



# Civil Resolution Tribunal

Date Issued: March 17, 2021

File: SC-2020-008233

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kousari v. Rosabal*, 2021 BCCRT 292

BETWEEN:

AIDA KOUSARI

**APPLICANT**

AND:

ILIANA ROSABAL

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about a custom-made wedding veil.
2. The applicant, Aida Kousari, says the respondent, Iliana Rosabal, agreed to make her a custom veil for \$550. Ms. Kousari says she paid a \$275 deposit for the custom veil. She says she was unhappy with the custom veil at the first fitting and tried to

cancel the order. She says she did not hear back from Ms. Rosabal and never received the custom veil. Ms. Kousari says that as a result, she had to buy a more expensive “ready to wear” veil (replacement veil) at the last minute.

3. Ms. Kousari seeks an order that Ms. Rosabal refund the \$275 deposit. She also seeks \$1,450, which is the difference between the price of the custom veil and the replacement veil.
4. Ms. Rosabal agrees that Ms. Kousari was unhappy with the custom veil at the first fitting. Ms. Rosabal says the custom veil and materials are still available for pick-up. Ms. Rosabal says the deposit is non-refundable, she has paid for materials that she cannot return, and Ms. Kousari still owes her the balance of \$275 for the custom veil. She says she should not have to pay Ms. Kousari the difference between the price of the custom veil and the replacement veil. Ms. Rosabal did not file a counterclaim in this dispute.
5. Both parties are self-represented.

## **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). 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.
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. 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.

8. 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.
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.

## **ISSUES**

10. The issues in this dispute are:
  - a. Whether Ms. Kousari is entitled to a refund of her \$275 custom veil deposit?
  - b. Whether Ms. Kousari is entitled to \$1,450 in compensation from Ms. Rosabal for the difference between the price of the custom veil and the replacement veil?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, as the applicant Ms. Kousari must prove her claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

### ***Is Ms. Kousari entitled to a refund of her \$275 custom veil deposit?***

12. It is undisputed that the parties agreed Ms. Rosabal would make a custom veil for Ms. Kousari in exchange for \$550. Ms. Rosabal gave Ms. Kousari an August 10, 2020 invoice for the custom veil showing the total \$550 price (invoice), with a handwritten

note on the invoice requiring a \$275 deposit. The parties agree Ms. Kousari paid the \$275 deposit.

13. It is uncontested that Ms. Kousari tried on the custom veil and was unhappy with it. Ms. Kousari says that she did not approve the lace used for the custom veil. Ms. Rosabal says she did. While the parties disagree on this point, I find that nothing turns on whether the lace used for the custom veil was approved by Ms. Kousari.
14. I find that Ms. Kousari meets the definition of consumer in the *Business Practices and Consumer Protection Act* (BPCPA), and Ms. Rosabal meets the definition of supplier in the BPCPA. I also find that the invoice is a future performance contract as defined in the BPCPA (contract).
15. I note the parties did not contemplate the BPCPA in their submissions. However, since the relevant provisions of the BPCPA discussed below are mandatory, I have determined it is unnecessary for the parties to make submissions on the application of the BPCPA in these circumstances.
16. Section 19 of the BPCPA requires a future performance contract to include a detailed description and itemized purchase price of the goods to be supplied, as well as a detailed statement of the payment terms. The contract does include a description, price, and payment terms for the custom veil.
17. However, section 23 (2) of the BPCPA also requires a future performance contract to include the supply date, and the date on which the supply of goods will be complete. The contract does not list a supply date or the date on which the supply of goods will be complete. While it is undisputed that Ms. Kousari's wedding was scheduled for August 22, 2020, neither party provided any submissions or evidence confirming the custom veil's supply date. I find the contract does not comply with section 23(2) of the BPCPA, as required.
18. Section 23(5) of the BPCPA allows a consumer to cancel a future performance contract within 1 year of the date they receive the contract if it does not include the

information required in sections 19 and 23(2). Therefore, I find that Ms. Kousari was entitled to cancel the contract.

19. It is undisputed that Ms. Kousari received the contract on August 10, 2020. The question then is whether Ms. Kousari cancelled her contract with Ms. Rosabal.
20. Section 54 of the BPCPA requires a consumer who wishes to cancel a future performance contract to give notice by any method that creates evidence of their intention to cancel the contract on a specific date.
21. Ms. Kousari requested a refund on August 13, 2020 via text message and advised she did not wish to go forward with the custom veil. Before Ms. Rosabal responded, Ms. Kousari sent another text message asking Ms. Rosabal whether she would provide a refund, and if not, to complete the custom veil. Ms. Kousari repeatedly followed up with Ms. Rosabal via text message to attempt to confirm whether Ms. Rosabal would either provide the refund or make the veil. Ms. Kousari says that Ms. Rosabal did not respond to her, and by August 17, 2020 it was clear Ms. Rosabal would not be completing the custom veil.
22. Ms. Rosabal says she told Ms. Kousari there was nothing more she could do for her and the custom veil was ready for pick up. Ms. Kousari disputes this, and I will discuss it further below. However, given that the wedding was scheduled for August 22, 2020, I find that by August 17, 2020, Ms. Kousari had cancelled. In any event, Ms. Kousari started the CRT proceeding within a year of receiving the contract, and that indicates an intention to cancel. I find Ms. Kousari cancelled within 1 year of the date she received the contract and has met the cancellation requirements in sections 54 of the BPCPA.
23. Section 27 of the BPCPA says that if a consumer cancels a contract, the supplier must refund the consumer within 15 days after the notice of cancellation has been given without deduction. Section 28 of the BPCPA requires a consumer who has cancelled a future performance contract to deliver any goods received under the contract to the supplier's business address, which relieves the consumer of their

obligations under the contract. Here, it is undisputed Ms. Rosabal has the veil so there is nothing for Ms. Kousari to return.

24. I note that the contract says “all sales are final and we do not accept returns for refund or exchange”. However, as discussed above, the provisions of the BPCPA are mandatory, and so I find Ms. Kousari is entitled to a refund of the \$275 deposit.

***Is Ms. Kousari entitled to \$1,450 in compensation from Ms. Rosabal for the difference between the price of the custom veil and the replacement veil?***

25. Ms. Kousari asks for both a refund of the custom veil deposit and compensation for the difference between the price of the custom veil and the replacement veil. I have already found that Ms. Kousari is entitled to a refund of the custom veil deposit.

26. Ms. Kousari says that Ms. Rosabal failed to finish the custom veil and deliver it to her. Ms. Kousari says that as a result, she had to purchase a replacement veil for \$2,000, which was \$1,450 more than the custom veil. Ms. Rosabal says that the lace material and the custom veil were ready for pick up.

27. So, the question is whether Ms. Rosabal breached the contract for allegedly failing to finish the custom veil and deliver it to Ms. Kousari, and if so, whether Ms. Kousari is entitled to \$1,450 in damages for the replacement veil’s increased cost.

28. As discussed above, it is undisputed that Ms. Kousari was unhappy with the custom veil at the first fitting. Shortly thereafter, on August 13, 2020, Ms. Kousari cancelled the contract. I have found she was entitled to do so because the contract did not comply with the provisions of the BPCPA.

29. As noted in *Kuo v. Kuo*, 2017 BCCA 245, unless a contract is terminated, the parties must fulfill their obligations. Termination by repudiation occurs when a party shows an intention not to be bound by the contract and the other party elects to accept the repudiation.

30. As discussed above, Ms. Kousari says that Ms. Rosabal did not respond to her request to cancel the contract. She says that as a result, she was unsure whether

Ms. Rosabal was going to work with her to complete the custom veil or give her a refund, and she missed the opportunity to have someone else make her a custom-made veil.

31. Ms. Rosabal says after the fitting, she told Ms. Kousari she would finish the custom veil. However, she says at the end of a heated phone call between the parties, she told Ms. Kousari she could not do anything else for her and she could pick up the custom veil and material at any time. Ms. Kousari says this phone call never happened and Ms. Rosabal just ignored her phone calls and text messages. I find that I do not need to resolve this evidence conflict. It is undisputed that by August 17, 2020, it was clear Ms. Rosabal would not be finishing the custom veil. I find that Ms. Rosabal accepted Ms. Kousari's cancellation of the contract, regardless of whether Ms. Rosabal told Ms. Kousari she could do nothing more for her or did not respond to Ms. Kousari at all.
32. I find that once Ms. Kousari cancelled the contract and Ms. Rosabal accepted the cancellation, Ms. Rosabal no longer had any contractual obligation to finish the custom veil.
33. I note that even if I had found Ms. Rosabal breached the contract by failing to finish the custom veil, Ms. Kousari did not provide sufficient evidence to prove her alleged damages.
34. In particular, Ms. Kousari says that she had a friend pick up the replacement veil for her in Toronto, and her friend misplaced the receipt. While she did submit an email from a Toronto bridal store that indicated she purchased a \$2,000 veil, the email indicates that "you bought the OSCAR DE LA RENTA veil here from me" (my emphasis). The email does not confirm Ms. Kousari's friend picked up the replacement veil for her, the date of purchase, or a copy of the receipt or transaction. Without more, I find the email is insufficient proof that Ms. Kousari sustained her claimed damages. There is no statement from Ms. Kousari's friend confirming that they picked up the replacement veil for Ms. Kousari or misplaced the receipt. In addition, Ms. Kousari did not include any proof of payment by way of receipt, credit

card statement, or e-transfer to prove she paid \$2,000 for the replacement veil or reimbursed her friend for the cost of the replacement veil.

35. I also I find it would be inappropriate to reimburse Ms. Kousari for both the custom veil deposit and the replacement veil's increased cost, because I find it was unreasonable for Ms. Kousari to replace a \$550 custom veil ordered just 12 days before her wedding with a \$2,000 replacement veil 5 days before her wedding. So, I dismiss Ms. Kousari's claim for damages.

### ***Interest, CRT Fees and Expenses***

36. The *Court Order Interest Act* applies to the CRT. Ms. Kousari is entitled to pre-judgment interest on the \$275 deposit from September 2, 2020, 15 days after she cancelled the contract, to the date of this decision. This equals \$0.67.

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. I find the applicant is entitled to reimbursement of \$125 in CRT fees. The applicant did not claim any dispute-related expenses, and so I award none.

## **ORDERS**

38. Within 15 days of the date of this order, I order the respondent Ms. Rosabal to pay the applicant Ms. Kousari a total of \$400.67, broken down as follows:

- a. \$275 in debt as reimbursement for the wedding veil deposit,
- b. \$0.67 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

39. Ms. Kousari is entitled to post-judgment interest, as applicable.

40. I dismiss Ms. Kousari's claim for \$1,450 in damages.



41. 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.
42. 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.

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Leah Volkers, Tribunal Member