



MATTHEW J. LEE/GLOBE STAFF

Not the wedding they were expecting

SEAN P. MURPHY

THE FINE PRINT

On June 11, Elaine Picco formally notified Alden Castle, site of her daughter's August wedding, that the family had decided to cancel because restrictions dictated by the venue because of the pandemic — no dancing, no cocktail hour, and social distancing required — would not make the dream wedding they had signed up for.

Picco asked for their \$19,500 deposit back.

"Your company is unable to provide the services that we agreed to," Picco wrote.

Under the contract, Alden Castle would provide a marriage ceremony, cocktail hour, sit-down dinner, and dancing until 11 p.m. for about 130 guests under the chandeliers of a sumptuous 100-year-old manse in Brookline.

But that all changed with the pandemic. Gatherings of more than 10 people were banned indoors. Under the Baker administration's phased approach to reopening the state, outdoor weddings of "moderate" size may be approved in the next phase, which begins, at the earliest, on June 29. The final phase, set to begin no sooner than three weeks later, or July 20 at the earliest, would apparently address indoor weddings.

Alden Castle told Picco she would not be eligible for a refund unless the state extended the ban on large indoor gatherings to Aug. 1, the date of her daughter's wedding.

And instead of a refund, Picco got a list of "guidelines" for a scaled-down wedding that banned dancing and a cocktail hour. "No dancing? Come on. It's bizarre," Picco said. "And it's certainly not what we agreed to."

Does Alden Castle owe the Piccos a refund?

"It's one of the most difficult situations" that operators of wedding venues are facing across the country, said Vicki Car-

*Save
the
Date*

FOR THE
WEDDING OF

MICHAELA AND JAMES

SATURDAY, AUGUST 1, 2020
AT ALDEN CASTLE, BROOKLINE

RECEPTION
TO FOLLOW*

~~COCKTAIL HOUR~~

SIT-DOWN DINNER

(Six guests per table, tables six feet apart; hors d'oeuvres and drinks will be served at tables)

~~DANCING UNTIL 11 P.M.~~

*Guests are required to wear masks entering, exiting, and traveling through common areas.

GEORGE PATISTEAS/GLOBE STAFF ILLUSTRATION

son, executive director of the Arizona-based Wedding International Professionals Association.

"It's a tough situation, all the way around," she said, adding that the association takes no position.

Ordinarily, cancellation triggers the loss of a deposit. Venue operators have only so many dates per year to host weddings, and if they lose some of them to cancellations without taking deposits, they may soon be in difficult financial straits.

Conversely, when a venue cancels it is almost always obligated to refund deposits. They had promised to put on a wedding but it didn't happen.

That's basic contract law: the party that breaches the con-

Elaine Picco, shown with daughter Michaela Picco and her fiancé, James Barnes, wants a \$20,000 deposit back because of changes made once the pandemic hit.

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tract — the party that can't perform what it promised — owes damages to the other.

But the pandemic — and the uncertainty surrounding how long event bans will last — has created a new dynamic.

It has been likened to families and wedding venues playing a game of chicken. Families who really want to cancel because of the uncertainty resist doing so in the hope that the state will extend its events ban to their date, thus forcing the venue to cancel and refund the deposit.

Venues, on the other hand, resist canceling in the expectation, even hope, that families will do so first, thus forfeiting their deposits. For this to work, venues must insist they are ready and able to host the wedding.

Picco provided me with a pile of e-mails. They portray Alden Castle as eager to have the Piccos postpone to a later date, with no penalty. (The bride-to-be said no.) They also show the company insisting as recently as June 15 that it was ready to host them.

"If you still want to move forward with your wedding [under the] guidelines, we are excited and ready for your big day," it said.

In its June 15 e-mail to the Piccos, Alden Castle noted that the state had not yet made a determination about the number of guests who would be allowed to gather indoors.

Under its proposal, Alden Castle said guests at the ceremony would have to be 6 feet apart, hors d'oeuvres and drinks would be served at tables (six guests per table, tables 6 feet apart), employees would wear masks, and guests would wear masks "entering, exiting and traveling through common areas."

Alden Castle said dancing

Michaela Picco and fiancé James Barnes. Michaela, 29, doesn't want to postpone her wedding, even if it means exchanging vows in the backyard of the family home in Braintree.

would not be allowed, except for the couple's first dance and parent dances, though it said it hoped the ban on dancing would be lifted by the time of the wedding.

There was no discussion of a discount.

I talked with two lawyers from a downtown firm who frequently deal with contract law and a law professor who teaches it. They cited two legal principles that favor Picco's demand for a refund: force majeure and the doctrine of frustration of purpose.

Picco has cited the force majeure clause in her contract with Alden Castle. It's a rarely invoked doctrine now getting lots of attention among business lawyers due to the pandemic. It says that if something really extraordinary and unexpected happens, like an earthquake or an act of terrorism, both parties can be relieved of their respective obligations under the contract.

There is little doubt in my mind that the pandemic qualifies

as a force majeure event. But the one-sentence clause in their contract talks about an event being "impossible." And Alden Castle keeps insisting the wedding is possible, albeit quite different than the one agreed upon pre-pandemic.

So, the force majeure argument may not be a slam dunk for the Piccos because the venue has offered to host a wedding, albeit a scaled-back version. But the doctrine of frustration of purpose may be a stronger argument.

It is quite similar to force majeure, in that it also waives contractual obligations due to an extraordinary and unexpected event. But the doctrine of frustration of purpose, as the name implies, focuses on the main purpose of the contract being derailed due to the intervening event: i.e., no dancing and no mingling over cocktails.

Picco's daughter, Michaela, 29, doesn't want to postpone, even if it means exchanging vows in the backyard of the family home in Braintree.

"They want to get married, start a family, and move on," Elaine Picco said.

On June 19, days after the Alden Castle general manager promised to respond to my inquiries, he sent an e-mail to Picco, copied to me.

Alden Castle said it had never denied Picco a refund or tried to force her to proceed with something she was uncomfortable with.

"You clearly do not want to proceed with your wedding. As such, we will cancel your event and refund your money within the next 90 - 120 days."

That's a good result, I think, though waiting three to four months for a refund seems like a long time, especially since a backyard wedding is still in the offing and the money would certainly help with that.

Got a problem? Send your consumer issue to sean.murphy@globe.com. Follow him on Twitter @spmurphyboston.



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