



# Civil Resolution Tribunal

Date Issued: May 26, 2021

File: SC-2021-000026

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Scharf v. C.P.M. Farms Ltd.*, 2021 BCCRT 565

BETWEEN:

LINDA SCHARF and DAVID SCHARF

**APPLICANTS**

AND:

C.P.M. FARMS LTD. dba THE SECRET GARDEN OF WOODBRIDGE  
PONDS dba THE SECRET GARDEN, PAUL MOSTERTMAN, and  
CAROLINE MOSTERTMAN

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about a cancelled wedding event. The applicants, Linda Scharf and David Scharf, contracted with the respondent, C.P.M. Farms Ltd. dba The Secret Garden of Woodbridge Ponds dba The Secret Garden (CPM Farms), to hold their

daughter's May 16, 2020 wedding at CPM Farms. The applicants say that after signing the contract, government COVID-19 pandemic restrictions limited attendance to 50 people, and the parties were unable to find a mutually acceptable alternative date. So, the applicants say the respondents cancelled the May 16, 2020 reservation, refunded \$3,200 of the \$6,400 paid by the applicants, and held the remainder as a deposit on a future event. The applicants claim the \$3,200 withheld, because they say the contract provides for a full refund.

2. The respondents say that the applicants could have proceeded with the wedding within government-imposed attendance limits, or chosen an alternative date, but they decided not to. The respondents deny that a full refund is required under the contract. The respondents say that they provided a larger refund than the contract required and remain available to host the event on a different date, so they owe nothing. The respondents Paul Mostertman and Caroline Mostertman also say that they are directors of CPM Farms, but the applicants' contract is with CPM Farms alone and not the Mostertmans personally.
3. Ms. Scharf represents the applicants in this dispute. Ms. Mostertman represents all of the respondents.

## **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 applicants are entitled to a refund of the remaining \$3,200 retained by CPM Farms.

## **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 arguments that I find relevant to provide necessary context for my decision.
10. On the evidence before me, I find that CPM Farms is a separate legal entity from Ms. Mostertman and Mr. Mostertman. I find the Mostertmans are not liable for CPM Farms' actions simply because they are its directors. Ms. Scharf undisputedly signed a "Secret Garden Use Agreement 2020" contract on August 13, 2019 that named her and Mr. Scharf as CPM Farms' "clients." I find the contract said it was with CPM Farms, said that cheques should be payable to CPM farms, and gave a CPM Farms email address for e-transfers. Ms. Mostertman and Mr. Mostertman were not mentioned anywhere in the contract. I find the evidence shows Ms. Mostertman and Mr. Mostertman were not parties to the contract, and did not agree to be personally

responsible for CPM Farms or any aspect of the contract or the wedding event. So, I dismiss the applicants' claims against Ms. Mostertman and Mr. Mostertman personally. When I refer to the "respondent" below I mean CPM Farms, and my references to the "parties" below mean the applicants and CPM Farms only.

11. The respondent says this dispute is similar to one considered in a previous CRT decision, *Appelt v. C.P.M. Farms Ltd.*, 2020 BCCRT 1378. In that dispute, the CRT dismissed a deposit refund claim for a CPM Farms wedding event cancelled during the COVID-19 pandemic. I note that I am not bound by previous CRT decisions, and the outcome of this dispute turns on the evidence before me.
12. The undisputed evidence is that the applicants paid a required \$6,400 wedding event fee, and \$3,200 was refunded. The contract's refund policy said that if the event was cancelled more than 4 weeks after booking, which I find was the case here, the \$1,000 initial deposit was non-refundable. The policy also said that the \$3,000 first installment payment and the final payment were both non-refundable once paid.
13. The contract also contained a "force majeure" clause. A force majeure is an unforeseeable situation that prevents a party from fulfilling a contract. The clause said, "The ability to execute this Agreement by either party is subject to the Acts of God, including but not limited to hurricanes, flooding, earthquakes, fires, etc. as well as any government intervention, staff disputes and strikes, changes to by-law and licensing, civil disorders, terrorism, or other emergencies" (reproduced as written). The contract said that if the event was cancelled "through a Force Majeure event", CPM Farms would refund all fees paid by the applicants within thirty days.
14. I find that under the contract, if a force majeure event occurred, and if the wedding was cancelled "through" that force majeure event, the applicants would be entitled to a full refund of the remaining \$3,200. Otherwise, I find that their payments were non-refundable under the contract, so they would not be entitled to an additional refund.
15. It is undisputed that government restrictions came into force in March 2020 that limited gatherings to no more than 50 people. The applicants say that this was a

“government intervention,” which the contract said was a force majeure event. On balance, and in the circumstances, I agree. I find that the force majeure clause is broad enough to apply to such a government attendance restriction (see *Wightman Estate v. 2774046 Canada Inc.*, 2006 BCCA 424 at paragraph 26). I also note that the contract says its execution, which I find means the parties’ performance of the contract, is subject to force majeure events such as government interventions. I find this means that the parties were only required to perform the contract to the extent permitted by the government-imposed 50-person attendance limit.

16. The question remains, was the May 16, 2020 event cancelled “through” the 50-person attendance limit? The applicants say the contract was for a 50- to 140-person wedding, but I find that is not correct. A CPM Farms “Basic Information & Pricing 2020” pamphlet, which is not part of the written contract, said that “Capacity is 50 to 140”. I find this refers to a range of maximum capacities without indicating which, if any, applied to the parties’ contract. I find the contract was for the rental of CPM Farms’ greenhouse facility, including tables and chairs, a patio area, washrooms, and alcohol service. I find the contract said, “Maximum seating capacity is 140” and did not specify any minimum attendance requirements. On balance, I find that the contract did not require CPM Farms to ensure that at least 140 people could attend the wedding event in all circumstances. I also find that the contract did not provide for cancellation, refunds, or other remedies if the applicants were unable to bring an unspecified minimum number of guests for any reason.
17. The respondent says it remained able and willing to perform the May 16, 2020 rental contract within government attendance limits, but the applicants did not want to proceed within those limits. The respondent says it offered to move the event date, but the parties could not agree on a different date. The respondent says it refunded half of the applicants’ fees and remains willing to hold an event on a different date, to which it would apply the retained \$3,200.
18. The applicants say that the respondent effectively cancelled the event in a March 18, 2020 email, and that the implied reason for cancellation was the 50-person limit. The

applicants say this means the cancellation was “through a Force Majeure event”, so they are entitled to a full refund of all fees paid under the contract.

19. Having reviewed the emails in evidence, I find that CPM Farms did not cancel the event. On March 18, 2020, CPM Farms acknowledged that the event “will not happen on May 16, 2020 if your guest list is over 50.” So, CPM Farms recommended looking at other options, and asked if any other dates later in the year or in the next year would work. The applicants responded they thought the wedding would not have more than 50 attendees, and that their first choice was to have it at CPM Farms, so they were hoping for the best. The applicants said they would see how things were at the end of April 2020 or the first week of May 2020 and decide then. I infer this meant decide whether to cancel the event. The applicants said they would assume things were “a go” and the respondents replied that they would proceed accordingly. I find this correspondence shows that as of around March 18, 2020 the parties specifically agreed not to cancel the event. On balance, I find CPM Farms indicated that events were subject to the government’s 50-person attendance restriction, and that it was willing to consider alternative dates if the applicants wanted to proceed with an event with more than 50 attendees.
20. On March 26, 2020, the applicants emailed CPM that their wedding event would exceed 50 attendees and include immunocompromised and elderly people. The applicants said they “concur that our event must be cancelled” and requested a full refund under the contract’s force majeure terms. As noted, the respondents then refunded 50% of the fees paid and offered to credit the retained balance toward an unspecified future event date in either 2020 or 2021. However, the applicants allege that CPM Farms unilaterally cancelled the event because the March 18, 2020 email ruled out events exceeding 50 attendees. The applicants say CPM Farms’ March 18, 2020 email “initiated the Force Majeure clause”.
21. As noted, I find CPM Farms did not cancel the event on March 18, 2020. I also find that the event could have proceeded with 50 or fewer attendees on May 16, 2020, without any of the parties breaking the contract. I find the applicants decided that an

event of that size was not acceptable to them, but I find there was nothing in the contract that required CPM Farms to accommodate a minimum number of guests. I find that the applicants cancelled the wedding on March 26, 2020. Further, I find that they did so because of their dissatisfaction with the 50-person attendance limit, and not because that limit made the parties' contract impossible to perform in the circumstances.

22. Overall, I find that the wedding event was not cancelled "through" a force majeure event. So, I find that under the contract, the applicants' payments to CPM Farms were non-refundable. I also note that the CRT lacks jurisdiction to provide relief from penalties or forfeitures under section 24 of the *Law and Equity Act*. I find that the applicants are not entitled to an additional \$3,200 refund.

## **CRT FEES AND EXPENSES**

23. 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 applicants were unsuccessful here, and in any event claimed no CRT fees or CRT dispute-related expenses. The respondents paid no fees and claimed no expenses. So, I order no reimbursements.

## **ORDER**

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

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Chad McCarthy, Tribunal Member