Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Lust 4 Luxury Tours Inc. v. New Monaco Enterprise Corp*, 2023 BCCRT 470

B E T W E E N :

LUST 4 LUXURY TOURS INC.

APPLICANT

A N D :

NEW MONACO ENTERPRISE CORP, PAUL TSANG, OWAIN SAMUEL, and CHRIS CURTOLA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about a cancelled 2-day winery tour. The applicant, Lust 4 Luxury Tours Inc. (L4L), says the respondents, New Monaco Enterprise Corp (NME), Paul Tsang, Owain Samuel, and Chris Curtola, hired it to arrange and provide the tour.

L4L says that the respondents cancelled the tour and are not entitled to a refund under its cancellation policy. L4L says it is entitled to damages of $6,100 but limits its claim to $5,000, the Civil Resolution Tribunal's (CRT) small claims monetary limit.

2. The respondents deny liability. They say that they never entered into a binding contract with L4L. Mx. Tsang, Mx. Samuel, and Mx. Curtola also say that they are alternatively not liable because they never personally contracted with L4L.

3. L4L's owner and director, Stacey Lynn Lust, represents it. Mx. Tsang represents the respondents. In the dispute, the respondents also collectively rely on Mx. Samuel's submitted evidence and arguments.

4. For the reasons that follow, I find L4L has partially proven its claim.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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 any respondents breached a binding contract with L4L, and if so, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, L4L as the applicant must prove its 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.

11. L4L and NME are both registered BC companies. The parties' emails and text messages in evidence show the following. On February 3, 2022, Mx. Samuel spoke with Ms. Lust about booking a tour of several wineries for NME. Ms. Lust emailed a 1-day itinerary for 20 guests and a total cost of $2,800. The correspondence shows that the parties chose not to proceed with this quote. Instead, Mx. Samuel and Ms. Lust exchanged further text messages about adjusting the itinerary to add a second day of touring and a dinner event. L4L provided a copy of the itinerary as evidence, and I discuss it below.

12. On February 10, 2022, Mx. Samuel wrote to Ms. Lust, "…I think everything you've suggested is perfect." Mx. Samuel added that he "ran [the itinerary] by Paul [Tsang] and he agrees, so we can run with it!" It is undisputed that L4L sent NME an updated invoice on February 11, 2022. The breakdown charged $180 per guest for a "Private West Kelowna Wine Tour & Shuttle" and $125 per guest for a "Kelowna &

Lake Country Tour & Shuttle". The total was based on 20 guests and included GST, for a total of $6,100.

13. On February 13, 2022, Mx. Samuel texted that he would provide L4L credit card numbers for payment. A February 13, 2022 receipt shows that L4L used the provided information to pay its $6,100 invoice.

14. L4L says Mx. Samuel specifically provided the information to pay its invoice. The respondents disagree and say the information was meant to secure a restaurant reservation. Overall, I find the timing and text messages support L4L's version of events. Further, on February 7, 2022, Ms. Lust texted Mx. Samuel that L4L's fees could be paid by credit card. So, I find the parties agreed that L4L could charge the provided credit card for the $6,100 invoice.

15. I will discuss whether the parties had a binding agreement by this time below.

16. On February 16, 2022, Mx. Samuel texted that he was hospitalized and would be passing on responsibility for planning to Mx. Curtola. On February 20, 2022, Mx. Curtola wrote L4L and said they would not require its services. Mx. Curtola asked for a refund, and said NME would contact the venues directly. Mx. Tsang subsequently charged back the fee through his credit card company, so L4L's invoice remains unpaid.

Did any respondents breach a binding contract with L4L?

17. The parties disagree on whether there was a binding contract. Whether there is an enforceable contract involves an objective test based on what a reasonable person in the parties' situation would have believed and understood, rather than on the parties' subjective beliefs. The contract's essential terms must be sufficiently clear, and the party seeking to rely on the contract must show there was a matching offer and acceptance of those terms. See *Ratanshi v. Brar Natural Flour Milling (B.C.) Inc.*, 2021 BCSC 2216 at paragraphs 66 to 69.

18. Based on the correspondence, I find it clear that Mx. Tsang, Mx. Samuel, and Mx. Curtola did not act in their personal capacities at any point. I find it also clear that L4L knew or ought to have known this. So, I find the personal respondents only acted as representatives for NME and are not personally liable for any of its debts. This leaves only L4L's claim against NME itself.

19. I find that by February 13, 2022, L4L and NME had a binding contract. I find the price was sufficiently certain as L4L had provided an invoice, and NME paid it as of that date.

20. The respondents say that it is unclear what services L4L would actually provide. I find it relatively clear from the correspondence that L4L agreed to provide, at a minimum, driving, planning services, and winery tours for up to 20 guests for NME. I say this for the following reasons.

21. The text messages show L4L was heavily involved in planning the itinerary and directly contacting various service providers, including the wineries. The copy of the itinerary developed by L4L is in evidence. It shows the plan for February 24 and 25, 2022. For February 24, 2022, L4L intended to use its vehicle to pick up the guests and bring them to Two Eagles Golf Course. So, I find L4L agreed to provide driving services. After this, L4L would drive the group to NME's site for a tour. It would then bring the group to a wine tour starting in the early afternoon. The destinations included Mission Hill, Fring Estate, and Mt. Boucherie wineries. The group would then travel to Quail Gate for dinner. Overall, the itinerary spanned from 9:00 a.m. to 9:00 p.m. For the next day, the guests would meet at the hotel, and L4L would pick them up to tour Kelowna's downtown. L4L would then deliver the guests to a golf course, then return them to their hotel.

22. I also find the price included winery tour fees based on an email from Ms. Lust to Mx. Samuel. Ms. Lust mentions that L4L requires payment in advance because "we are responsible for paying each venue we reserve". The email date is cut off, but based on the context I find it was likely sent before L4L charged the credit card. I find the parties deviated slightly from this arrangement as NME booked and paid for

some of the wineries on its own. However, I find this was a minor change that did not cancel the overall agreement.

23. As I find the essential terms like price and L4L's obligations were sufficiently clear and agreed upon, I find that NME breached the contract when it cancelled the contract on February 20, 2022. So, I must consider the appropriate remedy.

24. L4L says that its website cancellation policy applies, meaning the entire invoice balance is still due. L4L provided a cropped screenshot that shows it is under an "FAQ" section. It relies on *Century 21 Canada Limited Partnership v Rogers Communications Inc.*, 2011 BCSC 1196 (*Century 21*), and the non-binding decisions of *Smart Technologies Consultants Ltd. v Dysys Media Solutions Inc.*, 2019 BCCRT 1181, *Kube v Screaming Chicken Theatrical Society*, 2018 BCCRT 428, and *Herbert v SKILS Sea Kayak Instruction and Leadership Systems Ltd.*, 2018 BCCRT 747.

25. As noted in *Century 21* and *Kobelt Manufacturing Co. Ltd. v. Pacific Rim Engineered Products (1987) Ltd.*, 2011 BCSC 224, website terms may bind a party. However, the website owner must give notice of the terms before the parties enter into a contract. Here, I find it unproven that L4L provided such notice to NME before it entered into the contract. There is no indication that L4L advised NME about the cancellation policy on or before February 13, 2022. For example, it did not refer to the website or say that those online terms applied. The invoice does not mention it or any cancellation policy.

26. Further, the respondents dispute knowing about the cancellation policy. There is no indication that Mx. Samuel knew of it or that it came up in discussions prior to February 13, 2022. Aside from the isolated and cropped screenshot, there is little evidence about where the cancellation policy was on L4L's website, how one could navigate to it, or whether it was prominently displayed.

27. As I find the cancellation policy inapplicable, I must still consider the amount of damages. Generally speaking, damages for breach of contract are meant to put the

innocent person in the same position as if the contract had been carried out. See *Water's Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39.

28. I find it would be disproportionate to award L4L the full price of the invoice. This is because L4L's price included expenses it would make on NME's behalf for services provided by others, such as the winery tours. However, L4L did not provide a full list of expected out-of-pocket expenses or say what profit it expected to receive. What is before me is a February 22, 2022 invoice. It shows that L4L booked a tour bus and paid a non-refundable deposit of $107.80. There is also an invoice of $2,092.80 for the Mission Hill tour and lunch, which L4L did not pay for. NME ultimately did this tour and lunch and paid for them on its own. I find from this that L4L's expenses would be fairly substantial, but the evidence falls short of providing any precise number. So, I am unable to calculate L4L's expected profit had the contract been carried out.

29. L4L says its cancellation policy mentions a service fee of 8% that is not refundable. Given the lack of other evidence, I find this is a rough estimate of its expected profit margin. I find that L4L is entitled to a service fee of 8% of $6,100, or $488. To that, I add the non-refundable deposit of $107.80. The total is $595.80.

30. The *Court Order Interest Act* applies to the CRT. L4L is entitled to pre-judgment interest on the damages award of $595.80 from February 20, 2022, the date of the breach, to the date of this decision. This equals $16.65. Only NME is liable to pay these amounts as I have dismissed the claims against the other respondents.

31. 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 find L4L is entitled to partial reimbursement of $87.50 in CRT fees from NME.

32. The respondents claim $1,500 for time spent on this dispute. CRT rule 9.5(5) says that the CRT will not award compensation for time spent dealing with a CRT

proceeding except in extraordinary cases. I find this dispute falls short of that standard. It involved a large but not extraordinary volume of evidence and did not involve issues of great complexity. I also dismiss this reimbursement claim because it is unsupported by any evidence. For example, aside from brief submissions, there is no evidence, such as time logs, to support the time spent on the dispute, and no explanation about why the respondents' time is worth $100 per hour, for a total of $1,500.

ORDERS

33. Within 30 days of the date of this order, I order NME to pay L4L a total of $699.95, broken down as follows:

    a. $595.80 in damages for breach of contract,

    b. $16.65 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $87.50 for partial reimbursement of CRT fees.

34. L4L is entitled to post-judgment interest, as applicable.

35. I dismiss the balance of L4L's claims, including all claims against the respondents Mx. Tsang, Mx. Samuel, and Mx. Curtola.

36. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

David Jiang, Tribunal Member