

have their wedding. On August 30, 2019, the Muxlows, along with Charlotte Muxlow's father, toured and then booked South Wind Ranch. See Complaint, ¶ 12-13.

B. The South Wind Contract

To book the venue, Plaintiffs signed a contract with South Wind on the same day they toured (the "South Wind Contract"). See Deposition of Charlotte Muxlow, p.20, ll. 19-21. The South Wind Contract provided the following:

- (1) That Plaintiffs were renting the venue for the dates of November 6 and 7, 2020;
- (2) That the total Rental Fee would be \$8,950;
- (3) That an Initial Deposit of \$4,475 was due at that time (and which was paid that day);
- (4) That the balance of \$4,475 was due October 6, 2020; and
- (5) That "[a]ll deposits are non-refundable (except Security Deposit)".

Plaintiffs agreed that this date, in the midst of the fall season, was a "prime date" for the venue and they booked it over a year in advance. See Deposition of Charlotte Muxlow, p.23, ll. 1-9.

Charlotte Muxlow testified that she "read the whole thing" and does not recall having any questions about the South Wind Contract. See id., p.27, ll. 3-9. Even reading it at the time of her deposition, Mrs. Muxlow agreed that there was nothing she could cite to that was unclear about the South Wind Contract. See id., p.112, ll. 6-13.

Of course, having signed the South Wind Contract and paid the Initial Deposit, Plaintiffs expected South Wind to hold those dates for their use. See id., p.27, ll. 17-19. And Plaintiffs acknowledged that, as far as they know, South Wind did hold those dates. See id., p.28, ll.3-5.

C. The Black Contract

Plaintiffs then separately signed a contract with Ashley Black, a wedding planner recommended by South Wind, but separate from the venue (the “Black Contract”). See id., p.30, ll. 19-25. The Black Contract provided the following:

- (1) That Ashley Black would provide wedding planning services for their event;
- (2) That the total cost would be \$2,000;
- (3) That an Initial Deposit of \$1,000 must be paid with the signed contract (and was paid by Plaintiffs);
- (4) If the event is canceled, the Initial Deposit would not be returned; and
- (5) If the event was canceled less than six months prior to the date of the event, then the second payment of an additional \$1,000 would be required.

As with the South Wind Contract, the Muxlows admitted that they signed the Black Contract and that they read it before they signed it. See Deposition of Charlotte Muxlow, p.31, ll. 4-16.

D. Plaintiffs’ Decision to Postpone

Beginning around March of 2021, Charlotte Muxlow began having concerns about whether the COVID pandemic would impact her wedding, and “slowed down the wedding planning a little bit, just to see how things were going to play out.” See id., p.39, ll. 21-25. As Mrs. Muxlow has family in Germany, she became particularly concerned that these family members might not be able to travel to the United States to attend the wedding. See id., p.44, ll. 14-22.

Mrs. Muxlow therefore reached out to Ashley Black to mention the possibility of rescheduling the wedding. See id., p.47, ll. 16-20. The two then had a phone call in which they spoke about the process of trying to reschedule. See id., p.48, ll. 4-10. Mrs. Muxlow admitted in her deposition that, during this phone call, she was told that there would possibly be a price increase for selecting a 2021 date. See id. Notably, Mrs. Muxlow admitted in her deposition: “I know rescheduling wasn’t part of the contract” See id., p.95, ll. 1-2.

Following the phone call, on August 4th, Mrs. Muxlow then text-messaged Ashley Black and stated that they wished to postpone the wedding, writing as follows:

We have decided to postpone for good. I want to save Southwind for next year and enjoy it with everyone and do a small ceremony on a hiking trail along the [B]lue [R]idge [P]arkway. Can you send me the Saturday dates that are still available between September – October 2021 and I can talk it over with Greg before we call Ron? I'm incredibly sad we have to do this, but I just don't think I can enjoy myself without worry

See Exhibit 4 to Deposition of Charlotte Muxlow. Ashley Black told Mrs. Muxlow that she would ask Ron Hakala for available 2021 dates. See id. at p.51, ll. 22-24. Mrs. Muxlow again wanted fall dates, a two-day event, and those dates must include a Saturday. See id.; p.56, ll. 19-25.

E. Attempt to Reschedule

Ashley Black later provided Mrs. Muxlow with a list of available dates in the fall, provided to her by Mr. Hakala. See Deposition of Charlotte Muxlow, p.55, ll. 13-16. However, at this point, Mrs. Muxlow decided she did not want dates in September, as she felt that the weather would be too hot. See Exhibit 4 to Deposition of Charlotte Muxlow, p.5.

Mrs. Muxlow then messaged Ron Hakala directly regarding dates. Mr. Hakala said that he had an October weekend opening up and offered that he would give the Muxlows a credit towards the price for what they had already paid, but explained that 2021 rates were higher than 2020 rates. See id. at p.10. Mrs. Muxlow testified that the October date offered “would have been fine if it weren't for the price increase.” See Deposition of Charlotte Muxlow, p.59, ll. 12-16.

Mrs. Muxlow did not ask Mr. Hakala to waive the price increase or to lessen it. See id. at p.59, ll. 18-24. At this point, Mrs. Muxlow did not communicate for approximately two weeks. See id. at p.60, ll. 5-10. Then, on September 26th she sent an e-mail to Ron Hakala, objecting to the price increase and stating: “We would like to ask for our deposit back and not schedule another

wedding for next year.” See Exhibit 5 to Deposition of Charlotte Muxlow. Ron Hakala replied as follows:

Hey Charlie & Greg,

I had you down as cancelling your Nov 7 date and looking at other dates in 2021. What I was referring to was that weekends in 2021 had increased in price. They are actually \$14,580 now. The virus issue has not slowed down the wedding business in the past several weeks. A November 2020 wedding is definitely doable. I was hoping to re-sell your date, which I have not been able to. You have a \$4,475 credit. We lost out on your November date. We have not issued a single refund even to those that were impacted with the virus back in April/May. I will work with you. Just pick a date in 2021. From the business side we lost out on the full \$8950 you had book[ed] in November, so the math is if I gave you a 2021 date and a \$14,580 value, I would have in total given you \$23,530 worth of dates, of which I may collect \$8950 from you, so I’d be out \$14,580. On the emotional side I like you and Greg a lot and want to help you. Pick a date in 2021 and I’ll see what I can do. I have an August weekend and a September weekend along with one in December. Possibly select a Sunday and stay over into Monday. I may have a Thursday/Friday we could do.

See id. at p. 2. Mrs. Muxlow replied by e-mail on September 27, 2020, writing, in part:

“Honestly after everything that happened we do not want to move forward with scheduling another date with a strained relationship and would just like our deposit back.” See id. at p.2.

Mr. Hakala replied:

I can’t do that Charlie. We dealt through 14 other Brides/events that were impacted during March/April/May. Everyone had an emotion draining scenario. We refunded no one. We’d have gone out of business if we refunded! We worked something out with each of them. Some got married on their date with a small gathering and booked a party in 2021. Some went ahead with who they could. We did one yesterday for 22 guests. It was originally 150. *You could just schedule a party, a family reunion, something to utilize your credit. I’ll work with you if you just pick a date.* I have 3 other partners and a solid legal and accounting team. It’s a terrible emotional frustrating time for so many Brides. I have to be consistent in operating the business. *Please try to figure out something. A holiday party; a business outing; something!*

See id. at p.1 (emphasis added). The Muxlows made no response to this e-mail and they were married on a mountaintop in late October 2020. The November date they had booked went unused,

as South Wind was not able to rent it out on such short notice. The Plaintiffs then filed this lawsuit against South Wind Ranch, Ron Hakala, and Ashley Black.

F. Present Motions

The parties engaged in written discovery and then depositions of all parties. During the 30(b)(6) deposition of Ron Hakala, Plaintiffs' discovered that Mr. Hakala has other business partners in the South Wind Ranch business. Plaintiffs therefore filed a Motion to Amend the Complaint to add claims against these individuals, in addition to the individual claims already filed against Mr. Hakala and Ms. Black. Plaintiffs' counsel also took issue with answers provided by Mr. Hakala during the 30(b)(6) deposition and therefore filed a Motion to Compel various answers relating to the same. Additionally, during the deposition of Plaintiff Charlotte Muxlow, Plaintiffs' counsel instructed Ms. Muxlow multiple times not to answer questions from Defendants' counsel. Pursuant to Rule 30(j)(3), SRCRP, Plaintiffs' counsel filed a Motion for a Protective Order. Defendants also filed a Motion for Summary Judgment as to the Plaintiffs' claims against all parties. These various motions are now before the Court.

PLAINTIFFS' MOTIONS

A. Plaintiffs' Motion for Protective Order

As noted above, during the deposition of Plaintiff Charlotte Muxlow, Plaintiffs' counsel instructed her multiple times not to answer questions from Defendants' counsel. These included questions regarding whether Mrs. Muxlow canceled the contract, whether she had been involved in any other lawsuits, and why it would not have been possible for the ceremony that Plaintiffs held in October to have been held at South Wind. Having instructed his client not to answer questions in a deposition, Plaintiffs' counsel then filed the instant Motion for a Protective Order, as required by Rule 30(j)(3), SRCRP.

Rule 30(j)(3) provides as follows:

Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the court or unless that counsel intends to present a motion under Rule 30(d), SCRCP. . . . Counsel directing that a witness not answer a question on those grounds . . . shall move the court for a protective order under Rule 26(c), SCRCP, or 30(d), SCRCP, within five business days of the suspension or termination of the deposition.

Plaintiffs' motion does not specify whether Plaintiffs claim justification for the instruction of Plaintiffs' counsel under Rule 26(c) or 30(d). However, Plaintiffs' motion provides the following as justification:

Upon information and belief, some of the questions asked were intended only to harass the witness, sought information irrelevant to the lawsuit, and sought information protected by the attorney-client or work product privilege. The plaintiffs therefore seek a protective order.

See Plaintiffs' Motion for Protective Order.

During the hearing, Defendants' counsel read to the Court each instance during the deposition in which Plaintiffs' counsel instructed his client not to answer questions from counsel. Not only were these questions plainly not intended to harass but each was plainly relevant to the claims and defenses. No questions related to attorney-client privilege or the work product doctrine. As noted, questions which Plaintiffs' counsel instructed his client not to answer included questions as to whether Mrs. Muxlow canceled the contract, whether she had been involved in any other lawsuits, and why it would not have been possible for the ceremony that Plaintiffs held in October to have been held at South Wind. There is no justification for Plaintiffs' counsel instructing his client not to answer these questions and Plaintiffs' motion on this point is therefore denied.

B. Plaintiffs' Motion to Compel 30(b)(6) Testimony

Plaintiffs filed a Motion to Compel relating to the 30(b)(6) testimony of Ron Hakala, on behalf of Defendant South Wind Ranch. Plaintiffs presented no basis for this motion and the motion is therefore denied.

C. Plaintiffs' Motion to Amend Complaint

Plaintiffs seek to amend their Complaint to add claims against more individuals to this lawsuit, particularly those individuals who are business partners in South Wind Ranch. As I find that the existing Defendants are entitled to summary judgment on the present claims, this motion should be and is denied.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants seek summary judgment as to all claims. For the reasons set forth below, Defendants' motion should be and therefore is granted.

LAW

To obtain summary judgment, the moving party must demonstrate there is "no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." See Rule 56(c), SCRPC. Where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, the trial court must grant the motion for summary judgment. See Tupper v. Dorchester County, 326 S.C. 318, 325, 487, 187, 191 (1997).

DISCUSSION

Each of Plaintiffs' claims stem from their rental of South Wind Ranch as a venue for their wedding. It is undisputed that this rental was governed by contracts. As a result, each of Plaintiffs'

causes of action – which are all based on acts allowed by the contracts – must fail as a matter of law.

A. The Contract Precludes All Claims

An action to construe a contract is an action at law. See McGill v. Moore, 381 S.C. 179, 180, 679 S.E.2d 571, 574 (2009). “The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties’ intentions as determined by the contract language.” Schulmeyer v. State Farm Fire and Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). “Where the contract’s language is clear and unambiguous, the language alone determines the contract’s force and effect.” Id. “It is a question of law for the court whether the language of a contract is ambiguous.” S.C. Dep’t of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001).

Though Plaintiffs did not plead Breach of Contract as a cause of action, the contracts unquestionably apply here and preclude each of the Plaintiffs’ causes of action. Notably, there is no dispute in this case regarding the following points:

- The Plaintiffs entered into binding contracts with South Wind Ranch and Ashley Black. This fact is even pled in the Complaint. See Complaint ¶ 41 (“The plaintiffs entered into binding contracts . . .”).
- Both contracts stated that the initial deposits to South Wind and Black – which Plaintiffs now seek to have returned – were non-refundable. See Deposition of Charlotte Muxlow, p.29, ll. 3-9.
- The contracts did not provide for a right to reschedule. See id. at p.95, ll. 1-3 (“I know rescheduling wasn’t part of the contract . . .”).
- The contracts do not contain any relevant ambiguity. See id. at p.112, ll. 6-23.

Given the above, the law requires that the plain language of the contracts be enforced. The deposits are simply and clearly non-refundable under the terms of the contracts. Plaintiffs were aware of this from the very beginning, as they testified they read the – fairly short – contracts.

In fact, given the timeframe in which Plaintiffs canceled their wedding, South Wind and Ashley Black could have insisted on the payment of the other half of the funds. Instead, these Defendants offered to allow Plaintiffs to reschedule to another date. However, rather than do so, Plaintiffs complained about the dates offered and then canceled due to what they called their “strained relationship” with South Wind and Black.

Given that the contract applies, each of the causes of action fails. Each are addressed in turn below:

B. Negligence

The elements of a cause of action for Negligence are (1) duty, (2) breach, (3) causation, and (4) damages. Plaintiffs provide a list of ten separate alleged duties within the cause of action. See Complaint, ¶ 28. None of them is supported by the evidence or defeats the plain language of the contracts. Some alleged duties are simply general statements not found anywhere in caselaw, such as the alleged duty to “avoid forcing customers to file lawsuits where the defendants have acted tortuously.” See id. Others are simply not supported by the evidence and are directly contradicted by the contracts, such as the duty to “refund payment when unable to provide agreed-upon services.” See id.

The alleged breaches of the various duties are the same, and amount to alleged tortious behavior for actions which are plainly supported by the contracts, such as “retaining funds in bad faith.” See id. In short, as the contracts are plainly applicable here, the Negligence cause of action is not supported by the facts or law. Plaintiffs were creative in pleading Negligence rather than Breach of Contract in an effort to get around the contractual documents which they admitted in depositions they read and signed. However, the law does not permit parties to avoid unambiguous contractual provisions through the assertion of a negligence cause of action.

C. Unfair Trade Practices Act

The elements of the South Carolina Unfair Trade Practices Act are (1) an unfair or deceptive practice under the Act, (2) which has an impact on the public interest, including capable of repetition, (3) an ascertainable loss violation of money or property, and (4) proximate cause.

Here, Plaintiffs have not met their burden to show any unfair or deceptive act. The acts complained of by Plaintiffs – not returning the deposits – were supported by the clear language of the contracts. With regard to Plaintiffs’ complaints about the Defendants not allowing them to reschedule at their original contract prices, they admit that they did not have this right within the contracts. See Deposition of Charlotte Muxlow, p.95, ll. 1-3 (“I know rescheduling wasn’t part of the contract . . .”).

Moreover, even assuming *arguendo* that the contract was breached – though this is not alleged by the Plaintiffs - a mere breach of contract, without more, does not constitute a violation of the unfair trade practices act, even if done intentionally. See Key Co. v. Fameco Distribs., Inc., 292 S.C. 524, 526, 357 S.E.2d 476, 478 (Ct. App. 1987). Otherwise, every intentional breach of a contract within a commercial setting would constitute an unfair trade practice and thereby subject the breaching party to treble damages. Id. at 527, 357 S.E.2d at 478.

D. Breach of Contract Accompanied by a Fraudulent Act

The elements of Breach of Contract Accompanied by a Fraudulent Act are: (1) a breach of contract, (2) fraudulent intent relating to the breach and not merely its making, (3) a fraudulent act accompanying the breach. See Conner v. City of Forest Acres, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002). In addition, the fraudulent act must be “separate and distinct from the act(s) constituting the breach,” and cannot “merely restate the manner in which [the defendant] is alleged

to have breached” the contract. See Smith v. Canal Ins. Co., 275 S.C. 256, 260, 269 S.E.2d 348, 350 (1980).

As noted, Plaintiffs did not include a cause of action for Breach of Contract in the Complaint. Moreover, Mrs. Muxlow was unable to cite to any breach of the contracts in her deposition:

Q. How do you think they breached it?

A. I mean, I’m not an attorney. So I don’t – this is I think getting a little bit too much into the . . .

Q. Well, I mean, you brought this lawsuit, and so I just need to understand. Do you believe my folks violated this contract?

A. I’m not sure how to answer that right now.

Deposition of Charlotte Muxlow, p.89, ll. 3-9. More importantly, as shown above, the contract is clear and, as Plaintiffs acknowledged, plainly states that the deposits they seek in this lawsuit were non-refundable:

Q. And you’d agree that it says in the contract that all deposits are nonrefundable except for the security deposit. Correct?

A. Yeah. *I mean, I can read the contract.*

Id. at p.29, ll. 4-9 (objection omitted) (emphasis added). As there is no breach by Defendants, there is certainly no evidence of a breach with fraudulent intent. Therefore, this cause of action must also fail.

E. Quantum Meruit

Plaintiffs’ final cause of action is for Quantum Meruit. To begin with, this claim fails because actions in quantum meruit are based on the absence of a contract. See ELEMENTS OF CIVIL CAUSES OF ACTION, 5th ed., p.579, citing Johnston v. Brown, 292 S.C. 478, 357 S.E.2d 450 (1987).

“Relief under the theory is therefore not available if an action is based on the existence of a contract.” See *id.*, citing Gantt v. Morgan, 199 S.C. 138, 18 S.E.2d 672 (1942).

On a more basic level, Plaintiffs cannot meet the elements of the equitable cause of action as they cannot show that Defendants retained a benefit – here, the initial deposit – unjustly. As explained above, the contracts are clear and binding. Even the Plaintiffs agreed that the non-refundable language is clearly contained therein. Consequently, for these reasons, this cause of action also fails.

CONCLUSION

For the reasons set forth above, Plaintiffs’ Motions for a Protective Order, to Compel 30(b)(6) Testimony, and to Amend the Complaint are denied and Defendants’ Motion for Summary Judgment is granted.

IT IS SO ORDERED.

Hon. J. Derham Cole
Circuit Court Judge

_____, 2022
Spartanburg, South Carolina



Greenville Common Pleas

Case Caption: Christian Wienands , plaintiff, et al vs. Southwind Ranch , defendant,
et al
Case Number: 2021CP2300416
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IT IS SO ORDERED!

s/J. Derham Cole 2053