Civil Resolution Tribunal

Date Issued: March 15, 2024

File: SC-2023-001165

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Itakura v. Extreme Air Park 4 Ltd.*, 2024 BCCRT 269

B E T W E E N :

ROBERT ITAKURA

APPLICANT

A N D :

EXTREME AIR PARK 4 LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Megan Stewart

INTRODUCTION

1. Robert Itakura booked his son's birthday party at Extreme Air Park 4 Ltd. (Extreme Air) and paid a $100 deposit. Due to a surge in COVID-19 infections, Mr. Itakura then cancelled the party. He tried to recover his deposit but was unsuccessful. Mr. Itakura claims the return of his $100 deposit. He is self-represented.

2. Extreme Air says that because Mr. Itakura agreed to its terms and conditions, one of which was that the deposit was non-refundable, he is not entitled to the claimed amount. Extreme Air is represented by an employee.

JURISDICTION AND PROCEDURE

3. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states 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.

4. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me, without an oral hearing.

5. 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 court.

6. In submissions, Mr. Itakura alleges Extreme Air violated his privacy rights. However, he did not claim a breach of privacy in his application for dispute resolution, and he did not request a remedy for this alleged breach. Even if Mr. Itakura had raised the claim earlier or requested a specific remedy, there is no common law tort for breach of privacy in BC (see *Ari v. Insurance Corporation of British Columbia,* 2015 BCCA 468). The *Privacy Act* creates a statutory tort when one person violates another's privacy, with some exceptions. However, those claims must be brought in the BC Supreme Court. So, I would have found the CRT had no jurisdiction (legal authority) to decide a claim for breach of privacy.

ISSUE

7. The issue in this dispute is whether Mr. Itakura is entitled to a refund of his $100 deposit.

EVIDENCE AND ANALYSIS

8. As the applicant in a civil proceeding, Mr. Itakura must prove his claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence but only refer to information I find necessary to explain my decision.

9. On December 13, 2021, Mr. Itakura booked his son's birthday party at Extreme Air for January 9, 2022, and paid a $100 deposit. The contract's terms and conditions made the deposit non-refundable. On December 29, 2021, Mr. Itakura told Extreme Air he wanted to cancel the party due to an increase in COVID-19 infections, and a December 22, 2021, provincial health order restricting organized indoor gatherings. Extreme Air refused to reimburse Mr. Itakura's deposit. Instead, Extreme Air offered Mr. Itakura a credit with no expiry date, which Mr. Itakura did not accept. Extreme Air later withdrew the offer after Mr. Itakura posted a negative review of the company online. None of this is disputed.

10. Mr. Itakura argues the birthday party contract was frustrated. A contract is frustrated when 1) an unforeseeable event outside of the parties' contemplation occurs that 2) makes performance of the contract something radically different from what the parties originally agreed (see *Aldergrove Duty Free Shop Ltd. v. MacCallum*, 2024 BCCA 28 at paragraph 24). The event must make it truly pointless to continue to perform the terms of the contract, not just inconvenient, undesirable, more difficult, or more expensive for one or both parties (see *Blackmore Management Inc. v. Carmanah Management Corporation*, 2022 BCCA 117 at paragraph 60).

11. An email in evidence shows Mr. Itakura characterized the increase in COVID-19 infections as an extreme circumstance "no one could ever have predicted." I disagree with this characterization. While the COVID-19 pandemic introduced a high degree

of uncertainty and unpredictability, by December 2021, I find it could no longer reasonably be described as unforeseeable. BC provincial health orders restricting indoor gatherings had been implemented (and lifted) many times throughout 2020 and 2021, including on December 3, 2021, 10 days before Mr. Itakura booked his son's party. The December 22, 2021, order was more restrictive, and essentially banned inside events to celebrate birthdays. However, I find such an order was something a reasonable person would have considered possible in the context of the pandemic at the time Mr. Itakura booked the party. So, I find the surge in COVID-19 infections and the December 22, 2021, provincial health order were not unforeseeable events that frustrated the parties' contract.

12. Even if these events were unforeseeable, I find they did not radically change the nature of the parties' obligations, making it pointless to perform the contract at all. I say this because Extreme Air offered Mr. Itakura a credit for his deposit that he could have used once the restrictions were lifted. Mr. Itakura argues that the uncertainty around how long the restrictions would remain in place made the offer useless, since his son's birthday would likely have come and gone by the time inside gatherings like parties were allowed again. I accept it was Mr. Itakura's preference to have his son's party close to the date of his birthday. However, I note in submissions he acknowledges that having to change the date was not, on its own, enough to frustrate the contract. So, I find the offer of a non-expiring credit for a future party date was merely inconvenient and undesirable, rather than a radical alteration of the contract. The fact that Extreme Air later withdrew the offer is of no consequence, as by that time Mr. Itakura had already declined the offer and cancelled the contract. For these reasons as well, I find the parties' contract was not frustrated.

13. In the circumstances described above, I find Mr. Itakura was not entitled to the return of his deposit. I dismiss his claim for a refund.

14. 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. As Mr. Itakura was unsuccessful, I dismiss his claim for

CRT fees. Extreme Air did not pay any fees, and neither party claimed any expenses, so I make no order.

ORDER

15. I dismiss Mr. Itakura's claims and this dispute.

Megan Stewart, Tribunal Member