorou and was responsible for the booking. I have also put weight on a statement from the club's president NA, who was at the event and confirms that the pub's acting manager was polite and agreed to refund the deposit when asked to do so by Mr. Isidorou.
17. I therefore find that the pub, through its staff, agreed to refund the club's deposit. I find that the club reasonably understood the staff member had authority to offer the refund, and they accepted this offer.
18. The pub argues that the club's members made Nazi salutes, and anti-Jewish and homophobic statements, which upset staff and guests and led to staff asking club members to leave. The pub argues that it does not have to refund the deposit, as the pub lost revenue and staff tips totaling approximately \$750 when it was forced to shut down the event.
19. The pub did not file a counterclaim. I therefore infer from the pub's arguments that its position is that the alleged behaviour is a defence to cancelling the event without a deposit refund, because the cancellation arose from the applicant's own conduct that breached an implied term in the parties' contract. While the club has the burden of proving its claims, the pub has the burden of proving this defence. I find that it has not done so.

20. First, the pub agreed to refund the club's deposit after it cancelled the event and was presumably aware of the likely lost revenue. As the refund was offered in the context of the cancelled event, there is no evidence of circumstances justifying a contract breach with respect to the deposit refund.
21. Even had I not found the pub agreed to issue the refund after it cancelled the event, I would still have found the pub failed to prove its defence, because there is insufficient evidence that club members behaved as alleged.
22. Given the serious allegations of racism and homophobia against the club members, I find it is necessary to explain this in some detail.
23. The only evidence on file with respect to the club members' behaviour are statements from Mr. Jacobs, who did not attend the event. Instead, he heard about it when a staff member called him to report the allegations. Mr. Jacobs says he instructed the pub manager to have the club members leave. Mr. Jacobs did not name the manager, nor did he provide details about what specifically the club members were alleged to have said or done. While the CRT's evidentiary rules are flexible, I do not accept Mr. Jacobs' hearsay evidence, which is vague and comes from an unnamed source. This is particularly so given the nature of the allegations against the club members, and the centrality of this evidence to the dispute.
24. There is also no evidence before me from any of the staff members or guests who were said to have been upset by the club members' conduct. At a minimum, I assume Mr. Jacobs' staff's evidence was available to him, and there is no explanation for its absence.
25. Conversely, Mr. Isidorou strongly denies that any club members made any anti-Semitic or homophobic comments or gestures. Mr. Isidorou says club members were asked to leave the pub because of their "politics," though he did not elaborate.

26. In support of its position, the club provided several written statements. NA's statement, referenced above, says that he was setting up for the event and was surprised when the pub's manager asked the group to leave for making anti-Semitic and homophobic remarks. NA states that he is both Jewish and homosexual and found this curious. NA also describes in significant detail his lifelong relationship with Judaism, including attending religious services regularly, attending Jewish day school and summer camps and consistently advocating on behalf of Jewish issues. NA recounts "his extensive love, dedication and attachment towards his Jewish community, many of whom are Holocaust survivors." He states, and I accept, that he felt disgusted to have the pub's accusations levelled against his club.
27. NA's statement is supported by other statements in evidence from people who know NA, including those from 2 Rabbis, the president of the Federation of Teachers in Hebrew Schools in Toronto, the former executive director of Hillel BC, the chief editor of a national Jewish online news platform and several of NA's friends. The statements consistently describe NA as a devoted member of the Jewish community, a social justice advocate, and someone who has never promoted anti-Semitic or other hateful views. I accept this evidence, and I find it supports the conclusion that NA did not make anti-Semitic or homophobic remarks at the event. While NA was only one attendee, I find it is unlikely that as club president he would have tolerated anti-Semitic or homophobic statements or gestures at the event. I find the pub has not proved its allegations in this regard.
28. In conclusion, I order the pub to refund the \$315 deposit. As I have rejected the pub's allegations about the club's conduct I find there is no legal basis for the pub to retain the deposit under the parties' contract.
29. The *Court Order Interest Act* applies to the CRT. The club is entitled to pre-judgement interest on the \$315 deposit from September 6, 2019, the date the pub agreed to refund it, to the date of this decision. This equals \$5.42.

30. 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. I see no reason in this case not to follow that general rule. I find the club is entitled to reimbursement of \$125 in CRT fees. The club did not claim dispute-related expenses, and so I order none.

ORDERS

31. Within 30 days of the date of this order, I order the pub to pay the club a total of \$445.42, broken down as follows:

- a. \$315 in debt for the deposit refund,
- b. \$5.42 in in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

32. The club is entitled to post-judgment interest, as applicable.

33. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

34. 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.

Shannon Salter, Chair