Civil Resolution Tribunal

Date Issued: November 26, 2020

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Renke v. Noisy Acres Garden Estates,* 2020 BCCRT 1340

B E T W E E N :

ALEXANDER RENKE also known as AL RENKE and MADISON FAULKNER

APPLICANTS

A N D :

NOISY ACRES GARDEN ESTATES

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about a deposit for a wedding venue rental. The applicants, Alexander Renke (also known as Al Renke) and Madison Faulkner, agreed to rent the premises

of the respondent, Noisy Acres Garden Estates (Noisy Acres), for their wedding. The applicants say that they were unable to hold the June 20, 2020 wedding at Noisy Acres as planned because of COVID-19 pandemic-related government restrictions. The applicants claim a refund of the $1,497.50 deposit they paid Noisy Acres, saying that the pandemic restrictions frustrated the rental contract, making it impossible to perform.

2. Noisy Acres says that the deposit is non-refundable, as stated in the parties' contract. Noisy Acres says it remained willing and able to rent the premises with government-imposed attendance restrictions and for a reduced price, or on a later date, so the contract was not frustrated and they owe nothing.

3. Mr. Renke represents the applicants. Hilary Dash, a partner, represents Noisy Acres.

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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.

5. Section 39 of the CRTA says 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 in the interests of justice.

6. Section 42 of the CRTA says 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, and if so, must Noisy Acres return the applicants' $1,497.50 deposit?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

10. The circumstances of the wedding venue rental and cancellation are largely undisputed. The parties agreed to a wedding venue rental contract dated March 16, 2019. The contract was between the applicants as renters, and Ron Dash, Hilary Dash, Rick Shewchuk, and Josie Shewchuk, all "of Noisy Acres Garden Estates," as owners and lessors. According to a BC Registry Services General Partnership Summary provided by the applicants, Noisy Acres is a general partnership with at least 2 partners, namely Hilary Dash and Josephine Shewchuk. The parties do not deny, and I find, that Noisy Acres was as party to the contract. Among the owners and lessors identified in the contract, only Noisy Acres was named as a respondent in this dispute.

11. The contract was for the rental of Noisy Acres' premises for a June 20, 2020 wedding. The "estimated number of guests" listed in the contract was "80-100". The contract limited the total number of people at the venue to 100 unless Noisy Acres granted special permission for more. The contract required a $500 security deposit to reserve

the venue, and a non-refundable deposit of 25% of the rental fee, which the parties agree was $1,497.50, payable 12 months in advance. The applicants paid the deposits. Notably, the contract did not have what is known as a “force majeure” clause, meaning it did not say what would occur if unforeseen circumstances changed what could be provided under the rental agreement. I find that the contract did not provide for cancellation if less than a minimum number of guests attended or were permitted, or if the applicants’ catering arrangements fell through. More on that below.

12. The parties agree that, as stated in a January 2, 2019 email, Noisy Acres would provide bartenders to serve alcohol at the wedding, and it would help run the music, assist with the ceremony, move chairs, and generally see that everything ran smoothly during the wedding and rehearsal. No catering or kitchen facilities were provided by Noisy Acres, although there was a food preparation and serving area.

13. A March 16, 2020 order of BC’s Provincial Health Officer (PHO) prohibited those responsible for an indoor or outside place from permitting the gathering of more than 50 people at such a place, because of the COVID-19 pandemic. The order had an expiry date of May 30, 2020, but restrictions on gatherings were extended in a later order, as described below.

14. Beginning on May 12, 2020, the parties corresponded by email about the potential effects of continued PHO attendance restrictions on the June 20, 2020 rental. Noisy Acres told the applicants that because the order said no more than 50 people could gather, and Noisy Acres staff would be present to perform their duties under the contract, the number of wedding attendees would be limited to about 40-43, depending on the number of catering staff present. The applicants expressed concern about this attendance limitation, and said they were committed to having their wedding on June 20, 2020. The applicants asked Noisy Acres about their options and a possible fee reduction for the reduced guest count. The parties agree that Noisy Acres said they could proceed to hold the wedding with the reduced guest count and an $800 discount, reschedule the event to August 15, 2020, June 19, 2021, or another date, or credit the rental deposit to any type of future event at Noisy Acres.

15. On May 20, 2020, the applicants informed Noisy Acres that their chosen caterer was unable to commit to the June 20, 2020 date because of "grey area regulations" in its industry. There is no direct evidence of this caterer cancellation, or explanation of the applicable "grey area regulations." Noisy Acres responded that the applicants were more than welcome to do a "pot luck style" meal if they wished, which the applicants say was not adequate for them. In a May 21, 2020 email, the applicants cancelled the contract, saying that the wedding would not work with "only 40 odd guests", that the loss of their chosen caterer made the logistics more difficult, and that they did not wish to postpone because of future pandemic uncertainty. The parties agree that Noisy Acres refunded the $500 security deposit, but kept the $1,497.50 non-refundable rental deposit, which it said it would apply to any future events booked by the applicants.

16. The parties agree that the contract says the claimed $1,497.50 deposit was not refundable. The applicants' position is that the unexpected attendance restrictions made the contract impossible to perform, resulting in a frustrated contract. They say that under the doctrine of frustration, the deposit should be refunded because both parties should be relieved of their obligations under the contract, including the applicants' obligation to pay a deposit.

17. In *Wilkie v. Jeong*, 2017 BCSC 2131, the BC Supreme Court said that the purpose of the doctrine of frustration is to relieve a contracting party from its bargain by bringing the contract to an end. In *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58, cited by both *Wilkie* and the applicants, the Supreme Court of Canada said that under the preferred and established test, a contract is frustrated when an unforeseeable event makes a party's performance of the contract something radically different from what the parties agreed to. According to paragraphs 15 to 18 of *Wilkie*, the event must totally affect the nature, meaning, purpose, effect, and consequences of the contract, making it completely fruitless to perform, and not just inconvenient, more expensive, or involving greater hardship.

18. The question here is whether the contract was frustrated. The applicants acknowledge several CRT decisions where wedding services were cancelled because of COVID-19 pandemic-related restrictions, but deposits for wedding services were not refundable. The applicants admit that reduction in guest count alone would not establish frustration here. I agree, as I find that Noisy Acres remained willing and able to provide the wedding venue rental, and that the attendance reduction did not radically change the parties' obligations to a degree where they became fruitless to perform.

19. However, the applicants say that the reduction in guest count, combined with other factors, amounted to frustration. They say the first additional factor was the applicants' loss of their caterer, allegedly because of pandemic-related restrictions.

20. The caterer was not a party to the contract. I find that neither party's performance of the contract depends on the existence of catering. Even if I accepted, on the applicants' scant evidence, that their chosen caterer backed out before they cancelled the contract on May 21, 2020, I find the evidence does not show that it was impossible to provide food for guests by other means, including with a different caterer. The applicants say it was difficult to find a caterer who could provide services at Noisy Acres' kitchen-free venue, but they did not say whether they attempted to find an alternative caterer, and if so whether they were successful.

21. Further, the applicants admit that they held their wedding at a different outdoor venue on June 20, 2020, and that they had it professionally catered, inferring that kitchen facilities were available there. They also said that friends assisted with some food preparation, with I find is a "pot luck" element similar to what Noisy Acres suggested, and which the applicants had rejected. In any event, I also find that a caterer's changing availability for a wedding is not an unforeseeable event, even in the absence of a pandemic. Overall, I find that caterers did not affect the parties' agreement.

22. The applicants also say that Noisy Acres restricted the guest list to 40-43 people, when attendance should have been restricted to no less than 50 guests under a PHO

order. I find that the March 16, 2020 PHO order was in effect on the May 21, 2020 cancellation date, and that it restricted gatherings to no more than 50 persons total. The applicants refer to a May 22, 2020 PHO order that replaced the earlier order. The May 22, 2020 order restricted gatherings to no more than 50 patrons, not persons. I find the applicants argue, essentially, that the May 22, 2020 order applied, and that Noisy Acres unilaterally reduced the allowed guest count by 7 to 10 patrons, which frustrated the contract.

23. The evidence before me shows that the applicants did not seek to hold the wedding at Noisy Acres with 50 guests after the May 22, 2020 PHO order came into effect. The applicants had already cancelled the contract by that time. I find they based their May 21, 2020 cancellation on the March 16, 2020 50 person limit that was then in effect, despite the fact it was set to expire on May 30, 2020. Given that Noisy Acres was to provide bartending and other services, and that catering was anticipated, I find that Noisy Acres' 40-43 person guest limit was reasonable in the circumstances. Further, I found above, and the applicants admit, that a reduction in guest count alone does not establish frustration here. Even if 50 guests had been permitted under the applicable PHO order, rather than 40-43, I do not consider this small difference in guest count to be significant in these circumstances, let alone to result in frustration.

24. In addition, I again note that the applicants successfully held a catered outdoor wedding elsewhere on June 20, 2020, the date of the Noisy Acres rental. The applicants do not say how many guests attended their wedding, but I infer from the evidence that no more than 50 attended, given the May 22, 2020 PHO order. On the evidence before me, I find there is no significant difference between the applicants' ability to hold the wedding at Noisy Acres and their proven ability to hold it elsewhere on the same date, apart from Noisy Acres lacking full kitchen facilities, which the applicants knew when they agreed to the contract. This further supports a finding that the contract was not frustrated.

25. I acknowledge that the applicants anticipated a larger event, but I find that the reduced guest count was not a radical change to the parties' agreement. I find that

the applicants could have held their wedding at Noisy Acres with the reduced guest count, that Noisy Acres stood ready to perform their duties under the contract, and that the applicants were not prevented from fulfilling their contractual obligations. I find that the contract was not frustrated. Therefore, I find the contract remained binding on the parties. Under the contract's terms, the $1,497.50 rental deposit was non-refundable. So, I find the applicants are not entitled to a refund of that amount. I dismiss the applicants' claim.

CRT FEES AND EXPENSES

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. Noisy Acres was successful but paid no CRT fees and claimed no CRT dispute-related expenses. The applicants claimed $125 in CRT fees and $11.50 for a corporate registry search expense, but they were unsuccessful, so I decline to order any reimbursements.

ORDER

27. I dismiss the applicants' claims, and this dispute.

Chad McCarthy, Tribunal Member