



# Civil Resolution Tribunal

Date Issued: February 24, 2021

File: SC-2020-008163

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sohi Vacations Ltd. v. Waraich*, 2021 BCCRT 218

**B E T W E E N :**

SOHI VACATIONS LTD.

**APPLICANT**

**A N D :**

HARMAN PREET SINGH WARAICH and SANDEEP KAUR WARAICH

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. This dispute is about flights that were cancelled due to the COVID-19 pandemic.

2. The applicant Sohi Vacations Ltd. (Sohi) says it sold airline tickets to the respondents Harman Preet Singh Waraich and Sandeep Kaur Waraich, who failed to pay for the tickets and associated customer service. Sohi claims \$4,998.54 for unpaid airline tickets and service. Sohi's claim is based on the Waraichs having their credit card company refund \$4,998.54 for half of the flight booking costs they paid to Sohi.
3. The Waraichs say they paid \$6,597.08 to Sohi, for return air travel for their family of 4 between Vancouver and Delhi. After their Delhi-Vancouver flights were cancelled due to the COVID-19 pandemic, the Waraichs paid Sohi a further \$1,700 penalty to rebook the flights. Those rebooked flights were also cancelled due to the pandemic.
4. The Waraichs then booked "rescue flights" through a different airline and asked their credit card company to refund them 50% of the price they paid to Sohi. The Waraichs say Sohi did not provide them with booked flights that they could use to get back to Vancouver, and so they were entitled to a 50% refund. The Waraichs ask me to dismiss the dispute.
5. Sohi is represented by its director SS. Mr. Waraich represents himself and Mrs. Waraich.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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 of 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 *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 that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

8. 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.
9. 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**

10. The issue in this dispute is whether the Waraichs must pay Sohi the claimed \$4,998.54 for airline tickets and service.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, as the applicant Sohi must prove its claims on a balance of probabilities. I have read all the evidence and submissions before me, but refer only to what I find relevant to provide context for my decision.
12. The parties agree to the following facts:
  - a. On January 27, 2020, the Waraichs purchased four round trip airline tickets to travel from Vancouver to Delhi, from Sohi. That day, the Waraichs paid Sohi \$6,597.08 for the flights, using their credit card.

- b. On February 19, 2020, the Waraichs flew from Vancouver via Frankfurt to Delhi on February 19, 2020.
  - c. The Waraichs were initially booked to return home to Vancouver on March 25th via Delhi-Dubai-Toronto-Vancouver.
  - d. On March 17th, 2020, Air Canada notified the Waraichs that their flight had been cancelled due to the COVID-19 pandemic.
  - e. The Waraichs contacted Sohi and booked a new return flight for March 28, 2020.
  - f. On March 23, 2020, the Waraichs learned from Air Canada that their return flight had been cancelled again and that it was rescheduled to May 4, 2020.
  - g. Also on March 23, 2020, a Sohi employee advised the Waraichs that the May 4, 2020 flight would cost an additional \$1,700.00. The Waraichs agreed to the rebooking and paid the \$1,700.
13. Based on the documents filed in evidence, I accept the Waraichs' evidence that a Sohi employee notified them that their May 4, 2020 flight was cancelled again, due to the COVID-19 pandemic. The Waraichs were informed that their flight had been rescheduled to May 18, 2020. This is consistent with the Air Canada itineraries showing this change issued on April 29, 2020.
14. On May 1, 2020, the Waraichs were informed either by Sohi or Air Canada that their May 18, 2020 flights were cancelled. Sohi says it informed the Waraichs of the cancellation, but the Waraichs say Air Canada informed them. I find that nothing turns on who communicated the cancellation. It is undisputed that the May 18, 2020 flights were cancelled.
15. On May 11, 2020, the Waraichs paid KLM \$6,550.19 for 4 tickets from Delhi to Toronto for May 19, 2020. The Waraichs also booked a domestic flight from Toronto to Vancouver. It is uncontested that the international flight was a "rescue flight", meaning it was one of the only passenger flights available from Delhi to Canada during this period of the COVID-19 pandemic.

16. On May 19, 2020, the Waraichs flew to Canada on KLM.
17. The parties agree that, on July 10, 2020, the Waraichs asked their credit card company to charge back \$4,998.54 to Sohi. This amount was for 50% of the original flight cost of \$6,597.08 plus the \$1,700.00 rebooking penalty, taxes and fees for the flights the Waraichs originally booked through Sohi on March 23rd.
18. The Waraichs say they requested this refund because Sohi did not provide them with a return flight or offer a refund. Based on the documents filed in evidence, I find that their credit card company granted the 50% refund because the Waraichs did not receive the services for which they paid.
19. Although Sohi submits that either Air Canada or Sohi offered the Waraichs a flight credit or voucher, it offered no evidence to prove it. I find the Waraichs did not receive a credit or voucher for the cancelled flights. I find that the Delhi-Canada return flights booked by Sohi were ultimately cancelled without any specific rebooking date, due to the COVID-19 pandemic.

***Was the contract frustrated?***

20. 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. The unforeseen circumstances must destroy a fundamental aspect or purpose of the contract, making it truly pointless to continue to perform the terms of the contract, not just inconvenient, undesirable, or involving increased hardship or expense for one or both parties. Put differently, a contract is frustrated if its performance is rendered impossible or impracticable by an unforeseeable event for which neither party was at fault: *Wilkie v. Jeong*, 2017 BCSC 2131.

21. 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. In British Columbia, the *Frustrated Contract Act* provides a framework for restitution to parties for part performance of a contract at the time of frustration, in certain circumstances.
22. Sohi submits that it could not furnish the Delhi-Vancouver flights because the Indian government stopped all flights except those operated under a pandemic agreement that did not include Air Canada. The Waraichs agree they had no choice but the KLM rescue flight. I therefore find that it was not possible for Sohi to provide the return flights through Air Canada as promised under the contract.
23. The effect was that the Waraichs had no option but to return on a KLM rescue flight. Sohi did not refund the Waraichs for the cost of the return flight. The Waraichs had their credit card company charge back 50% of the total price paid. The refund was based on the Waraichs getting only half the trip. They travelled to Delhi on Sohi's booking, but then Sohi did not provide them airline tickets to get them back to Canada.
24. The CRT has issued several decisions where wedding services were cancelled because of COVID-19 pandemic-related restrictions, but deposits for wedding services were not refundable. As one example, in *Van Hoepen v. Chilliwack Golf and Country Club Holdings Ltd.*, 2020 BCCRT 1048, the Tribunal Member found that changing the wedding date or the number of wedding guests did not amount to the contract being frustrated because those were not fundamental or essential terms of the contract. As a result, the cancellation terms of the contract were held to apply, and the applicants did not receive a refund of their deposit.
25. I distinguish the facts of this case from the wedding services decision in *Van Hoepen*. Where a wedding contract is altered in terms of the number of attendees allowed or the precise date, a wedding can still proceed in some form at the same venue.
26. Here, the fundamental and sole purpose of the contract was to provide the flights. Sohi became unable to provide any flights from Delhi to Canada, due to the COVID-19 pandemic and related government decisions. Two attempts to reschedule the

flights had failed and, when the May 18, 2020 flight to return to Canada was cancelled, Sohi did not offer any new rebooking dates.

27. Although Sohi implies that the Waraichs could have used a flight voucher to travel at a later date, there was no certainty as to when such travel could occur. By the time of the May 18 flight cancellation, the Waraichs had already waited in India for nearly 2 months beyond their initial return booking. While the contract between the parties may not have been frustrated at the first two rescheduling points, I find it was frustrated when the May 18 flight was cancelled without another booking being provided. Unlike for a wedding that could proceed in a specified date range with fewer attendees, I find that the Waraichs would have been physically stranded for over 2 months, if not for the rescue flight.
28. Therefore, I find the contract between Sohi and the Waraichs was frustrated because the pandemic was an unforeseeable event, not provided for in the contract, and not either party's fault. Further, I find that the pandemic caused a radical change in the nature of the fundamental contractual obligation that made it impossible for Sohi to fulfil the return flight obligation.
29. The effect of frustration is to make the parties' contract void from that point, which would discharge Sohi's obligation to provide return flights. However, as mentioned above, section 5(3) of the FCA provides that a party to a contract is relieved from fulfilling obligations under that contract that were required before the frustration but were not performed, except where the other party has become entitled to damages for consequential loss due to the failure to fulfil those obligations.
30. I find that FCA section 5(3) applies to require Sohi to pay the Waraichs damages for consequential loss as a result of Sohi's failure to fulfil the return flight obligation.
31. I have found that Sohi entered a contract to provide the Waraichs with return travel from Vancouver to Delhi, for \$6,597.08 plus additional rebooking charges.

32. Given the *Frustrated Contracts Act*, I find Sohi was obliged to refund the Waraichs 50% of the price paid. That is the money the Waraichs lost as a result of Sohi's inability to fulfil its obligations under the frustrated contract.

***Does the airline's refund policy impact the outcome?***

33. I have also considered Sohi's submission that it was an Air Canada policy to cancel the flight and offer only vouchers or credits toward future flights, but not refunds. Sohi says it communicated this information to the Waraichs, though it did not file any evidence to prove that it did. Sohi also submits that the 'no refunds' approach was recommended by a Canadian Transport Association Guideline but did not provide a copy of any such guideline.

34. Sohi suggests that the Waraichs had already received e-vouchers or credits from Air Canada for the contested flights. On the evidence before me, I have found that they did not receive credits for the contested flights.

35. The dispute is between Sohi and the Waraichs only. Air Canada is not a party to this dispute. Whether Sohi might seek payment from Air Canada is a separate issue.

36. For the reasons given above, I find the Waraichs were entitled to the 50% refund they received through their credit card company. Therefore, I dismiss Sohi's claim.

***CRT Fees and Dispute-Related Expenses***

37. 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. Because Sohi was unsuccessful in this dispute, I do not make any order for their CRT fees. Neither party claimed dispute-related expenses.



## **ORDER**

38. I dismiss Sohi's claims and this dispute.

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Julie K. Gibson, Tribunal Member