

BETWEEN

ES
APPLICANT

AND

UH LTD
RESPONDENT

Date of Order:

31 October 2014

Referee:

Referee Whineray

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders UH Ltd is to pay ES the sum of \$900.00 within 21 days of the date of this order.

Facts

[1] In March 2014 ES entered into a contract with UH Ltd (trading as UHU) to provide decorations for her wedding at [X] Golf Club on [X] April 2014. The contract price was \$4,496.50. ES paid a deposit of \$1,000 on [X] April 2014 and the balance was paid shortly after. On [X] April, ES told UHU that her wedding was no longer going ahead and she cancelled the contract for the decorations. ES is now seeking a refund of \$3,597.30 being the total money paid under the contract less the deposit.

[2] This claim is governed by the law of contract. Under the law a contract can be cancelled in certain circumstances. The contract itself may contain specific termination or cancellation provisions, there may have been a misrepresentation or one of the parties may have broken a term of the contract. If these circumstances don't exist then generally a party is not entitled to cancel a contract at will.

[4] If a contract has been cancelled wrongfully, then the innocent party may claim damages for the losses caused by the cancellation. The principle behind an award of damages is to put the party in the position it would have been in had the contract not been cancelled or breached.

Issues

[5] The issues to be determined by the Tribunal are (i) whether ES is entitled to all or some of her money back and (ii) what loss, if any, did UH Ltd suffer as a result of the cancellation?

Is ES is entitled to all or some of her money back?

[6] ES gave evidence that she accepted the quote provided by UH Ltd and paid the deposit and balance on time. She did not place any other demands on the company. She said she cancelled the contract four days before the wedding for personal reasons but that it was their choice not to unload the truck. ES accepts that UH Ltd is entitled to keep the deposit but she believes that because the company owned the goods already and the hireage had not yet started she should be able to get back the bulk of her money.

[7] Mr AA, a director of UH Ltd, said that the terms of the contract were clear. There was no allowance for cancellation. Once a booking is made then that date is closed off for any other events (except possibly small ones) and that planning and preparatory work begins. A lot is required behind the scenes before the wedding can be set up. For example, getting the items out of the warehouse and cleaning. In ES's case, they made sure that the decorations were in a good condition and they were loaded onto an 8 tonne truck. Mr AA estimated that approximately 40% of the work was done at this point.

[8] I have reviewed the documents submitted and considered all the evidence produced. I find that the contract does not contain a termination clause and there is no evidence of breach of contract by UH Ltd. There was no evidence to suggest that ES was induced to enter into the contract by a misrepresentation or that she was particularly vulnerable or disadvantaged at the time she paid the deposit. Therefore, I find that ES was not entitled to cancel the contract and she is not automatically entitled to recover the money which she has paid.

What loss did UH Ltd suffer as a result of the cancellation?

[9] Notwithstanding that ES's claim for a refund fails, this does not mean that UH Ltd is automatically entitled to retain the money paid. It must show that it has suffered a loss because of the cancellation and this loss must be properly calculated.

[10] Under the law, UH Ltd is entitled to be put in the position it would have been in had the contract not been cancelled. Had everything gone according to plan it would have received the total amount but it would also have paid out labour and travel costs. These costs were not incurred therefore they should be deducted from the money received from ES.

[11] Mr AA estimated that it would have taken 53 man hours for the decorations to be set up and taken down. At an hourly rate of \$15, labour costs would have been around \$800. The company also did not need to travel to the venue and these transport costs were not incurred. A figure of \$100 was placed on this.

Conclusion

[12] Given that the cancellation only happened a few days before the wedding, I find that it is unlikely that UH Ltd could have mitigated its loss further by supplying the decorations to another wedding.

[13] I therefore find that UH Ltd is entitled to damages being the equivalent to the contract price paid by ES less the sum of \$900.00 for costs which were not incurred.