Civil Resolution Tribunal

Date Issued: October 12, 2021

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Borsanyi v. Kalawarny*, 2021 BCCRT 1082

B E T W E E N :

FRANCINE BORSANYI, PATRICK BLAIN, and DENNIS DIEMERT

APPLICANTS

A N D :

LAURINDA KALAWARNY

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. This dispute is about a cancelled vacation home rental. The applicants, Francine Borsanyi, Patrick Blain, and Dennis Diemert, rented a vacation home near Big White Ski Resort (Big White) from the respondent, Laurinda Kalawarny. The applicants say

they had to cancel the trip due to the COVID-19 pandemic, an outbreak of COVID-19 cases at Big White and a Provincial Health Officer (PHO) order. The applicants seek a refund of the $4,902.81 they paid.

2. Ms. Kalawarny says the applicants are bound by a cancellation policy that said there would be no refund. She says people should not use the pandemic as an excuse to abuse people's businesses.

3. The applicants are represented by Ms. Borsanyi. Ms. Kalawarny represents herself. For the reasons that follow, I find the applicants are entitled to a full refund.

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.

8. Ms. Kalawarny raised a possible issue in her Dispute Response about standing or entitlement to bring the claim. She said Mr. Blain made the booking and she had no idea why Ms. Borsanyi was involved. It is undisputed that Mr. Blain and Ms. Borsanyi are immediate family members. It is also undisputed that Ms. Borsanyi paid for the vacation home Mr. Blain booked. Mr. Diemert's relationship to the other applicants is not explained but his standing has not been questioned. I find the applicants are entitled to bring this claim.

ISSUE

9. The issue in this dispute is whether Ms. Kalawarny must refund the applicants any of the $4,902.81 paid for the cancelled vacation home.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

11. The undisputed evidence is that on or around December 12, 2020, Mr. Blain reserved Ms. Kalawarny's vacation home for January 18-25, 2021 through "Owner Direct". Owner Direct describes itself in the evidence as an online service that matches guests to hosts and is not involved with rental agreements.

12. The total cost, including taxes and a $300 cleaning fee, was $5,399.39. Of that, $496.58 went to Owner Direct, which Owner Direct later refunded to the applicants when they cancelled the booking. The difference, $4,902.81, is what the applicants claim from Ms. Kalawarny in this dispute.

13. On or around January 10, 2021, the applicants attempted to cancel their booking. Ms. Kalawarny refused to provide a refund. This dispute turns on the terms of the parties' agreement and in what circumstances, if any, Ms. Kalawarny was required to provide a refund.

14. It is undisputed that the parties did not have a written contract. Ms. Kalawarny provided some screenshots of Owner Direct correspondence with payment terms and conditions. The full payment was due at booking time, and refundable if the booking was cancelled at least 30 days in advance. There is no dispute that the applicants did not give 30 days' notice of cancellation.

15. The screenshot correspondence appears to be something created for the property owner, not the renter. So, it is not clear that Mr. Blain or any applicant saw these terms when making the booking. However, I find nothing turns on this because Ms. Kalawarny provided more specific information about cancellation directly to Mr. Blain.

16. On December 11, 2020, just before confirming the booking, Mr. Blain messaged Ms. Kalawarny through Owner Direct and asked about the cancellation policy in case "something happens with the unpredictability of covid?" Ms. Kalawarny replied, "Thank you for your concerns, if the Mountain shuts down there would be a full refund of your deposit[.]" Ms. Kalawarny's reply also addressed what would happen if someone in Mr. Blain's party contracted COVID-19, and measures Ms. Kalawarny had taken with respect to the vacation home related to the pandemic.

17. It is undisputed, and I find, that Ms. Kalawarny's refund statement became a term of the parties' contract. The question is what exactly the parties intended.

18. The modern approach to contract interpretation involves reading the contract as a whole and giving the words their normal and ordinary meaning in line with the surrounding circumstances of the parties when they made the contract: see *Sattva Capital Corp. v. Creston Moly Corp.* 2014 SCC 53.

19. The first issue is the meaning of "full refund of your deposit," given the applicants paid in full rather than paying a deposit. I find Ms. Kalawarny's use of the term "full refund"

and the fact that the full price was paid at the time of booking mean Ms. Kalawarny agreed to refund the full price if the condition of a mountain shut down was met.

20. The second issue is the meaning of “mountain shut down”. The applicants say the mountain was shut down to them, being from another province.

21. The applicants provided a December 15, 2020 Global News article that stated that Big White was restricted to “locals only” following BC officials’ decision to extend restrictions, including an advisory against non-essential travel, until February 5, 2021. The article quoted an official from Big White Central Reservations Ltd. (BWCR) saying that the reservations team had been instructed to begin contacting guests and ski groups to cancel their bookings.

22. The applicants also provided a copy of correspondence from BWCR to its guests that stated:

    - On December 15, 2020, Interior Health reported a COVID-19 “community cluster” at Big White.
    - The PHO asked BWCR to review all incoming reservations and ensure that all visitors are adhering to the December 7, 2020 PHO order.
    - The PHO order said all non-essential travel should be avoided, including travel into BC and vacation travel.
    - BWCR was limiting bookings to guests from the Central Okanagan area only until January 9, 2021.
    - BWCR would be cancelling all other bookings and providing credit or a full refund, as well as issuing refunds on pre-booked lift tickets, equipment rentals and ski school fees, and helping with flight refunds

23. The PHO order was subsequently extended past the applicants’ reservation dates. I agree with the applicants that the BWCR letter confirms that Big White was closed to non-locals as a result of the PHO order.

24. The applicants argue that since they are undisputedly non-locals, Big White was effectively "shut down" for them. The booking documents indicate that Ms. Kalawarny was able to view Mr. Blain's address and therefore knew he was not local. Ms. Kalawarny does not say otherwise.

25. Ms. Kalawarny says the applicants could have used the mountain. She says Big White officials did not check where people came from. She also says, without providing any evidence, that other guests from out-of-province stayed in the vacation home and used Big White while the PHO order was in effect. Even accepting that to be true, that does not mean that Big White was open to non-locals. Accepting Ms. Kalawarny's interpretation of the contract would mean expecting the applicants to contravene a PHO order and Big White's rules and hope not to be caught doing so. I see no reason to endorse such an interpretation.

26. I acknowledge Ms. Kalawarny's argument that her vacation home is technically not part of Big White, but the question is not whether the applicants were able to stay in the vacation home, but whether Big White was "shut down" as a reasonable person in the parties' position would understand that term. Considering the context of the COVID-19 pandemic and the purpose of the vacation home as a "ski in, ski out" property, I find that a "shut down" meant a closure that prevented skiing and snowboarding. I find that Big White being closed to non-locals as a result of the PHO order meant the applicants would not have been able to ski or snowboard. So, I find that Big White was "shut down".

27. As a result, based on the parties' contractual refund term, I find Ms. Kalawarny must refund the full booking price. I order her to pay the applicants $4,902.81.

28. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the $4,902.81 from January 10, 2021, the date they attempted to cancel the booking, to the date of this decision. This equals $16.44.

29. 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 $175 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

30. Within 14 days of the date of this order, I order Ms. Kalawarny to pay the applicants a total of $5,094.25, broken down as follows:

    a. $4,902.81 in debt,

    b. $16.44 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175.00 in CRT fees.

31. The applicants are entitled to post-judgment interest, as applicable.

32. 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.

33. 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.

Micah Carmody, Tribunal Member