



Civil Resolution Tribunal

Date Issued: August 14, 2020

File: SC-2019-010057

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rempel v. Coast Medical Air Inc.*, 2020 BCCRT 909

BETWEEN:

JAMIE REMPEL, WILLIAM REMPEL and Heidi Rempel

APPLICANTS

AND:

COAST MEDICAL AIR INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Heidi Rempel, purchased an air purifier from the respondent, Coast Medical Air Inc. (CMA). Ms. Rempel seeks a refund for \$3,693.76. The other applicants, Jamie Rempel and William Rempel, are family members with no direct claims against CMA, as discussed below.

2. CMA denies that it should pay a refund. It says that the applicants failed to properly notify CMA that it wanted a refund and returned the purifier damaged. CMA also says the parties' agreement is governed by the *Business Practices and Consumer Protection Act* (BPCPA). Ms. Rempel denies this. The parties did not explain how the BPCPA affected their respective position. I will discuss this below.
3. Jamie Rempel represents the applicants. An employee or principal represents CMA.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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.
6. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

The Proper Parties to this Dispute

8. When the application for dispute resolution was originally filed, only Jamie Rempel and William Rempel were named as applicants. During the facilitation process Jamie and William Rempel asked the case manager to add Heidi Rempel as another applicant. The parties then proceeded to treat Ms. Rempel as a party to the dispute. However, the applicants did not formally amend the Dispute Notice to reflect Ms. Rempel's addition as an applicant.
9. Given the above, I directed the CRT staff to issue an amended Dispute Notice to reflect the addition of Ms. Rempel as an applicant. The parties were provided a copy of the amended Dispute Notice. I find it appropriate to proceed with Ms. Rempel as an applicant as this is consistent with the parties' approach in this dispute, noting that all parties treated Ms. Rempel as an applicant in their evidence and arguments. I find that proceeding in this manner is consistent with the CRT's mandate to provide dispute resolution services in a manner that is informal and flexible, while applying principles of law and fairness.
10. It is undisputed that only Ms. Rempel signed the agreement with CMA for the air purifier. Jamie Rempel and William Rempel are not parties to the contract and there is no negligence claim by them against CMA. I find their claims against CMA must be dismissed. I will proceed to consider Ms. Rempel's claim against CMA.

The CRT's Jurisdiction over Refunds under the BPCPA.

11. Section 171 of the BPCPA says that the BC Provincial Court has jurisdiction over proceedings to recover damages for failure to comply with the BPCPA. Since the CRT has no authority to award damages under the BPCPA, this decision will decide only the contract dispute between Ms. Rempel and CMA. That said, I find it entirely appropriate to consider the BPCPA and whether Ms. Rempel is entitled to a refund under the parties' contract. This is because her claim is about cancellation of the contract and an entitlement to a refund. The parties also had an opportunity to

provide submissions on whether Ms. Rempel was entitled to a refund under the BPCPA.

ISSUES

12. The issues in this dispute are as follows:
 - a. Does the BPCPA apply to the agreement between CMA and Ms. Rempel?
 - b. Is Ms. Rempel entitled to a refund under the BPCPA or under the terms of their agreement?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, the applicant Ms. Rempel bears the burden of proving her claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
14. As discussed below, I find that Ms. Rempel is entitled to a refund for \$3,493.76 under the BPCPA. This is because she provided the appropriate cancellation notice and returned the air purifier. I have reduced the refund because she returned the purifier damaged. My reasons follow.
15. Ms. Rempel purchased an air purifier from CMA after its sales representative, DM, provided an in-home demonstration. Both Ms. Rempel and DM (on CMA's behalf) signed an August 21, 2019 purchase agreement. Ms. Rempel paid a total of \$3,693.76 by cheque. DM agreed to refrain from depositing the cheque for at least 7 days.
16. On August 23, 2019, Ms. Rempel exchanged emails with DM. Ms. Rempel wrote that she was dissatisfied with the purifier and wished to return it to CMA's office in Delta, BC. DM replied that he would advise the office of Ms. Rempel's intentions, but asked her to try it over the weekend on a different setting. He also said he would continue to refrain from depositing Ms. Rempel's cheque. He wrote he would call

her back on August 26, 2019. Ms. Rempel replied she would try the new setting over the weekend.

17. The applicants say that on August 26, 2019 there were 2 phone calls. One of the applicants (it is not clear which) called CMA and advised that Ms. Rempel still wanted to return the purifier. DM returned the call and advised that he had injured himself playing soccer. He said the applicants could return the air purifier themselves to CMA's Delta office. CMA disagrees this call occurred, but I accept the applicants' version of events. As noted above, DM emailed that he would call Ms. Rempel back on August 26, 2019. The applicants also provided a phone bill showing both a long-distance call to CMA's office and a return call from DM's number on August 26, 2019. CMA did not provide any evidence from DM to contradict the applicants.
18. Ms. Rempel returned the air purifier and its accessories to CMA's Delta office. The applicants say this happened on August 27, 2019. A CMA employee, TP, says in a statement this actually happened on September 5, 2019. I find it likely that TP's account is correct as her statement is supported by a September 5, 2019 invoice showing the returned purifier was inspected on that date. However, as I will explain below, I find that nothing significant turns on the date discrepancy.
19. CMA ultimately deposited Ms. Rempel's cheque on August 28, 2019. Ms. Rempel did not realize CMA had cashed her cheque until October 2019. CMA refused a refund at that time.

Issue #1. Does the BPCPA applies to the agreement between CMA and Ms. Rempel?

20. Section 17 of the BPCPA defines a direct sales contract as one between a supplier and consumer for the supply of goods or services that is entered into in person at a place other than the supplier's permanent place of business. Several exceptions apply. One relevant exception is if the buyer asks a sales agent to come to the

buyer's house more than 24 hours in advance of the visit. This comes from section 5 of the *Consumer Contracts Regulation*.

21. The BPCPA is consumer protection legislation. Despite this, the applicants argued it does not apply to the parties' contract. CMA argued that it did. The parties did not explain how their positions assisted their arguments.
22. In any event, I find that CMA and Ms. Rempel entered into a direct sales contract under the BPCPA. Ms. Rempel purchased the purifier at her residence in person. CMA submits the parties arranged to meet at Ms. Rempel's house less than 12 hours in advance. CMA explained that it normally confirms appointments less than 24 hours in advance to ensure someone is home to meet their representative. I find this explanation plausible and accept CMA's version of events. The applicants disagree and say the appointment was made more than 24 hours in advance. However, the applicants did not provide any satisfactory explanation or evidence for their belief.
23. Under BPCPA section 21(1), Ms. Rempel may cancel a direct sales contract by giving notice of cancellation to CMA no later than 10 days after she received a copy of the contract. There is no dispute that Ms. Rempel received a copy of the contract on August 21, 2019. She therefore had until August 31, 2019 to provide CMA notice of cancellation.
24. BPCPA section 54(1) states how a consumer may provide a notice of cancellation. Generally, any method is sufficient so long as it permits a person to produce evidence that the consumer cancelled the contract on a specific date. BPCPA section 53(1)(b) states that one such method is an email to an email address shown in the parties' contract.
25. I conclude that Ms. Rempel's August 23, 2019 email to DM was notice of cancellation to CMA. Although DM's email address is not in the contract, DM was CMA's sales representative. I find the email satisfies the statutory requirement of showing the specific date of the cancellation request.

26. I note that the parties' written contract states that Ms. Rempel had to provide notice of cancellation "at the address in this contract". CMA says Ms. Rempel provided insufficient notice because she did not do so. I disagree as the contract terms do not override the BPCPA.
27. As stated above, Ms. Rempel agreed to DM's request to try out the air purifier over the weekend. CMA says that Ms. Rempel therefore intended to keep the purifier.
28. Based on the correspondence, I find that Ms. Rempel did not withdraw or otherwise cancel the notice of cancellation. This is because DM wrote that he would not cash Ms. Rempel's cheque, would advise his office that she intended to cancel, and would call her on August 26, 2019 to verify her intentions. I find the most reasonable interpretation is that the parties had only agreed to delay the return of the air purifier. Ms. Rempel removed any existing ambiguity when the applicants confirmed on August 26, 2019, that that they still wanted to cancel the contract.
29. If I am wrong, I find in the alternative that the August 26, 2019 phone call was also notice of cancellation under BPCPA section 54(1). Ms. Rempel provided evidence that the applicants spoke to DM on that date. The emails and subsequent return of the purifier support the applicants' submission that the phone call was to provide notice of the cancellation.

Issue #2. Is Ms. Rempel entitled to a refund under the BPCPA or the terms of the agreement?

30. Under section 27 of the BPCPA, if a contract is cancelled, CMA must refund all money received under the contract within 15 days after notice of cancellation has been given. Under section 28, Ms. Rempel must return any goods received under the contract by delivering the goods to the business address of the supplier.
31. I find that Ms. Rempel properly returned the goods received by delivering the purifier and its accessories to CMA's business address in Delta. This is the same address given for CMA in the parties' contract. CMA argues that it should have been contacted so that it could pick up the purifier from Ms. Rempel's home.

However, the parties' written contract only states that upon cancellation, "You must return the goods." I find this to be a lesser obligation than what CMA describes. In any event, the BPCPA overrides the parties' contract.

32. CMA says that Ms. Rempel should have returned the purifier within the 10-day period of providing notice of cancellation. I disagree. The BPCPA says that under a "distance sales contract" the goods must be returned within 15 days after notice of cancellation has been given or after the goods have been delivered to the consumer, whichever is later. However, the BPCPA provides no time limit for returning the goods under a direct sales contract. I have also reviewed the written agreement and it provides no time limit for returning the purifier.
33. I find it was an implied term that Ms. Rempel had to return the purifier within a reasonable period of time. I find that she did so, regardless of whether the goods were returned on August 27 or September 5, 2019. Both dates are within 15 days of Ms. Rempel's August 23, 2019 notice of cancellation. Ms. Rempel returned the goods within the statutory timeline for distance sales contracts, which suggests she acted reasonably.
34. Having found that Ms. Rempel is entitled to a refund, I must next consider if the amount owing should be reduced. BPCPA section 28(3) says that a consumer is liable to the supplier for any damage to the goods returned caused by the failure of the consumer to take reasonable care of the goods.
35. CMA says it should be entitled to a reduction in the refund because the purifier was returned damaged. A September 5, 2019 invoice says the machine was in proper working order, but it had cosmetic blemishes. CMA provided a video showing the cosmetic blemishes on the purifier. The applicants say that the air purifier was returned in the same condition as Ms. Rempel purchased it. They have no explanation for cosmetic damage.
36. Based on the invoice and the video, I am persuaded the Ms. Rempel caused cosmetic blemishes by a failure to take reasonable care of the purifier. Ms. Rempel

did not say the blemishes were pre-existing. She admitted the applicants packed and moved the purifier without its protective Styrofoam, which I find falls short of reasonable care. However, CMA did not say how much it would cost to fix the purifier.

37. Given the above, I find that Ms. Rempel is entitled to a refund of \$3,693.76 from CMA. Using my discretion, I reduce this amount by \$200 to account for the cosmetic damage, for a total of \$3,493.76
38. The *Court Order Interest Act* applies to the CRT. Ms. Rempel is entitled to pre-judgment interest on the refund from September 5, 2019, the date the purifier was returned, to the date of this decision. This equals \$57.93.
39. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Ms. Rempel is entitled to reimbursement of \$175 in CRT fees. Ms. Rempel claimed no dispute-related expenses, so I order none for any party.

ORDERS

40. Within 14 days of the date of this order, I order CMA to pay Ms. Rempel a total of \$3,726.69, broken down as follows:
 - a. \$3,493.76 as a refund for the purchase of the air purifier,
 - b. \$57.93 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175.00 in CRT fees.
41. Ms. Rempel is entitled to post-judgment interest, as applicable.
42. I dismiss all claims of the other applicants, Jamie Rempel and William Rempel.

43. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
44. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia

David Jiang, Tribunal Member