



Civil Resolution Tribunal

Date Issued: July 18, 2022

File: SC-2022-000778

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sohi v. Bombay Banquet Hall Ltd.*, 2022 BCCRT 817

BETWEEN:

KULWINDER SOHI

APPLICANT

AND:

BOMBAY BANQUET HALL LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. This dispute is about a deposit for banquet hall services. The applicant, Kulwinder Sohi, paid a \$5,000 deposit to the respondent, Bombay Banquet Hall Ltd.

(Bombay), for 2 events for Mr. Sohi's son's wedding. June 30 and July 3, 2021 were reserved as dates for the wedding. Mr. Sohi says Bombay said it was not worth it for them to hold an event with a 50-person restriction then in place during the COVID-19 pandemic. Mr. Sohi says that with the uncertainty around the pandemic, he cancelled the Bombay events and held the events at his home. Mr. Sohi says the contract Bombay created was blank, and so its "non-refundable" term is not enforceable. Mr. Sohi claims a refund of the \$5,000 deposit.

2. Bombay says the deposit was non-refundable and that it was willing to hold the events and that Mr. Sohi never cancelled them. Bombay says it lost about \$50,000 because the events did not proceed. Bombay did not file a counterclaim.
3. Mr. Sohi is self-represented. Bombay is represented by its owner, Gurminder Brar.

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). CRTA section 2 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. 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. Some of the evidence in this dispute amounts to a "he said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. CRTA section 42 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. As noted above, Bombay says it lost about \$50,000 for the events not proceeding. Since Bombay did not file a counterclaim and because the CRT's monetary limit in small claims matters is \$5,000, I find this \$50,000 claim is not before me and I make no findings about it.

ISSUE

9. The issue is whether Mr. Sohi is entitled to a refund of a \$5,000 deposit for cancelled banquet hall services.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Sohi must prove his claim on a balance of probabilities (meaning "more likely than not"). I have read the parties' submitted documentary evidence and arguments but refer only to what I find relevant to provide context for my decision.
11. In around May 2019, BG, a mutual friend of Mr. Sohi's and Bombay's, coordinated with Bombay to reserve June 30 and July 3, 2021 for Mr. Sohi's son's wedding events. In June 2019, Bombay asked BG to obtain a \$5,000 deposit to reserve the booking, which Mr. Sohi paid by cheque on June 16, 2019. None of this is disputed.

12. Mr. Sohi says “contracts were then created” which were incomplete with no details for the functions other than the dates. Mr. Sohi does not say if or when BG received those contracts. Notably, there is no witness statement in evidence from BG. Mr. Sohi says he did not see the contracts until September 2021. The contract has preprinted text that says the deposit is non-refundable.
13. First, the contract. Bombay submitted versions of the contracts with BG’s name crossed out and Mr. Sohi’s name inserted instead, highlighted in yellow. Their versions also have pricing filled in, also highlighted in yellow. Bombay does not say these highlighted and priced versions were given to BG or Mr. Sohi. I do not accept Mr. Sohi’s assertion they are fabrications intended to mislead. Rather, I infer Bombay created these highlighted versions for their own bookkeeping.
14. Second, I find it likely Bombay gave the incomplete and unhighlighted contracts (one for each of the 2 events) to BG. This is consistent with Mr. Sohi’s phrasing “contracts were created” and Bombay’s submission that it told BG the deposit was non-refundable and that this term was in the contract as well. Mr. Sohi says Bombay did not tell him the deposit was non-refundable but he does not say Bombay failed to tell BG the deposit was non-refundable. Again, there is no statement in evidence from BG.
15. I agree with Mr. Sohi that because the contracts did not set out the fundamental terms about price, this meant there was no binding contract for the events themselves. However, I do find there was a binding contract for the deposit. I say this because BG undisputedly acted as Mr. Sohi’s agent, and as such had authority to bind Mr. Sohi. Mr. Sohi and BG undisputedly knew Mr. Sohi was providing the \$5,000 deposit to Bombay to “reserve the booking” for the events. I further find BG knew the deposit was non-refundable, from the contracts Bombay gave him and because it is undisputed Bombay verbally told BG it was non-refundable.
16. Significantly, because Mr. Sohi admits he wanted the 2 events booked with Bombay and admits he paid a \$5,000 deposit to “reserve the booking”. I find this means the deposit was a “true deposit”. More on this below.

17. In law, a true deposit is designed to motivate contracting parties to carry out their bargains. A buyer who repudiates the contract generally forfeits the deposit. An example of repudiation is when a party refuses to purchase what was bargained for. In contrast, a partial payment is made with the intention of completing a transaction, such as with a down payment to cover work to be done or materials to be purchased under the contract. For a seller to keep a partial payment, the seller must prove actual loss to justify keeping the money received. See *Tang v. Zhang*, 2013 BCCA 52 at paragraph 30.
18. So, the next question is whether Mr. Sohi repudiated or cancelled the contract, or, whether Bombay refused to perform it. Mr. Sohi says Bombay refused to hold the events because it was not worth it for them to do so with only 50 guests. The undisputed evidence is that the events had been planned for 250 people. However, Mr. Sohi also submits that “due to the uncertainty” around the province’s phase 3 reopening and timing of his son’s events, he was “forced” to hold the events at his home.
19. In contrast, Bombay says while the hall had earlier been closed due to pandemic restrictions, it was open for both June 30 and July 3, 2021. I accept this undisputed evidence. Bombay says Mr. Sohi was discussing the events with Bombay close to the event dates, which I accept as Mr. Sohi does not deny it. Bombay further says that Mr. Sohi never cancelled the events. In reply submissions, Mr. Sohi disagrees and says that “the events were requested that they be cancelled”. Yet, Mr. Sohi submitted no explanation of how he communicated this alleged cancellation request and no supporting evidence such as an email, text message, or record of a cell phone call.
20. I find it unproven that Mr. Sohi cancelled the events. I find he repudiated the deposit contracts. As the \$5,000 was paid as a true deposit to reserve the bookings, I find Mr. Sohi forfeited it when he repudiated the contracts.
21. With that, I have however considered whether the deposit contracts were frustrated by the pandemic. Even if the “blank” contracts’ terms applied, those contracts did

not contain a *force majeure* clause. A *force majeure* means an unforeseeable situation that prevents a party from fulfilling a contract.

22. In the absence of a *force majeure* clause, the common law doctrine of frustration may apply to relieve parties from their contractual obligations. A contract is frustrated when an unforeseeable event occurs and makes performance of the contract something radically different from what the parties originally agreed: see *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58 at paragraph 53. The event must make it truly pointless to continue to perform the terms of the contract, not just inconvenient, undesirable, or because there is increased hardship or expense for one or both parties: *Wilkie v. Jeong*, 2017 BCSC 2131.
23. In the circumstances of this dispute, I find it unproven the deposit contracts were frustrated. This is because I have found Bombay's hall was available to host the events and because Mr. Sohi did not cancel them. Given my conclusions above, I dismiss Mr. Sohi's claims.
24. 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. Sohi was not successful, I find he is not entitled to reimbursement of CRT fees. Bombay did not pay CRT fees and no dispute-related expenses were claimed.

ORDER

25. I dismiss Mr. Sohi's claims and this dispute.

Shelley Lopez, Acting Chair and Vice Chair