

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Roy v. Ryan*, 2017 NSSM 14

Claim No: SCK 454463

BETWEEN:

Ginger Kim Roy

Claimant

v.

Ruth Ryan
d.b.a. "In Stitches with Ruth"

Defendant

Ginger Kim Roy – Self-Represented.

Ruth Ryan – Self-Represented.

Decision Rendered on January 20, 2017

Editorial Notice: Addresses and phone numbers have been removed from the electronic version of this judgment

DECISION

This claim arises from the sewing of the Claimant's wedding gown. The Claimant alleges that the dress was sewn such that it cannot be worn.

Background

Ginger Kim Roy and Eric Roy were married on July 30, 2016. Prior to their nuptials, Ms. Roy was in the market for a wedding dress. She was unable to find one exactly to her liking. However, she found two dresses, each with a part she liked, i.e. one with the skirt and train, the other with a bodice that she preferred over other styles. She hired the Defendant, Ruth Ryan, who is a seamstress and runs her business, "In Stitches with Ruth" to sew the favourite parts of the two dresses and create a new gown. Ms. Ryan was also hired to create the bridesmaids'

dresses and pocket squares for the groom, best man and ushers. Unfortunately, things did not unfold well for either party.

There were delays in completing the job arising from issues. In addition, when finished the wedding gown was lopsided in the chest area and did not fit well. There were issues with the bridal party's gowns, although as noted later, these cannot form part of this claim.

Issues

Is the Defendant liable for breach of contract in sewing the Claimant's wedding dress? If so, what damages are to be assessed?

Evidence

Ginger Kim Roy testified that she purchased two dresses for \$100 each. She preferred the top of one gown and the bottom of a different gown. She contacted Ms. Ryan on April 1, 2016, brought the dress to her at or around that time, along with a dress design that she found elsewhere. The parties settled on a price, \$300, with Ms. Ryan assuring the Claimant it would be completed in time for the wedding. She made it clear to Ms. Roy that she would not begin work on the dress for several months when demand was not as high, explaining that it was "prom time". The Claimant checked back on May 2 and went in for another fitting. She called again on June 14 and was told it would be ready in two weeks.

She checked back several times, June 29, 30 and July 5, and the dresses were not completed and "there was always something not fitting properly." On July 14, Ms. Roy attended to Ms. Ryan's place of business with a view to having the gown completed. There was additional work to be done including adding material. There was lace missing in parts of the garment including the back which she described as a see-through effect. It was agreed that new material needed to be added. There were additional difficulties with the fitting. The gown was too tight and she could not sit down properly. She spent three hours at Ms. Ryan's shop on that day alone. She agreed to take the dress and suggested she would return if there were problems. She gave Ms. Ryan \$300 and a tip for \$100.

When she returned home that evening, Ms. Roy tried on the gown and observed several major flaws: the seams moved when she walked, the sides of the bust were different sizes and the train was not gathering properly behind the dress. Ms. Roy was upset and sought a second opinion from Pauline Mullin before speaking with Ms. Ryan. She asked if the dress could be altered further and Ms. Mullin advised that there was insufficient seam allowance to allow for expansion. She hired Ms. Mullin to sew a new dress and work on those of the bridesmaids.

She spoke with Ms. Ryan who offered to make further repairs. However, at this stage Ms. Roy was not comfortable and had Ms. Mullin make a new dress.

She claims the following from Ms. Ryan:

Alterations	\$ 300.00
Cost of Dresses	\$ 200.00
Bridesmaid's Dresses	\$ 180.00
Lost Work	\$ 220.00
Babysitter	\$ 25.00
Pauline Mullin's work	\$ 115.00
General Damages	<u>\$ 100.00</u>
Total	\$1140.00

She also seeks costs (filing and service) of \$191.26.

Under cross-examination, Ms. Roy acknowledged that there were difficulties with the gown and bridesmaids dresses but she advised Ms. Ryan to leave it as it was. At no time did she feel rushed. She acknowledged that the bridesmaids dealt with Ms. Ryan directly and paid her as each dress was completed. Ms. Roy, in turn, reimbursed each woman for the cost of their respective dresses.

Pauline Mullin has been sewing since 1998. She has been the sole proprietor of "Pauline's Golden Thread" for approximately six years. She is a seamstress based in Kentville. She testified to meeting with Ms. Roy approximately a week and a half before the wedding and being shown the wedding dress. She described it as too small for Ms. Roy. The dress had no seam allowances and the chest was misshapen. She says it, typically, takes her approximately 2-3 weeks to make a dress and this particular job should be accomplished in two weeks.

When altering a dress, material is gathered and taken together to form "darts". Ms. Mullin believed there was one dart too many. She is not certain why the dress would turn when Ms. Roy walked. The pulling is the result of one side being too loose and the other flat. She found the dress was not the same on both sides.

Under cross examination, she acknowledged seeing that the dress was created from two dresses sewn together. She acknowledged that sometimes certain dresses take longer than anticipated as certain jobs are time consuming.

Mary Osmond is Ruth Ryan's mother. She is a retired nurse. She is not a seamstress although she enjoys sewing as a hobby, making quilts and performing alterations. She was in the sewing room and saw Ms. Roy pick up the dress and pay. Ms. Roy indicated to Ms. Ryan that she wanted the dress tight and did not want a zipper. She did not see her walk or sit in the dress.

Ruth Marie Ryan has sewn professionally for over ten years. She has been doing it on a full-time basis for the past three years. When she met with Ginger Roy, the job was described as sewing

the two halves together. She quoted a price of \$500 all inclusive. Following some adjustments in the work required, they settled on a quote of \$300. She described the process of altering the dress. Given my finding, it is not germane to the outcome of this matter. While left later than Ms. Roy was comfortable and in retrospect, later than it should, the redesign required a considerable expenditure of time and effort on Ms. Ryan's part. She may have felt rushed, but her efforts do not reflect a rush job.

She described the fitting process with Ms. Roy. Several times Ms. Roy wanted it changed to fit tighter. In addition, she went from wanting a long train to a detachable train. She determined that an embellishment was necessary. She testified that Ms. Roy indicated she was "very happy" with the dress, paid for it and gave an extra \$100 tip. Ms. Ryan indicated that Ms. Roy could return for a subsequent fitting. There were also discussions regarding the bridesmaids' dresses. However, as noted later in this decision, those dresses were not part of the contract between Ms. Roy and Ms. Ryan. The contracts were with the individual bridesmaids.

After Ms. Roy took delivery of the dress, Ms. Ryan received a call from one of the bridesmaids, Jen, who asked her to call Ms. Roy as "Ginger was upset". She described the concern with the dress. She invited Ms. Roy to come back and she would alter the dress. Ms. Roy indicated she was concerned about the timelines as her wedding would have been less than 10 days away. She claimed Ms. Ryan owed her for alterations.

In questioning from the court, she indicated after viewing the photographs in evidence, that this is not how the dress was supposed to look.

The Law

The law respecting the provision of services is governed by the *Consumer Protection Act*. Subsection 26 states:

Implied conditions or warranties

26 (1) In this Section and Section 27, "consumer sale" means a contract of sale of goods or services including an agreement of sale as well as a sale and a conditional sale of goods made in the ordinary course of business to a purchaser for his consumption or use but does not include a sale

- (a) to a purchaser for resale;
- (b) to a purchaser whose purchase is in the course of carrying on business;
- (c) to an association of individuals, a partnership or a corporation; or
- (d) by a trustee in bankruptcy, a receiver, a liquidator or a person acting under the order of a court.

(2) In this Section and Section 27, "purchaser" means a person who buys or agrees to buy goods or services.

(5) There shall be implied in every consumer sale of services a condition, on the part of the seller, that the services sold shall be performed in a skilful and workmanlike manner.

I find this was a consumer sale of services for the preparation of a wedding dress. As a result, it is an implied warranty of the contract that the work was to be “performed in a skilful and workmanlike manner.”

Findings

In reviewing the evidence, I have no doubt that Ms. Ryan worked hard and tried her best to complete the dress and sew it as stipulated by Ms. Roy. The job was more complicated than anticipated and took longer than either party had planned.

The phrase “skilful and workmanlike manner” may mean different things for each wedding gown. However, certain factors are present in all of them. For example, it must fit properly and look how a dress should appear in terms of symmetry and design. Clearly, this is subjective. If the Claimant had not provided photographs in evidence, I would have disallowed the claim. The photographs pictures are clear. The dress was tight, but it was too tight and did not fit correctly as it could not be closed in the back. More significantly, as Ms. Roy described it, the top is “lopsided”.

Another factor is the gown will be ready in ample time. The dress was picked up by Ms. Roy approximately 10 days before the wedding. To that point, Ms. Ryan had little success in having the dress near any stage of completion. Despite Ms. Ryan’s best efforts, it was not in a suitable condition when Ms. Roy accepted it. Once she realized this, Ms. Roy was justified in trying to have it finished elsewhere despite the parties’ discussions that Ms. Ryan would have an opportunity to further alter the gown.

Ms. Roy made additional demands and wanted changes. Often these were significantly different from the previous visit. However, I am not satisfied that they were so unreasonable as to make the requests impossible or impractical. Further, I note that she took delivery and appeared happy with the dress. Given Ms. Roy’s evidence, I find this the result of relief in having the dress finally completed with her wedding looming in less than two weeks. Although acceptance and payment are relevant considerations in assessing credibility, the *Consumer Protection Act* applies regardless of whether the garment was delivered and paid for. The problems with it are well supported by the evidence. As a result, I find the wedding gown was not completed in a skilful and workmanlike manner.

A portion of the witnesses’ testimony concerned issues with the bridesmaids’ dresses. As I mentioned during the hearing, I found the contracts for the sewing of these dresses were between the respective bridal attendant and Ms. Ryan. Each woman met with Ms. Ryan separately or in the company of Ms. Roy. More significantly, each woman was responsible for the payment of each dress. I find each was a separate contract from the sewing of the wedding dress. As there is no privity of contract, no liability can be found for this portion of the claim.

Damages

In making an award of damages for breach of contract, the object of the court is to put the parties in the position they would have been in had the breach not occurred. Damage awards consist of special damages, which compensate economic loss arising from the breach and general damages for non-economic items, such as “pain and suffering”.

Special Damages

Bridal Gown

Having found the work was not completed in a skilful and workmanlike manner, it is appropriate that the Claimant be refunded the purchase price. I order the return of the original purchase price, \$300.00.

Two Original Dresses

The original dresses were purchased prior to Ms. Roy retaining the services of a seamstress or seeking her advice as to whether and how the work could have been done. Ms. Mullin’s view that it should have been finished in two sittings is conjecture. As with most tasks, the problems can now be readily identified with the benefit of hindsight. I am not prepared to award compensation for the dresses.

Bridesmaids Dresses

As noted above, I find the sewing of the bridesmaids’ dresses were separate contracts with the individual attendants. I do not award anything under that head of damages.

Lost Wages and Babysitting Charges

These items were claimed for the additional time Ms. Roy spent for fittings. Fittings are part of any wedding dress alteration. While they were excessive in retrospect, I find the contract did not include a maximum number of fittings. I disallow this item. In addition, I am not prepared to award these as items of costs.

Pauline Mullin’s Work

It is not clear if this claim relates to the sewing for the new dress or to provide testimony at the hearing. I do not allow this item under either ground.

If I allow Ms. Mullin’s invoice as special damages, then Ms. Roy would have the benefit of the reimbursement of the cost of her old dress and a new dress. This would amount to double recovery placing her in a better position than if the contract had been fulfilled. As an item of

costs, there is no evidence of a witness fee paid or even that she appeared under subpoena. She was not qualified as an expert. I disallow any compensation for this item.

Special Damages - Summary

I award \$300.00 as special damages.

General Damages

By all accounts, the Roy's wedding was a happy occasion. That said, Ms. Roy has experienced disappointment, upset and stress as a result of the breach of contract. Therefore, it is appropriate to award general damages to compensate her. However, the *Small Claims Court Act* limits general damages to a maximum of \$100. Therefore, I award general damages of \$100.

Costs

The general rule in litigation is that costs follow the event. The Claimant shall receive costs for the filing fee and service of documents, which have been proven in evidence. I allow \$191.26.

Summary

In summary, the claim is allowed. The Claimant, Ginger Kim Roy, shall have judgment against the Defendant, Ruth Ryan as follows:

Special Damages	\$300.00
General Damages	\$100.00
Costs	<u>\$191.26</u>
Total	\$591.26

An order shall issue accordingly.

Dated at Halifax, NS,
on January 20, 2017;

Gregg W. Knudsen, Adjudicator

Original: Court File
Copy: Claimant(s)
Copy: Defendant(s)