



# Civil Resolution Tribunal

Date Issued: November 30, 2020

File: SC-2020-004997

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rudichuk v. Newlands Golf & Country Club Ltd.*, 2020 BCCRT 1350

B E T W E E N :

KALI RUDICHUK and JEFFREY LENNOX

**APPLICANTS**

A N D :

NEWLANDS GOLF & COUNTRY CLUB LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about an all-inclusive wedding services contract. The applicants, Kali Rudichuk and Jeffrey Lennox, say the respondent, Newlands Golf & Country Club Ltd. (Newlands), cancelled their April 25, 2020 wedding due to COVID-19 gathering restrictions. The applicants say the wedding contract was frustrated. They claim \$2,000, which is the portion of their \$4,000 deposit Newlands refused to refund.
2. Newlands denies it cancelled the wedding, and says it offered to reschedule the wedding, which the applicants initially wanted to do but then declined. Newlands says the remaining \$2,000 deposit is non-refundable.
3. Ms. Rudichuk represents the applicants. Newlands 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). 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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am 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' wedding services contract was frustrated, and if so, must Newlands refund the applicants' \$2,000 deposit balance?

## **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 parties' submissions, but refer only to the evidence and submissions that I find relevant to provide context for my decision.
10. The parties agree to the following facts:
  - a. In April 2019, the parties entered into a contract for the applicants' wedding to take place at Newlands' venue on April 25, 2020.
  - b. The applicants paid Newlands a total of \$4,000 in deposits as follows: \$2,000 in April 2019, \$1,000 in August 2019, and \$1,000 in December 2019.
  - c. On March 17, 2020, Newlands contacted the applicants to advise that due to pandemic-related gathering restrictions imposed by the provincial government, the wedding could not be held on April 25, 2020 and would need to be rescheduled. Newlands offered the applicants several available dates for the summer of 2020.
  - d. Newlands refunded the applicants \$2,000 of the deposits, on April 28, 2020.

11. The parties disagree about whether they are entitled to any refund of the remaining \$2,000 deposit.
12. I turn to the parties' April 13, 2019 4-page all-inclusive "Club Wed" contract, which was for a total of \$12,307.01. The relevant terms were:
  - a. "Minimum Guarantee of 80 adults; not subject to reduction".
  - b. "All deposits are non-refundable and non-transferable". On a separate "Terms & Conditions" page, this was repeated, and the applicants initialed it.
  - c. A final "guaranteed number of guests (greater than or equal to the minimum guarantee) is required 21 days" before the event.
  - d. In the event of "an unanticipated variance" in guest numbers, Newlands reserves the right to provide an alternate space, suitable to the function requirements.
  - e. An initial \$2,000 deposit was required to secure the venue. Additional \$1,000 deposits were required every 4 months from the booking date. A \$1,000 deposit would be withheld to cover outstanding account balances or damage. Rebooking to a new date would require a new deposit.
  - f. A final invoice will be issued after the event, based on the greater of the guaranteed minimum of guests or the actual number of guests.
13. The contract did not have what is known in law as a "force majeure" clause, which is a clause that addresses the parties' obligations if something unexpected happens. More on this below.
14. On March 16, 2020, the Provincial Health Officer (PHO) issued an order restricting gatherings to 50 people, given the COVID-19 pandemic.
15. On March 17, 2020, Newlands offered the applicants different wedding dates: July 4, August 8, August 29, September 12, October 3, and November 7, 2020. The applicants say they discussed the alternate dates with Newlands on March 19, along

with their “financial strain, uncertainty”. The applicants say these concerns and family deaths caused them not to proceed with Newlands, which is consistent with Ms. Rudichuk’s March 19, 2020 email in which she also told Newlands she appreciated their flexibility.

16. On March 19, 2020, Newlands offered another set of dates between September 2020 and March 2021. Later that day, at the applicants’ request, Newlands emailed its offer to hold a September 26, 2020 wedding date for several days.
17. On March 20, 2020, Newlands sent Ms. Rudichuk a new contract for a September 26, 2020 wedding and requested another \$2,000 deposit to hold that new date. Unhappy with the request for a further deposit, the applicants did not sign the new contract or new deposit schedule.
18. Also on March 20, 2020, the PHO replaced its March 17, 2020 order, and ordered venues like Newlands to close.
19. By March 31, 2020, Newlands advised the applicants that they would refund only \$2,000 if they decided not to choose a new date, and gave the applicants until April 25, 2020 to decide. On April 23, 2020, the applicants requested a full refund. As noted above, Newlands then refunded \$2,000 on April 28, 2020, but has refused to refund the remaining \$2,000 balance.
20. It is common knowledge that, after the applicants demanded a refund in late April 2020, on May 22, 2020 the PHO permitted venues like Newlands to reopen, with a limit of 50 patrons.
21. Newlands says that by mid-March 2020, it had already incurred expenses for the applicants’ wedding, and quite apart from the contract’s terms that is why it declined to offer a full refund. While I acknowledge the applicants disagree that any significant expense was incurred, I find nothing turns on the actual expenses Newlands incurred, given I find the contract was not frustrated and its terms say the deposit was non-refundable. My reasons follow.

22. First, it is clear the contract said the deposits were non-refundable. I find the applicants are not entitled to a refund of their deposit under the contract. The fact that Newlands paid a partial refund as a good faith gesture does not bind them to refund the deposit in full.
23. Second, in the absence of a '*force majeure*' clause, the common law doctrine of contract frustration applies. As noted above, the applicants argue their wedding contract was frustrated by the COVID-19 pandemic and the government's restrictions.
24. What about contract frustration? In *Wilkie v. Jeong*, 2017 BCSC 2131, the BC Supreme Court said that the purpose of the frustration doctrine is to relieve a contracting party from its bargain by ending the contract. In *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58, the Supreme Court of Canada said that 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. As set out in *Wilkie*, the event must totally affect the contract's nature, meaning, purpose, effect, and consequences, making it completely fruitless to perform, and not just inconvenient, more expensive, or involving greater hardship.
25. I accept the COVID-19 was an unforeseeable event. However, I find the parties' contract was not frustrated. I say this because Newlands agreed to host the wedding on a variety of different dates, and the evidence shows the applicants had wanted a September 2020 date. Dates in 2021 were also offered. The applicants' personal issues and financial concerns about paying the further deposit to hold the new date, while important to them, did not make the wedding services contract radically different or completely fruitless to perform.
26. I note the applicants argue that the minimum number of 80 guests in the contract meant the contract was frustrated given the pandemic restrictions. I disagree. The minimum number was for Newlands' benefit, as the contract makes it clear that it was to ensure a minimum price would be paid even if the actual guest numbers fell below 80. In other words, the applicants were not permitted under the contract to pay for

less than 80 guests. In any event, I find the contract could have been performed on an alternate date and with fewer than 80 guests in attendance. The fact that the applicants might have had to pay for 80 guests and only have 50 would be more expensive, but as set out in *Wilkie*, an increased expense is not enough to frustrate the contract.

27. So, I find the contract was not frustrated, which means the contract's terms apply, including that the deposit is non-refundable. Given my conclusions above, I dismiss the applicants' claims.

28. Under section 49 of the CRTA and the CRT's rules, as the applicants were unsuccessful in this dispute I find they are not entitled to reimbursement of CRT fees. Newlands was successful but did not pay CRT fees or claim dispute-related expenses.

## **ORDER**

29. I dismiss the applicants' claims and this dispute.

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Shelley Lopez, Vice Chair