



Civil Resolution Tribunal

Date Issued: April 17, 2023

File: SC-2022-004488

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bains v. Bhatia*, 2023 BCCRT 312

B E T W E E N :

AMIT BAINS

APPLICANT

A N D :

SUKHDEV SINGH BHATIA (Doing Business As Hi5 VIDEO & PHOTOGRAPHY)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a deposit for video and photography services. The applicant, Amit Bains, hired the respondent, Sukhdev Singh Bhatia (Doing Business As Hi5 Video & Photography), to take the video and photos at a party. Mr. Bains says Mr.

Bhatia wrongfully kept a deposit after Mr. Bains had to reschedule the party. He claims \$800 for the deposit.

2. Mr. Bhatia disagrees. He says that the deposit was nonrefundable under the parties' contract. Mr. Bhatia also says that, despite this, he agreed to apply the deposit to a new photo shoot. However, Mr. Bains picked a date on which Mr. Bhatia was unavailable.
3. The parties are self-represented.
4. For the reasons that follow, I dismiss Mr. Bains' claims.

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 Mr. Bains is entitled under the parties' contract to the return of the \$800 deposit.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Bains as the applicant must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. Mr. Bains did not provide reply submissions though he had the opportunity to do so.
11. The parties entered into a written contract for Mr. Bhatia to photograph a birthday party held for Mr. Bains' family member. Mr. Bains signed the contract, and the parties' text messages indicate that he did so in early November 2021. It is undisputed that the contract is binding.
12. The contract specified the following. Mr. Bains scheduled the party for December 30, 2021 at a banquet hall for 4.5 hours. He agreed to pay Mr. Bhatia \$1,344 for his services, and \$800 of the amount upfront as a deposit. The deposit was non-refundable. There were no specific terms about cancellations or any option to reschedule the session and apply the deposit to pay for services on a new date.
13. Notably, the contract did not contain a "force majeure" clause. Such clauses generally address unexpected events and relieve parties of their contractual obligations if such events occur.
14. It is undisputed that Mr. Bains paid Mr. Bhatia the \$800 deposit. On December 25, 2021, Mr. Bains texted Mr. Bhatia and other service providers scheduled for the

December 30, 2021 party. He said that he had to postpone the birthday party because of new indoor event restrictions. Mr. Bains says, and I accept, that these restrictions were related to COVID-19.

15. The parties agree that at some point after this, they verbally agreed that Mr. Bains would provide his services at an unspecified later date. Further, Mr. Bains agreed to apply the deposit to the new session. The parties did not formally document this new arrangement.
16. On July 5, 2022, Mr. Bains texted Mr. Bhatia. He said that he had rescheduled the party to December 2, 2022. The text messages show that other guests and party planners agreed to the new date. Mr. Bhatia texted back that he was unavailable for that date. Mr. Bains did not suggest a different date to Mr. Bhatia or attempt to reschedule the party. The parties exchanged more messages and disagreed on whether Mr. Bhatia was obligated to return the deposit.

Is Mr. Bains entitled to the return of the \$800 deposit under the parties' contract?

17. Mr. Bains says Mr. Bhatia breached their agreement to reschedule the photo and video session. He says Mr. Bhatia failed to commit to the new date and should return the deposit. Mr. Bhatia says he could not commit to a date on which he was unavailable.
18. As noted above, the parties' written contract said the \$800 was non-refundable. So, I find the key issue is what the parties verbally agreed to do about rescheduling the video and photo shoot.
19. Based on the text messages, I find that Mr. Bhatia verbally agreed to reschedule the video and photo shoot and apply the deposit towards the new session, though he did not have to. I find that it was an implied term that Mr. Bhatia would only do so provided he was available for the new date. This is because it would be impossible for Mr. Bhatia to fulfil the contract otherwise.

20. Mr. Bhatia also says that the parties agreed that Mr. Bains had to reschedule his session within 2 to 3 months of the original date of December 24, 2021. I find this unproven by any evidence. For example, Mr. Bhatia did not mention this in the parties' text messages. That said, I also find it unlikely that Mr. Bhatia agreed to be available for a rescheduled session without any time limit. Ultimately nothing turns on this for the reasons discussed below.
21. I turn back to the facts. As noted earlier, Mr. Bhatia texted Mr. Bains that he was unavailable for the new date of December 2, 2022. Mr. Bhatia did not provide any evidence, such as a schedule, to corroborate this. However, after Mr. Bhatia said he was unavailable, Mr. Bains did not suggest any other dates or ask about Mr. Bhatia's general availability. Given this, I am unpersuaded that Mr. Bhatia lied about his availability or breached the parties' new arrangement.
22. There is no indication in the text messages that Mr. Bhatia agreed to return the deposit under any circumstances. In particular, there is no indication that he agreed to return the deposit if he was unavailable for the new session. Given this, I find it unproven that Mr. Bhatia breached the parties' written contract or verbal agreement.
23. Although not argued by the parties, I also considered whether the parties' written contract became frustrated. In the absence of a force majeure clause, which is the case here, 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. See *Wilkie v. Jeong*, 2017 BCSC 2131.
24. The CRT has held in several photography service cases that the COVID-19 pandemic and the possibility of gathering restrictions are insufficient to frustrate a contract. See, for example, *Dolinski v. Karizma Photography*, 2022 BCCRT 842 and my decision of

Mcquade v. Mostert, 2021 BCCRT 193 at paragraph 23, citing other examples. As I noted in *Mcquade*, these decisions generally hold that the planned gatherings could have still taken place, though at reduced size and scope.

25. CRT decisions, including my own, are not binding. However, I find the reasoning in the above-cited decision applicable here. I find it unproven that the parties' contract was frustrated. Mr. Bains did not say or provide evidence to show that it was impossible to hold the originally planned party, with fewer guests. Further, he provided no evidence to show that it was impossible or outside the parties' reasonable contemplation that Mr. Bhatia might be unavailable on the new date of December 2, 2022, or that Mr. Bains could not have picked a different date when he rescheduled the birthday party.

26. For all those reasons, I dismiss Mr. Bain's claim.

27. 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 dismiss Mr. Bhatia's claim for reimbursement of CRT fees. No parties claimed for any specific dispute-related expenses.

ORDER

28. I dismiss Mr. Bain's claims and this dispute.

David Jiang, Tribunal Member