



Civil Resolution Tribunal

Date Issued: February 12, 2024

Files: SC-2022-007464
and SC-2023-002185

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Iannone (dba Iannone Photography) v. Hurley*, 2024 BCCRT 139

B E T W E E N :

NADIA IANNONE (Doing Business As IANNONE PHOTOGRAPHY)

APPLICANT

A N D :

NICOLE HURLEY

RESPONDENT

A N D B E T W E E N :

NICOLE HURLEY and Lester Carlyle Letersky

APPLICANTS BY COUNTERCLAIM

A N D :

NADIA IANNONE (Doing Business As IANNONE PHOTOGRAPHY)

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about a wedding photography contract. This decision relates to 2 linked disputes, SC-2022-007464 and SC-2023-002185. Although the parties are not identical in both disputes, I have issued one decision for both disputes for efficiency. This is because I find the disputes are essentially a claim and a counterclaim, as they arise from the same contract and the same circumstances.
2. In April 2020, Nicole Hurley hired Nadia Iannone (doing business as Iannone Photography) to photograph her wedding in Banff, Alberta on September 18, 2021. Lester Carlyle Letersky is Ms. Hurley's father and is not a party to the contract between Ms. Hurley and Ms. Iannone.
3. When Ms. Hurley signed the contract in April 2020, she paid Ms. Iannone a \$1,200 reservation fee. In April 2021, Ms. Hurley rescheduled her wedding to August 28, 2021 in Fort Saskatchewan, Alberta, because of Alberta's COVID-19 restrictions on weddings. Ms. Iannone did not photograph Ms. Hurley's rescheduled wedding, and she has not returned Ms. Hurley's \$1,200 reservation fee.
4. In SC-2022-007464, Ms. Iannone says Ms. Hurley unilaterally cancelled the contract in April 2021 when she decided to reschedule her wedding to a different date in a different location. Ms. Iannone says she was unable to secure photography work on the cancelled wedding date, and she claims \$2,800 in damages.
5. Ms. Hurley says the contract was frustrated because of Alberta's COVID-19 restrictions, so she was unable to have her wedding in Banff on September 18, 2021 as originally planned. She says that because the contract was frustrated, she did not cancel it, and she does not owe Ms. Iannone anything.

6. In SC-2023-002185, Ms. Hurley and Mr. Letersky say that because the contract was frustrated, they are entitled to a refund of the reservation fee. They say Ms. Iannone told Ms. Hurley she could use the reservation fee for a photo shoot at any time in the future, but when Ms. Hurley requested a family photo shoot in September 2022, Ms. Iannone refused. Ms. Hurley and Mr. Letersky claim \$1,200 as a refund of the reservation fee.
7. Ms. Hurley denies that the contract was frustrated. She says COVID-19 restrictions on weddings were reasonably foreseeable at the time the parties made the contract, and it was Ms. Hurley's decision to reschedule her wedding to a different date and location. She also says the parties did not reach an agreement about using Ms. Hurley's reservation fee for a future photo shoot. Ms. Iannone says she is not required to refund Ms. Hurley's \$1,200 reservation fee and she does not owe Ms. Hurley or Mr. Letersky anything.
8. Ms. Iannone is represented by Lindsey Richardson, a family member who was an articling student at the time the parties made their submissions. Mr. Letersky represents himself and Ms. Hurley.

JURISDICTION AND PROCEDURE

9. 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.
10. 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.

11. 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 court.
12. 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.
13. On December 5, 2022, Ms. Hurley filed a civil claim in the Provincial Court of Alberta against Nadia Iannone and Nadia Iannone operating as Iannone Photography. Ms. Hurley claimed \$1,200 for the return of her reservation fee. Earlier in the CRT dispute resolution process, CRT staff referred these CRT disputes to a vice chair to decide whether the CRT should refuse to resolve them under CRTA section 11(1)(a). That section allows the CRT to refuse to resolve any claim within its jurisdiction if it considers that the claim would be more appropriate for another legally binding process or dispute resolution process.
14. On August 4, 2023, a vice chair issued a preliminary decision, which is not binding on me. She found that Ms. Hurley and Mr. Letersky had not proven that the Provincial Court of Alberta was a more appropriate forum than the CRT to resolve these disputes. She declined to refuse to resolve these disputes under CRTA section 11(1)(a), and the disputes continued through the CRT process.
15. On December 29, 2023, Ms. Hurley withdrew her court claim. Since there is no longer an active court claim, and since the contract was undisputedly made in BC, I find the CRT has jurisdiction to decide both disputes, and there is no basis for refusing to resolve them. I address the merits of both disputes below.

ISSUES

16. The issues in these disputes are:
 - a. Was the contract frustrated by Alberta's COVID-19 restrictions on weddings?

- b. Is Ms. Iannone entitled to \$2,800 in damages?
- c. Are Ms. Hurley and Mr. Letersky entitled to the return of Ms. Hurley's \$1,200 reservation fee?

EVIDENCE AND ANALYSIS

17. As the applicant in this civil proceeding, Ms. Iannone must prove her claims on a balance of probabilities, which means more likely than not. Likewise, Ms. Hurley and Mr. Letersky must prove their claims to the same standard. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
18. On April 8, 2020, Ms. Hurley signed a \$4,000 contract for Ms. Iannone to provide photography services for Ms. Hurley's September 18, 2021 wedding in Banff. The parties later agreed that the total contract price would be \$4,300 to account for an extra night's accommodation for Ms. Iannone and her other photographer. However, based on my findings below, I find nothing turns on this adjustment to the contract price. The contract included a complimentary engagement photo session, but the parties agreed that Ms. Iannone would instead provide a complimentary baptism photo session the night before the wedding. As noted above, Mr. Letersky is not a party to the contract.
19. At the time she signed the contract, Ms. Hurley paid Ms. Iannone a \$1,200 reservation fee. The contract said the reservation fee was non-refundable because it was to reserve the September 18, 2021 wedding date and it meant Ms. Iannone would not make another reservation on that date.
20. On April 7, 2021, Ms. Hurley notified Ms. Iannone that she had decided to cancel her September 18, 2021 wedding because of Alberta's COVID-19 restrictions on weddings and the uncertainty about whether the restrictions would be lifted in time. She said that because of the COVID-19 restrictions, she expected Ms. Iannone to refund the \$1,200 reservation fee.

21. Ms. Iannone responded that she would not refund the reservation fee, but she offered to hold it for Ms. Hurley to use for her rescheduled wedding or for another future photo session, with no time limit. The parties discussed potential dates in August 2021 for a rescheduled smaller backyard wedding in Alberta. Ms. Iannone also told Ms. Hurley that if she could book another wedding on September 18, 2021, she would refund Ms. Hurley's reservation fee, but she said it was unlikely she would be able to do so.
22. On April 14, 2021, Ms. Iannone followed up with Ms. Hurley about rescheduling her wedding. Ms. Hurley told her she had already booked a different photographer for her rescheduled wedding. Ms. Iannone responded, "I'm sorry we couldn't make something work". Ms. Hurley had her wedding on August 28, 2021 in Alberta, using a different photographer.

Was the Contract Frustrated by Alberta's COVID-19 Restrictions on Weddings?

23. A contract is frustrated when an unforeseeable event occurs, which the parties made no provisions for in their contract, making the contract's performance something radically different from what the parties originally agreed on. For a contract to be frustrated, it must be truly pointless to continue to perform the contract's terms, not just inconvenient, undesirable, or because there is increased hardship or expense for one or both parties (see *Wilkie v. Jeong*, 2017 BCSC 2131).
24. For the following reasons, I find the contract was not frustrated by Alberta's COVID-19 restrictions on weddings. First, I find the restrictions were reasonably foreseeable at the time the parties made the contract. Ms. Hurley signed the contract in April 2020. At that time there were significant COVID-19 restrictions on private gatherings across the country. Under Alberta's Chief Medical Officer of Health Order 07-2020, as of March 27, 2020, private indoor and outdoor gatherings in Alberta, including weddings, were limited to 15 people. I find it was within the parties' contemplation when they signed the contract that there could still be restrictions on weddings in Alberta on September 18, 2021.

25. Second, even if Alberta's COVID-19 restrictions on weddings were unforeseeable at the time the parties made the contract, I find they did not make the contract's performance pointless or radically different from what the parties originally agreed. On April 7, 2021, when Ms. Hurley notified Ms. Iannone that she had cancelled her September 18, 2021 wedding, Alberta's Chief Medical Officer of Health Order 08-2021 went into effect. That order limited both indoor and outdoor wedding ceremonies to 10 people. It prohibited indoor wedding receptions but allowed outdoor wedding receptions with up to 10 people. Ms. Hurley says that before signing the contract she told Ms. Iannone that she planned to have 250 to 300 guests, a wedding service, and a catered reception and dance, all in a specific hall at the Banff Springs Hotel. However, the parties' contract contains no requirement for a minimum number of wedding guests, nor does it specify whether the wedding ceremony or reception would be held indoors or outdoors.
26. In many previous CRT decisions, such as *Bal v. Infinite Entertainment Sound and Lighting Inc.*, 2020 BCCRT 865, the CRT has found that while COVID-19 restrictions on gatherings may have made performance of a wedding contract undesirable, it did not mean the contract was frustrated. I agree with that reasoning and apply it here. While I appreciate it was not desirable for Ms. Hurley to have fewer guests at her wedding or to hold her reception outdoors, she has not established that it was impossible for the parties to perform their obligations under the contract in those circumstances.
27. I note here, the parties submitted evidence about Alberta's COVID-19 restrictions on weddings as of September 18, 2021, Ms. Hurley's original wedding date. However, I find that is not the relevant date in determining whether the contract was frustrated. Ms. Hurley undisputedly notified Ms. Iannone that she had cancelled her wedding on April 7, 2021. So, I find it is the restrictions that were in place on that date that are relevant to determining whether the contract was frustrated, and I find it was not.

Is Ms. Iannone entitled to \$2,800 in damages?

28. Ms. Iannone says Ms. Hurley unilaterally cancelled the contract by rescheduling her wedding to a different date and location. As noted, Ms. Hurley denies cancelling the contract, and says it was frustrated by Alberta's COVID-19 restrictions. Having found the contract was not frustrated, I find Ms. Hurley cancelled the contract in April 2021 when she cancelled her September 18, 2021 wedding.
29. I note here, in June 2021, Ms. Iannone sent Ms. Hurley a "contract cancellation request" through an online contract program. On June 16, 2021, this program emailed Ms. Hurley informing her that the cancellation request had expired. It said, "Your contract with Iannone Photography is still signed and active. They requested to cancel the contract but you did not agree within the 72 hour time frame." I find this simply indicates that the contract was still considered "active" in the software program Ms. Iannone was using, but it is not an indication of the contract's legal status.
30. Ms. Iannone says that since Ms. Hurley breached the contract by cancelling it in April 2021, she is entitled to \$2,800 in expectation damages, which is what she would have earned had Ms. Hurley not cancelled the contract. However, as Ms. Iannone notes, she is required to mitigate her damages. She says she did this by offering alternate wedding dates to Ms. Hurley, and by attempting to secure other work on September 18, 2021. While I find Ms. Iannone did offer Ms. Hurley alternative wedding dates, she provided no evidence of any attempts she made to secure other work on September 18, 2021. She also provided no evidence showing that she was unable to find work on that date, such as a work calendar or monthly billings. I also find the non-refundable reservation fee in the contract was meant to compensate Ms. Iannone in the event Ms. Hurley cancelled her wedding. For these reasons, I find Ms. Iannone has failed to prove her entitlement to \$2,800 in damages, and I dismiss her claim.

Are Ms. Hurley and Mr. Letersky entitled to the return of Ms. Hurley's \$1,200 reservation fee?

31. Mr. Letersky is not a party to the wedding photography contract between Ms. Hurley and Ms. Iannone. There is also no evidence he paid the \$1,200 reservation fee. So, I find Mr. Letersky has no claim against Ms. Iannone and I dismiss his claim.
32. Ms. Hurley says she is entitled to the reservation fee for 2 reasons. First, she says the contract was frustrated by Alberta's COVID-19 restrictions, which I have already addressed above. I find she is not entitled to a refund on this basis.
33. Second, Ms. Hurley says Ms. Iannone agreed to let her use the \$1,200 reservation fee towards a future photo session, but Ms. Iannone refused to honour this agreement in September 2022.
34. Ms. Iannone says she never made a second agreement with Ms. Hurley about using the \$1,200 reservation fee for a future photo session, because the terms were uncertain, and Ms. Hurley did not accept her offer. In submissions, Ms. Hurley agrees that she did not reach a second agreement with Ms. Iannone, and so she says the terms of the original contract apply. Those terms specifically state that the reservation fee is non-refundable. I find Ms. Hurley has failed to prove that she is entitled to a refund of the \$1,200 reservation fee, and I dismiss her claim.
35. 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. Since none of the parties were successful, I find each party must bear their own CRT fees. Ms. Iannone did not claim any dispute-related expenses.
36. In submissions, Ms. Hurley and Mr. Letersky ask for reimbursement of their \$100 court claim filing fee, because they say Ms. Iannone's legal representative delayed the court process. However, even if Ms. Hurley and Mr. Letersky were successful in their CRT claim, I find they would not be entitled to reimbursement of any court fees they paid. This is because they chose to file parallel claims in court and through the

CRT, and to withdraw their court claim, and any court fees they incurred are unrelated to these CRT disputes.

ORDERS

37. I dismiss Ms. Iannone's claims.

38. I dismiss Ms. Hurley's and Mr. Letersky's claims.

Sarah Orr, Tribunal Member