



# Civil Resolution Tribunal

Date Issued: July 25, 2022

File: SC-2021-007736

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dolinski v. Karizma Photography*, 2022 BCCRT 842

BETWEEN:

LISA DOLINSKI

**APPLICANT**

AND:

KARIZMA PHOTOGRAPHY and Tatiana Berdyugin

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about the refund of a deposit for a wedding photography contract.
2. The applicant, Lisa Dolinski, hired the respondent partnership, Karizma Photography (Karizma), to photograph her wedding, which was scheduled for October 10, 2020. Ms. Dolinski paid Karizma a \$1,000 deposit as part of the package price. Due to the

COVID-19 pandemic, Ms. Dolinski rescheduled her wedding to October 16, 2021, and then later rescheduled it again to a date in 2022. Ms. Dolinski says Karizma changed its services and prices for 2022, and she can no longer afford to have Karizma photograph her wedding. Ms. Dolinski claims a refund of the \$1,000 deposit.

3. The respondent, Tatiana Berdyugin, is one of Karizma's partners. The respondents say that the deposit was a retainer to reserve the date in their calendar, and that under the parties' contract, the deposit is non-refundable. The respondents say they owe Ms. Dolinski nothing.
4. Ms. Dolinski and Tatiana Berdyugin are each self-represented. Karizma is represented by its other partner, NL.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.

8. 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**

9. The issue in this dispute is whether Ms. Dolinski is entitled to the return of the \$1,000 deposit.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Ms. Dolinski must prove her claims on a balance of probabilities (meaning “more likely than not”). I have read all of the parties’ evidence and submissions, but I refer only to what I find is necessary to explain my decision.
11. The background facts are largely undisputed. Ms. Dolinski signed a contract with Karizma on January 21, 2020 for 8 hours of photography services at her October 10, 2020 wedding. The total package price was \$3,349.50. The contract stated that a \$1,000 non-refundable retainer was due within 48 hours of signing the contract, which Ms. Dolinski paid on January 22, 2020. The balance of the package price was due on September 26, 2020, 14 days before the wedding date.
12. On the contract’s second page, it stated that signing and paying the retainer would reserve the time and date for Karizma’s services. It also stated that if the total package price was not paid 14 days before the wedding date, Karizma was entitled to immediately terminate the agreement and keep the retainer. In the “Cancellation” section, the contract stated that if the client terminates the agreement before the wedding date, they must give Karizma 5 business days’ written notice of their

intention to cancel and any payments made before the cancellation date will not be refunded.

13. In March 2020, BC's Provincial Health Officer imposed public gathering restrictions due to the COVID-19 pandemic. Ms. Dolinski sent Karizma a May 18, 2020 email about possibly rescheduling her wedding to October 16, 2021. Karizma responded that given recent events, the non-refundable \$1,000 retainer could be transferred to book a new date until the end of 2021 without incurring any penalty fees. Karizma also confirmed that it would honour the prices as originally booked.
14. The parties signed a new contract dated June 8, 2020 for the October 16, 2021 wedding date. The terms of the June 2020 contract relating to payment and cancellation remained the same as in the original contract.
15. On January 8, 2021, Ms. Dolinski emailed Karizma about a recent social media post that indicated Karizma was changing its business model and was no longer booking larger weddings. Ms. Dolinski asked if this impacted her October 2021 booking. She also asked if Karizma would still be willing to photograph her wedding if it was rescheduled again to October 2022.
16. Karizma responded in a January 9, 2021 email that its new business focus would not impact any current bookings. Karizma also confirmed that it would only honour rescheduling requests if weddings and gatherings were "officially banned" as of the wedding date. However, if weddings of any size were permitted, Karizma stated the cancellation policy in the contract would apply to cancel the booked 2021 wedding date. Karizma also stated that it was willing to transfer the current deposit towards its new helicopter or elopement packages, but that this offer was only available until the end of 2021 and would not be extended to 2022.
17. Ms. Dolinski replied on February 9, 2021 that she had decided to reschedule her wedding to October 15, 2022 because it appeared weddings would still be restricted to smaller numbers with physical distancing. She asked if she could reschedule Karizma's services for the new date. Karizma responded that because small

weddings were currently permitted, if Ms. Dolinski cancelled the 2021 date, she would have to book a new package with the new pricing and pay a new deposit.

18. On July 15, 2021, Ms. Dolinski emailed Karizma to confirm she had rescheduled her wedding to October 2022, given the current gathering restrictions limited her venue to about 50 guests, and she wanted 70 to 80 guests in attendance. Ms. Dolinski asked about applying her \$1,000 retainer to an engagement photo session instead. Karizma responded that the only engagement session it currently offered was a helicopter package, which cost \$2,600. Karizma also confirmed that Ms. Dolinski would have to release her October 2021 date before booking any new sessions and provided a cancellation agreement for Ms. Dolinski to sign.
19. Ms. Dolinski sent Karizma an August 6, 2021 email advising that Karizma's engagement session and 2022 wedding package pricing was outside her budget. Ms. Dolinski noted that Karizma's 2020 engagement session pricing had been \$700 for 2 hours. So, she asked if Karizma would consider a 2-hour engagement photoshoot for the \$1,000 retainer. Alternatively, Ms. Dolinski asked for a 50% refund of her deposit. Karizma responded that while it had made exceptions to reschedule in 2021 or to use the deposit for another service currently offered, it would not make further exceptions. Karizma also noted that Ms. Dolinski had not yet cancelled the October 2021 booking.
20. On August 12, 2021, Ms. Dolinski emailed Karizma advising she would sign the cancellation form releasing her October 2021 booking, if Karizma agreed to the requested 2-hour engagement session or refunded half the deposit. In reply, Karizma confirmed the contract terms applied for rescheduling or cancelling the wedding booking.
21. It is undisputed that Ms. Dolinski declined to sign Karizma's cancellation agreement to release the October 16, 2021 booking. The evidence shows Karizma sent Ms. Dolinski an October 13, 2021 letter confirming that since she had failed to pay the balance of the package price 14 days before the scheduled wedding date, Karizma was terminating its service agreement and keeping the \$1,000 retainer.

22. Ms. Dolinski argues that she advised Karizma on both February 9, 2021 and July 15, 2021 that she was rescheduling her October 2021 wedding. However, even if Ms. Dolinski's emails were sufficient written notice of cancellation under the parties' contract, I find the contract's terms permitted Karizma to keep the \$1,000 deposit regardless of when Ms. Dolinski cancelled the date.
23. Ms. Dolinski does not provide any legal basis to explain why she is entitled to a refund of her \$1,000 deposit. Essentially, she submits that it was unfair of Karizma to only offer to apply the deposit towards the expensive engagement and elopement packages it was currently offering in 2021. Ms. Dolinski says that because Karizma honoured the 2020 package price for her 2021 wedding, it should also have permitted her to use the deposit for an engagement session at 2020 pricing. I disagree. I find Ms. Dolinski never booked a 2020 engagement session, and the parties' June 2020 contract did not include that service. So, I find Karizma was not obligated to honour its 2020 pricing for an engagement session. Further, I find Karizma's offer to apply the deposit to its currently offered services was a courtesy, and not part of its obligations under the parties' contract.
24. I note that 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.
25. I find Ms. Dolinski paid Karizma the \$1,000 as a true deposit, as its purpose was to hold Ms. Dolinski's wedding date in the respondents' calendar to ensure their availability. It is undisputed that Karizma was available and willing to fulfill its photography services obligations under the parties' contract for Ms. Dolinski's October 16, 2021 wedding date.

26. It is also undisputed that Ms. Dolinski decided to postpone her wedding due to uncertainty that she would be able to have the planned number of guests without social distancing requirements. Therefore, I find that Ms. Dolinski repudiated or cancelled the parties' contract, and so she forfeited her deposit.
27. While not specifically raised by the parties, I also considered whether the parties' contract was frustrated by the pandemic. The parties' contract undisputedly did not contain a *force majeure* clause. A *force majeure* means an unforeseeable situation that prevents a party from fulfilling a contract.
28. 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 simply inconvenient, undesirable, or because there is increased hardship or expense for one or both parties: *Wilkie v. Jeong*, 2017 BCSC 2131.
29. It is undisputed that weddings were permitted in BC when Ms. Dolinski decided to postpone her 2021 wedding date. I find the parties' contract was not dependent on a certain number of guests attending the wedding. As noted, the respondents were available and prepared to photograph Ms. Dolinski's wedding on October 16, 2021. While it may have been undesirable for Ms. Dolinski to hold her wedding with fewer guests, I find that did not make the parties' contract pointless to perform.
30. Further, the parties entered into the June 2020 contract for the October 16, 2021 wedding services when they were already aware of the COVID-19 pandemic and the possibility of related restrictions on gatherings and travel. Ms. Dolinski had already rescheduled her first wedding date for such concerns. Yet, the parties did not agree to different cancellation terms, including in the case that pandemic restrictions affected Ms. Dolinski's 2021 wedding plans. I find the pandemic was not an unforeseeable event when the parties signed the new contract in June 2020.

31. Overall, I find the parties' contract was not frustrated. For all the above reasons, I dismiss Ms. Dolinski's claims.
32. 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. The respondents were successful, but they paid no CRT fees and claimed no dispute-related expenses. So, I order no reimbursements.

## **ORDER**

33. I dismiss Ms. Dolinski's claims, and this dispute.

---

Kristin Gardner, Tribunal Member