



Civil Resolution Tribunal

Date Issued: January 12, 2022

File: SC-2021-005421

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pearson (dba Interior Women's Expo) v. Sound Waves Entertainment Network Ltd.*, 2022 BCCRT 41

B E T W E E N :

FRANCIS PEARSON (Doing Business As INTERIOR WOMEN'S EXPO)

APPLICANT

A N D :

SOUND WAVES ENTERTAINMENT NETWORK LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a paid deposit. The applicant, Francis Pearson (Doing Business As Interior Women's Expo), says he paid a \$5,000 deposit to the respondent, Sound Waves Entertainment Network Ltd. (SWEN), which does business as SHOWTIME Event & Display. The contract was for SWEN to set up display booths at a trade show Mr. Pearson was organizing. Given the government's COVID-19 restrictions and gathering limits, Mr. Pearson asked for a refund but SWEN refused. Mr. Pearson claims a \$5,000 refund for the deposit.
2. SWEN says the parties' signed agreement specified the deposit paid at the time of booking was non-refundable. SWEN also says it offered an opportunity to reschedule, but Mr. Pearson undisputedly refused because the participating exhibitors no longer wanted to participate. SWEN says it owes nothing and I infer it asks that I dismiss the claim.
3. Mr. Pearson is self-represented. SWEN is represented by an employee or principal, CM.

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). 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.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT's mandate that includes proportionality and a speedy

resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.

6. Under CRTA section 42, 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 CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
8. I note that in SWEN's Dispute Response filed at the outset of this proceeding, it stated that the CRT had no jurisdiction over this dispute. I disagree. This is a contractual dispute which squarely falls within the CRT's jurisdiction over debt and damages under CRTA section 118.

ISSUE

9. The issue is whether the parties' contract was frustrated by the pandemic and whether Mr. Pearson is entitled under the parties' contract to a refund of his \$5,000 paid deposit.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, as the applicant Mr. Pearson has the burden of proving his claims, on a balance of probabilities (meaning "more likely than not"). I have only referenced below what I find is necessary to give context to my decision.
11. The background facts are not disputed. Between February 28 and March 10, 2020, Mr. Pearson paid SWEN a total of \$5,000 as most of the required \$5,250 deposit towards the parties' \$10,532 contract for SWEN to set up the May 2020 trade show display booths.

12. On March 25, 2020, Mr. Pearson emailed SWEN asking for the return of his paid deposit, because he said, “the Government has cancelled all shows” and there was “no word on reopening dates”. Mr. Pearson added that “we will continue to look at doing our show in the fall or spring and will let you know”. However, in this dispute Mr. Pearson argues that he ultimately did not want to reschedule because the exhibitors did not want to do so.
13. The parties’ signed February 24, 2020 contract is clear that the deposit “will be non refundable”. So, I find the parties’ contract does not require SWEN to refund the paid deposit. The contract did not have what is known in law as a ‘force majeure’ clause (a clause addressing unforeseeable events outside the parties’ control). In the absence of such a clause, the doctrine of contract frustration applies.
14. Although he does not use this language, Mr. Pearson essentially argues the parties’ contract was frustrated by the COVID-19 pandemic, because the government’s restriction limiting gatherings to 50 people meant the trade show could not proceed as scheduled in May 2020.
15. A contract is frustrated when an unforeseeable event occurs (for which the parties made no provision) and which makes performance of the contract something radically different from what was originally agreed to: 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 contract’s terms, 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.
16. First, I acknowledge Mr. Pearson’s evidence that other vendors and suppliers, including the City of Kamloops, refunded his paid deposits. I also acknowledge that Mr. Pearson feels obligated to refund deposit monies he received from exhibitors

who did not want to reschedule the trade show. However, those factors are not determinative of SWEN's obligations to Mr. Pearson.

17. Second, Mr. Pearson's own evidence from his March 2020 cancellation email is that it was possible to reschedule the trade show. It is undisputed SWEN offered to reschedule (and it appears October 2020 was one suggestion) but Mr. Pearson declined. The fact that his existing exhibitors elected not to reschedule does not mean the parties' contract was impossible to perform. Mr. Pearson also has not shown that it was not possible to set up the trade show on non-municipal property or that limit the participants to 50 at any one time to comply with the pandemic gathering restriction. On balance, I find the parties' contract was not frustrated by the pandemic. So, I find Mr. Pearson is not entitled to a refund of the \$5,000 deposit, given the contract's terms and the fact the contract was not frustrated. I dismiss his claim.

18. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Pearson was unsuccessful, I dismiss his claim for reimbursement of paid CRT fees. SWEN did not pay CRT fees and no dispute-related expenses were claimed.

ORDER

19. I dismiss Mr. Pearson's claims and this dispute.

Shelley Lopez, Vice Chair