



Civil Resolution Tribunal

Date Issued: March 10, 2023

File: SC-2022-004902

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Coady v. Szetela dba Wind and River Fine Art Weddings and Portraits*,
2023 BCCRT 204

BETWEEN:

TIMOTHY JOSEPH COADY and KAYLA NICOLE LIM

APPLICANTS

AND:

JENELLE SZETELA (Doing Business As WIND AND RIVER FINE ART
WEDDINGS AND PORTRAITS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a deposit for wedding photography services. The applicants, Timothy Joseph Coady and Kayla Nicole Lim, hired the respondent, Jenelle Szetela (dba Wind and River Fine Art Weddings and Portraits), to photograph their wedding. The applicants paid an \$875 deposit as part of the total price. Due to the COVID-19

pandemic, the applicants rescheduled their wedding twice. By the time the wedding was rescheduled the second time, Ms. Szetela had stopped performing photography services. The applicants claim a refund of the \$875 deposit.

2. Ms. Szetela says the deposit was non-refundable and tied specifically to the applicants' original wedding date. Ms. Szetela says she allowed the applicants to change their wedding date once, out of goodwill, but that the applicants failed to sign a new contract. Ms. Szetela denies owing the applicants any refund.
3. The parties are each self-represented.

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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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 that 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 their \$875 deposit.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants must prove their claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
10. The background facts are not in dispute. In the summer of 2019, the parties agreed Ms. Szetela would provide photography services for the applicants’ June 20, 2020 wedding. On August 11, 2019, Ms. Lim signed a contract with Ms. Szetela for 8 hours of photography, with a total package price of \$3,500. The contract stated an \$875 deposit was due at the contract’s signing, which the applicants undisputedly paid. The contract said all deposits were non-refundable, “even if the date is changed or the wedding is cancelled for any reason”. The remaining balance of \$2,625 was due 1 week before the wedding date.
11. The contract further said if the photographer (Ms. Szetela) could not perform the agreement due to her injury or illness, or because of an act of God or other cause beyond the parties’ control, that Ms. Szetela would return any paid deposits.
12. In March 2020, British Columbia’s Provincial Health Officer imposed public gathering restrictions due to the COVID-19 pandemic. On April 19, 2020, Ms. Lim wrote Ms. Szetela to advise she and Mr. Coady were postponing their wedding to June 12, 2021. Ms. Szetela agreed to move the applicants’ wedding date and emailed Ms. Lim

an amended contract, asking Ms. Lim to initial it to reflect the changed wedding date. Ms. Lim undisputedly did not sign or return the contract to Ms. Szetela, or otherwise respond to Ms. Szetela's request.

13. On March 29, 2021, Ms. Lim again emailed Ms. Szetela to advise she and Mr. Coady were postponing their wedding date again, to an undecided date in 2022. She asked if Ms. Szetela would hold their deposit for a future date. In response, Ms. Szetela said she was happy to reschedule, and to keep her posted on a new date.
14. On April 22, 2022, Ms. Lim emailed Ms. Szetela to advise her of the applicants' new September 24, 2022 wedding date. Ms. Szetela undisputedly did not receive this email until after Ms. Lim texted Ms. Szetela on July 14, 2022. In the parties' text message exchange, Ms. Lim acknowledged knowing Ms. Szetela was no longer working as a wedding photographer and requested the \$875 deposit back. Ms. Szetela confirmed she was no longer photographing weddings and advised she was unable to provide a refund, pointing out that the deposit was non-refundable.
15. The applicants argue they should be entitled to the deposit's return because Ms. Szetela was unable or unwilling to perform the parties' contract. Although the applicants acknowledge the deposit was "non-refundable", they say the applicant agreed to use the deposit for a later date.
16. In contrast, Ms. Szetela says she agreed to the first date change out of goodwill, but that the contract required any changes to be made in writing, and Ms. Lim failed to execute the amended contract to secure any future specified date. Ms. Szetela also says the applicants went ahead with their June 20, 2020 wedding anyway, so they could have used Ms. Szetela's services as initially contracted for.
17. First, the applicants do not argue Ms. Szetela's services could not be performed due to the pandemic or related restrictions, rather the evidence shows they voluntarily changed their wedding date. So, I find they are not entitled to a refund under that aspect of the contract.

18. To the extent the applicants argue Ms. Szetela should have permitted them to use the deposit for a future date, I disagree. The contract clearly states the deposit was non-refundable, even if the date was changed. Although Ms. Szetela allowed a date change, Ms. Lim undisputedly did not sign the amended contract, and has not provided any explanation why she did not do so. I find Ms. Szetela's offer to amend the contract to the June 12, 2021 date was a courtesy, and not part of her obligations under the parties' contract. I also find Ms. Szetela was under no obligation to continue to hold the applicants' deposit indefinitely, for a future undisclosed wedding date.
19. 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 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).
20. I find the applicants paid Ms. Szetela the \$875 as a true deposit, as its purpose was to hold their wedding date in Ms. Szetela's calendar to ensure her availability. It is undisputed that Ms. Szetela was available and willing to fulfill her photography services obligations under the parties' contract for their June 20, 2020 wedding date.
21. As noted, I find it was the applicants who unilaterally decided to change their wedding date, and failed to sign a new contract with Ms. Szetela. So, I find the terms of the original contract apply. Therefore, I find they forfeited their deposit when the applicants changed their wedding date.
22. Given this, I find the fact Ms. Szetela later left the wedding photography business is irrelevant because the parties' contract had already ended.
23. For the above reasons, I dismiss the applicants' claims.

24. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As the applicants were not successful, I find that they are not entitled to reimbursement of their paid tribunal fees. Ms. Szetela was successful but did not pay tribunal fees or claim dispute-related expenses.

ORDER

25. The applicants' claims, and this dispute, are dismissed.

Andrea Ritchie, Vice Chair