



Civil Resolution Tribunal

Date Issued: April 18, 2024

Files: SC-2023-005749
and SC-CC-2023-007764

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Edge v. Zarzu (dba Trandafir Photography)*, 2024 BCCRT 370

B E T W E E N :

KAYLA EDGE

APPLICANT

A N D :

CAROLINE ZARZU (Doing Business As TRANDAFIR
PHOTOGRAPHY)

RESPONDENT

A N D :

KAYLA EDGE

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a photography contract. In 2019, Kayla Edge hired Caroline Zarzu (doing business as Trandafir Photography) for a \$1,500 wedding photography package. The package included wedding day photography, prints, and complimentary boudoir and engagement photoshoots. Mrs. Edge paid a \$750 deposit up front. She later postponed her wedding due to the COVID-19 pandemic. Miss Zarzu agreed to the rescheduled wedding date but later said she could not photograph the wedding and offered a replacement photographer. Mrs. Edge declined and asked for a refund, which Miss Zarzu refused. The complimentary photoshoots did not happen, which Mrs. Edge says was because Miss Zarzu moved 900 km away.
2. Mrs. Edge says she had to hire another photographer for the wedding and will have to hire others for the additional photoshoots. She seeks \$600 for the alleged cost difference. She also wants her \$750 deposit refunded.
3. Miss Zarzu disagrees with the claim. She says Mrs. Edge cancelled or nullified the contract by changing her wedding date, so the \$750 was non-refundable. Miss Zarzu blames the COVID-19 pandemic and Mrs. Edge's lack of communication for the parties' inability to find a date that worked for the other shoots. As for the rescheduled wedding, Miss Zarzu says she met her contractual obligations by providing a qualified replacement photographer. In the counterclaim, Miss Zarzu seeks the \$750 contract balance and \$3,500 in damages for holding the rescheduled wedding date for Mrs. Edge. Mrs. Edge disputes the counterclaim. In particular, she says Miss Zarzu has not proven any loss as she was not available to shoot on the rescheduled wedding day anyway.
4. Each party is self-represented. As I explain below, I find Mrs. Edge validly cancelled the contract in accordance with its terms and is entitled to a deposit refund, but I find neither party is entitled to anything else.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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 court.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Was Mrs. Edge entitled to cancel the contract and obtain a refund?
 - b. Is Mrs. Edge entitled to her claimed damages?
 - c. Is Miss Zarzu entitled to the contract balance or damages?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mrs. Edge must prove her claims on a balance of probabilities, meaning more likely than not. Miss Zarzu must prove her counterclaim to the same standard. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. Most of the background facts are undisputed. Mrs. Edge's wedding was originally planned for June 26, 2021. In November 2019, she first inquired with Miss Zarzu about wedding photography via Facebook. The parties met in person and then signed a written agreement on November 18, 2019.
12. The agreement was for wedding photography but did not indicate the wedding date. It said \$750 was due at signing, which Mrs. Edge paid. The remaining \$750 was due a week before the "session date". The agreement contained cancellation terms and other relevant terms that I discuss below.
13. The agreement did not describe the services to be provided in detail. However, an invoice issued the same day confirmed that Mrs. Edge was entitled to 10 hours of wedding day coverage, including 3 hours with 2 photographers, complimentary engagement and boudoir photoshoots, 35 gift prints, and \$150 credit toward wall art.
14. At some point between November 2019 and August 2020, Miss Zarzu moved to a different city, approximately 900 km away from where Mrs. Edge lived.
15. The parties' Facebook messages show that in August 2020, they confirmed a date and time for the engagement photoshoot in October 2020. Miss Zarzu later had to reschedule, and the parties could not find a time that worked. They decided to reschedule to spring 2021.
16. In March 2021, Mrs. Edge asked if postponing her wedding would "change anything" with the parties' contract. Miss Zarzu responded that it would not change anything at all, and the deposit applied to the wedding no matter when it happened. Mrs. Edge responded that she was likely postponing given the COVID-19 pandemic-related

restrictions in place at the time. The parties discussed scheduling the engagement shoot for July 2021 but did not confirm a date.

17. The parties did not exchange messages again until September 2022 when Miss Zarzu reached out and Mrs. Edge asked if June 17, 2023 worked for Miss Zarzu to photograph the wedding. Miss Zarzu confirmed that she was available.
18. The parties did not exchange messages again until May 1, 2023, when Miss Zarzu checked in. The parties then spoke on the phone to confirm details for the June 17, 2023 wedding.
19. On May 26, 2023, Miss Zarzu wrote that she would not be able to photograph the wedding. Miss Zarzu said she had arranged for a replacement photographer, GB, to photograph the wedding, and then Miss Zarzu would edit and deliver the images. Miss Zarzu said Mrs. Edge could pay the contract's balance to GB directly.
20. Mrs. Edge expressed her disappointment with many things, including that Miss Zarzu had moved so far away, that the boudoir and engagement photoshoots had not happened, and now that Miss Zarzu would not be the photographer. Mrs. Edge asked Miss Zarzu to refund her deposit. The parties were unable to work things out. To date, Miss Zarzu has not refunded the deposit.

Was Mrs. Edge entitled to cancel the contract and obtain a refund?

21. I begin with the contract's relevant provisions. First, under the heading "Retainer", the contract said in the event of a canceled session, the deposit is non-refundable.
22. Next, under "Cancellation/Reschedule Policy", the contract said that if the client cancels their wedding, they acknowledge that the deposit is non-refundable. If the client cancels within 120 days of the wedding, the remaining amount of the package is due at the time of cancellation. However, if the wedding is rescheduled and the studio has the rescheduled date available, the client may transfer their wedding package to that date.

23. Under the heading “Limit of Liability”, the contract said that in the unlikely event that the photographer is injured or becomes too ill to photograph the session, the “studio” will make every effort to secure a replacement photographer unless otherwise specified by the client. If that happens and a “suitable replacement is not found or accepted,” the client will receive their deposit back.
24. Mrs. Edge says she is entitled to a refund based on that latter clause. Miss Zarzu says Mrs. Edge cancelled the initial wedding date, so the parties’ contract was nullified and the deposit became non-refundable. As I explain below, I agree with Mrs. Edge.
25. First, I find Mrs. Edge did not cancel her wedding. She initially postponed it with Miss Zarzu’s confirmation that postponing the wedding did not change anything and the deposit still applied to the wedding no matter when it happened. Then she rescheduled it. The contract distinguished between cancelled and rescheduled weddings. Mrs. Edge rescheduled her wedding and transferred her wedding package to June 17, 2023, when Miss Zarzu confirmed that she had that date available. I acknowledge that the contract said there may be additional fees for the same package when rescheduling. However, as noted, Miss Zarzu said that nothing changed, and she did not advise of any additional fees for rescheduling. I find that Miss Zarzu confirmed that the contract remained in effect, so she cannot now argue that the contract was nullified by the wedding date change she agreed to.
26. When Miss Zarzu told Mrs. Edge that she had secured GB as a replacement photographer, I find the “Limit of Liability” clause came into effect. Even though Miss Zarzu was not ill or injured, she was unable to photograph the session. The parties disagree about whether Miss Zarzu could not attend due to a court date or simply did not want to travel 900 km for the shoot, but I find it does not matter. I find the specific reason Miss Zarzu was unable to attend is less important than her inability to attend. The effect of the provision is that if Miss Zarzu could not photograph the wedding herself, Mrs. Edge was entitled to a refund in either of 2 circumstances. The first was

if Miss Zarzu could not find a suitable replacement. The second was if Mrs. Edge did not find the replacement suitable, which is what happened here.

27. In deciding whether GB was an acceptable replacement photographer, Mrs. Edge had to act in good faith. This is because all contracts include a duty to exercise contractual obligations in good faith (see *Bhasin v. Hrynew*, 2014 SCC 71). However, I find she acted in good faith. Mrs. Edge says GB is a real estate photographer. This is how GB's website excerpt in evidence identified them. Miss Zarzu provided evidence that shows GB has wedding photography experience, but Mrs. Edge also says GB does not have the same photography style as Miss Zarzu. Wedding photographers are a personal choice subject to personal tastes. I find Mrs. Edge reasonably concluded that GB was not an acceptable replacement even though Miss Zarzu was going to personally edit and deliver the photos.
28. When Mrs. Edge said GB was not an acceptable replacement and asked for a refund, the contract obligated Miss Zarzu to return Mrs. Edge's deposit. I therefore order Miss Zarzu to pay Mrs. Edge \$750.
29. Is Mrs. Edge entitled to her claimed \$600 in damages for the cost difference of hiring a last-minute photographer for three photoshoots? I find she is not. First, I find Miss Zarzu did not breach the contract by offering a replacement photographer, which is something the contract explicitly contemplated. Mrs. Edge chose to end the contract and seek the refund. As for the boudoir and engagement photoshoots, I find it was implicit in the contract that if the wedding photography was cancelled and the deposit refunded, any incomplete complimentary shoots were also cancelled. I also find that Miss Zarzu did not breach the contract by failing to provide the complimentary photoshoots before the wedding because I find both parties failed to adequately communicate about scheduling those photoshoots. In any event, Mrs. Edge has not provided evidence to support her claimed damages.
30. Given my conclusion that Mrs. Edge exercised her right to cancel the contract in accordance with its terms, I dismiss Miss Zarzu's counterclaim for the \$750 contract

price balance. For the same reason, I dismiss her claim for \$3,500 in damages for holding the rescheduled wedding date.

31. The *Court Order Interest Act* applies to the CRT. Mrs. Edge is entitled to pre-judgment interest on the \$750 deposit from May 30, 2023, to the date of this decision. This equals \$33.29.
32. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mrs. Edge was substantially successful, so I find she is entitled to reimbursement of \$125 in paid CRT fees. I dismiss Miss Zarzu's claim for CRT fees. Neither party claims dispute-related expenses.

ORDERS

33. Within 14 days of the date of this order, I order Miss Zarzu to pay Mrs. Edge a total of \$908.29, broken down as follows:
 - a. \$750 as reimbursement of the deposit,
 - b. \$33.29 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
34. Mrs. Edge is entitled to post-judgment interest, as applicable.
35. I dismiss Mrs. Edge's remaining claims.
36. I dismiss Miss Zarzu's claims.

37. This is a validated decision and order. 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.

Micah Carmody, Tribunal Member