



# Civil Resolution Tribunal

Date Issued: July 23, 2018

File: SC-2017-006625

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Saalfeld et al v. Steve Anonby doing business as Hot Tubs Galore*, 2018  
BCCRT 354

**B E T W E E N :**

Chad Saalfeld and Jennifer Saalfeld

**APPLICANTS**

**A N D :**

Steve Anonby doing business as Hot Tubs Galore

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. This is a dispute about the return of a deposit paid for a hot tub. The applicants, Chad Saalfeld and Jennifer Saalfeld, say the respondent, Steve Anonby doing business as Hot Tubs Galore, refused to return their \$1,960 deposit after they cancelled their order for a hot tub.
2. The respondent says the parties' signed contract specifies that the deposit was non-refundable.
3. The parties are both self-represented.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issue in this dispute is whether the respondent must refund the applicants' \$1,960 deposit.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The emails provided by the applicants show that they emailed with the respondent in late July 2017 about a buying a hot tub. Mr. Saalfeld met with the respondent, and the respondent sent a follow-up email on July 29, 2017 recommending a used Beachcomber hot tub.
11. In a second email dated July 29, 2017, the respondent wrote that he and his crew could deliver the hot tub, or the applicants could hire another company. The respondent attached a copy of a purchase agreement, and asked Mr. Saalfeld to sign it and send \$1,960 by e-transfer to confirm the purchase and put the hot tub in line for inspection, testing, and preparation. The respondent wrote that any cost beyond \$1,960 could be paid the following week.
12. The purchase agreement is dated July 29, 2017. It says the price for the Beachcomber hot tub was \$1,750, including a new cover and a 1-year warranty, for a total with taxes of \$1,960. Somewhat confusingly, the purchase agreement form also says that another \$1,750 was owed for the hot tub, in addition to the \$1,960. Based on the parties' subsequent emails, I interpret this to mean that the down payment was \$1,960, and the total purchase price for the tub was \$3,500 plus tax.

13. The bottom of the purchase agreement states: "\$2000 is non-refundable if the client cancels the order or fails to follow through with the purchase within 90 days."
14. Mr. Saalfeld confirmed the purchase by email the same day, stating that he wanted the respondent to deliver the hot tub. Subsequent emails show that Mr. Saalfeld e-transferred the \$1,960 to the respondent on July 31, 2017.
15. In an August 9, 2017 email, the respondent confirmed that the applicants still owed \$1,750 for the hot tub, plus an extra \$120 for LED lights.
16. The applicants' emails show that they cancelled the contract on their own initiative on August 11, 2017. Prior to that, on August 9, 2017 Mr. Saalfeld sent the respondent measurements and photographs showing the access path beside his house, and the respondent said the hot tub would not fit. Mr. Saalfeld asked the respondent to come to his home to check. The respondent replied that he did not do free on-site inspections, and there was a \$95 call-out fee. The respondent suggested they figure it out over email, and asked if there was a way to remove a fence panel and come through the neighbour's yard "or something".
17. On August 11, 2017, Mr. Saalfeld replied that removing fence panels was not an option, and a \$95 call-out fee was not what he was expecting. Mr. Saalfeld wrote that he was cancelling the order effective immediately, and he asked the respondent to return the \$1,960 deposit.
18. The July 29, 2017 contract clearly states that \$2,000 is non-refundable if the client cancels the order or fails to follow through with the purchase within 90 days. However, the applicants say that the respondent is nonetheless obligated to return their \$1,960 deposit. I agree, based on section 23(5) of the *Business Practices and Consumer Protection Act* (BPCPA).
19. The BPCPA applies to the hot tub contract because the respondent meets the definition of "supplier", as he is a person who in the course of business participated in a consumer transaction by supplying, or offering to supply, goods or services to a consumer.

20. Section 23(5) of the BPCPA states that a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than one year after the date that the consumer receives a copy of the contract if the contract does not contain the information required under section 23(2) and section 19 of the BPCPA.
21. The BPCPA says that a “future performance contract” is a contract for the supply of goods or services between a supplier and a consumer for which the supply or payment in full of the total price payable is not made at the time the contract is made or partly executed. Because Mr. Saalfeld was not required to pay (and did not pay) the additional \$1,750 owed for the hot tub at the time he entered into the contract in late July 2017, and because the hot tub was not going to be supplied until sometime in the future, I find that the hot tub purchase agreement was a future performance contract, as contemplated in the BPCPA.
22. Section 23(2) of the BPCPA says that a future performance contract must contain the supply date and the date on which the supply of goods or services will be complete. The July 29, 2017 hot tub contract does not contain this information, and the emails from the respondent show that no supply date had been agreed to by the parties. On August 9, 2017 Mr. Saalfeld emailed to ask when the hot tub would be ready for delivery, and the respondent replied that his technician would not start work on it for at least a week and he was not certain when it would be ready.
23. As the respondent did not specify the date on which the hot tub would be supplied to the applicants, I find that the contract did not contain the information required under section 23(2) of the BPCPA. Again, section 23(5) of the BPCPA says a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than one year after the date that the consumer receives a copy of the contract if the contract does not contain the supply date information required under section 23(2).
24. For these reasons, I find the applicants were entitled to cancel their contract in writing on August 11, 2017, as they did. Also find they provided a reason for the

cancellation, so their email was sufficient notice of cancellation as required under section 54 of the BPCPA.

25. Section 27 of the BPCPA says that if a contract is cancelled under section 23, the supplier must refund the consumer all money received in respect of the contract, without deduction.
26. The terms of a contract between parties does not override mandatory legislation such as the BPCPA. To the extent that the July 29, 2017 hot tub contract contradicts the BPCPA, I find that it is invalid. Accordingly, I conclude that the respondent must return the applicants' \$1,960 deposit, plus interest under the *Court Order Interest Act (COIA)*.
27. While the tribunal cannot award damages under the BPCPA because it is not a court, I can consider the BPCPA and rely upon it in determining the outcome of a dispute, as I have done here.
28. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicants were successful, so I order that the respondent reimburse the \$125 they paid in tribunal fees. The applicants also claim \$80 for courier and registered mail expenses. As the applicants did not provide receipts to support these expenses, I find, on a judgment basis, that they are entitled to reimbursement of \$50 for dispute-related expenses.

## **ORDERS**

29. I order that within 15 days of this decision, the respondent pay the applicants a total of \$2,153.26, broken down as follows:
  - a. \$1,960 as reimbursement of hot tub deposit,
  - b. \$18.26 as prejudgment interest under the COIA, and
  - c. \$175 for tribunal fees and dispute-related expenses.

30. The applicant is also entitled to post-judgment interest under the COIA.
31. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
32. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Kate Campbell, Tribunal Member