



Civil Resolution Tribunal

Date Issued: April 26, 2021

File: SC-2021-000065

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Morgan v. Kennedy (dba Moments Under Frame Studios)*,
2021 BCCRT 432

B E T W E E N :

KYLIE MORGAN and AARON MORGAN

APPLICANTS

A N D :

SHAUN KENNEDY (Doing Business As MOMENTS UNDER FRAME
STUDIOS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicants, Kylie Morgan and Aaron Morgan, hired the respondent, Shaun Kennedy (doing business as Moments Under Frame Studios) as their wedding photographer and videographer. The parties agree that Mr. Kennedy did not fulfill all

of his obligations under the parties' contract, but they disagree about the appropriate remedy. The Morgans want Mr. Kennedy to refund them \$5,000 for the full contract amount, and to provide them with the raw video footage from their wedding.

2. Mr. Kennedy says the Morgans received some benefit under the contract. He is willing to reimburse them \$2,500 and provide them with the raw video footage.
3. Mrs. Morgan represents the Morgans, and Mr. Kennedy is self-represented.

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. 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. Specifically, section 118 (c) of the CRTA allows the CRT to order specific performance of an agreement relating to personal property or services.

ISSUE

8. The issue in this dispute is the appropriate remedy the Morgans are entitled to for Mr. Kennedy's acknowledged breach of contract.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicants Mr. and Mrs. Morgan must prove their claims on a balance of probabilities. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
10. The basic facts are undisputed. On January 3, 2018 the parties signed a \$5,000 contract for wedding photography and videography. The contract included engagement photos, 10 hours of photography and videography during the wedding, an 18x12 canvas, a photo album, all photos and videos in a private online gallery in high resolution available for viewing and download, all photos on a custom tablet transferrable to a home system, a 2-3 minute teaser video (teaser video), a 15-20 minute wedding highlights video (wedding video), raw files of the ceremony and speeches, drone photos and video, and Mr. Kennedy's travel costs.
11. In September 2018, Mr. Kennedy did an engagement photo shoot with the Morgans who say they were pleased with the result. The Morgans had their wedding on December 16, 2018, and Mr. Kennedy and 2 of his assistants shot 10 full hours of photos and video that day. The Morgans say Mr. Kennedy was rushed and disorganized which resulted in very little time for him to capture Mr. Morgan and his groomsmen getting ready. They also say there are very few family shots with everyone focused and smiling for the camera. They say these were only minor slipups that they were initially willing to ignore, but which they raise now that Mr. Kennedy has breached the contract. Mr. Kennedy says he was rushed because the

Morgans failed to take his recommendation to take family photos after the ceremony, and he says he reminded the family members more than once to look at the camera. The Morgans did not submit any evidence to support their allegations, which might have included statements from anyone present on the wedding day, or an expert opinion about the standard of a wedding photographer and videographer. So, I find the Morgans have not established that Mr. Kennedy breached any standard of care or term of the contract on the wedding day.

12. On January 7, 2019, Mr. Kennedy posted the teaser video on one of his social media accounts, which the Morgans were able to view. The Morgans say Mr. Kennedy never physically provided them with a copy of the teaser video and Mr. Morgan does not dispute this. However, I find the contract does not specify the format of the teaser video, and there is no evidence that the quality of the teaser video the Morgans were able to access was substandard. So, I find Mr. Kennedy did not breach the contract by providing the teaser video in the format he did.
13. On April 10, 2019, the Morgans gained access to their online photo gallery. The Morgans say they were initially pleased with the photos, but that after carefully reviewing them they noticed they are rushed, dark, and unedited. However, they did not submit the photos or any supporting evidence about their quality, so I find they have not established that the quality of the photos was substandard or in breach of the contract.
14. It is undisputed that Mr. Kennedy has not provided the Morgans with the canvas, photo album, photos on the custom tablet, the raw video files, or the wedding video (together, the missing items).
15. Mr. Kennedy undisputedly experienced serious health issues in early 2019 which he says is the reason he has not provided the missing items under the contract. The parties provided extensive submissions about Mr. Kennedy's life circumstances and his ability to fulfill his contract obligations since then. However, I find nothing turns on the reason for Mr. Kennedy's contract breach, as he admits he has not provided the missing items as required under the contract.

16. The Morgans want Mr. Kennedy to refund them the full \$5,000 they paid for the contract, and to provide them with the raw video footage from their wedding day. In his submissions, Mr. Morgan offers to refund the Morgans \$2,500 and provide them with the raw video footage. In the alternative, he offers to provide the missing items under the contract. However, the Morgans say they no longer trust Mr. Kennedy to provide a wedding video of sufficient quality. It has now been more than 2 years since the Morgans' wedding day and the contract states the wedding video will be provided approximately 3 to 4 months after the wedding date. In the circumstances I find it is reasonable for the Morgans to decline Mr. Kennedy's offer to complete the contract. So, I must determine an appropriate remedy for the Morgans.
17. Damages for breach of contract are meant to put a party in the position they would have been in had the contract been carried out as the parties agreed (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319. I find that had Mr. Kennedy fulfilled his obligations under the contract the Morgans would have had the canvas, photo album, tablet with photos, raw video footage, and the edited wedding video by the end of April 2019.
18. The parties agree that Mr. Kennedy must provide the Morgans with the raw video footage from their wedding day. Since provision of the raw footage was a term of the parties' contract, I find I am permitted to make such an order under section 118 (c) of the CRTA which allows the CRT to order specific performance of an agreement relating to personal property or services. So, I order Mr. Kennedy to deliver to the Morgans at the address stated on their Dispute Notice the entirety of the raw video footage from the Morgans' wedding day. I find that I must determine the value of the raw footage to ensure the total amount awarded to the Morgans in this dispute is within the CRT's \$5,000 small claims monetary limit. Without any evidence about the quality of the footage or its value, and considering the evidence as a whole, on a judgment basis I find it is valued at \$500.
19. Mr. Kennedy values the canvas at \$200, the photo album at \$100, and the tablet loaded with photos at \$130. The Morgans do not specifically dispute these amounts.

So, I find Mr. Kennedy must reimburse the Morgans \$430 for the value of these items.

20. Mr. Kennedy values the wedding video at \$100. He says the bulk of the contract was for labour and that his hourly rate at the time of the wedding was \$300. The Morgans do not dispute his hourly rate, and I find it is supported by the contract's terms. However, since the contract was a package including many different items, I find it likely Mr. Kennedy discounted his regular hourly rate for the contract. Mr. Kennedy also says he had to pay his 2 assistants who were with him during the entire wedding day, but he did not say how much he paid them.
21. The Morgans say Mr. Kennedy is undervaluing the wedding video for his own benefit. They submitted an estimate from Koyo Photography for \$4,200 to review video footage from a 10-hour wedding day and compile it into a 15 to 20-minute film and a 2 to 3-minute teaser trailer. The estimate said the work would take 40 hours at \$100 per hour. Mr. Kennedy says this quote is excessive. He submitted a screen shot from Koyo Photography's website showing that it charged a minimum of \$3,300 for "full day coverage photo packages." He said the usual cost to shoot and edit a wedding day is \$3,000 - \$5,000.
22. I agree that \$4,200 seems excessive when compared to the parties' \$5,000 contract which included much more than an edited wedding video. I also note that Mr. Kennedy already provided the teaser video, which is included in the estimate. Since Mr. Kennedy was taking both photos and video on the wedding day, I find there is likely less than 10 hours of video footage to edit. On balance, I find Mr. Kennedy must reimburse the Morgans \$3,000 for the cost of editing their wedding video.
23. The Morgans say they are devastated because Mrs. Morgan's grandfather, who was unable to attend their wedding for health reasons, passed away in July 2019 and was never able to watch a video of Mrs. Morgan walking down the aisle. They say Mr. Kennedy ruined their wedding and they are heartbroken. In their reply submissions the Morgans rely on a previous CRT decision and court decisions in which mental distress damages were awarded. However, they say they have limited

their claim to \$5,000 as a courtesy to Mr. Kennedy, instead of taking their claims to the Provincial Small Claims court and suing for mental distress damages. The Morgans did not claim mental distress damages in their Dispute Notice. It is unclear from their reply submissions whether they are claiming mental distress damages, but to the extent that they are, I find Mr. Kennedy did not have an opportunity to respond to such a claim. So, I find any claim for mental distress damages is not properly before me and I decline to address the merits of such a claim.

24. The *Court Order Interest Act* applies to the CRT. The Morgans are entitled to pre-judgment interest on the \$3,430 owing, calculated from April 16, 2019, which is the latest date Mr. Kennedy was required to provide the missing items under the contract, to the date of this decision. This equals \$93.65.
25. 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. Since the Morgans were generally successful, I find they are entitled to reimbursement of \$175 in CRT fees. They did not claim any dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order Mr. Kennedy to deliver to the Morgans at their address provided in the Dispute Notice all of the raw video footage in his possession from the Morgans' wedding day.
27. Within 30 days of the date of this order, I order Mr. Kennedy to pay the Morgans a total of \$3,698.65 broken down as follows:
 - a. \$3,430 in damages,
 - b. \$93.65 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.

28. The Morgans are entitled to post-judgment interest, as applicable.
29. 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.
30. 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.

Sarah Orr, Tribunal Member