



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Locke v. Lloyds Travel & Cruises Ltd.*, 2021 BCCRT 600

B E T W E E N :

MELISSA LOCKE and RICHARD KENNETH WADSWORTH

APPLICANTS

A N D :

LLOYDS TRAVEL & CRUISES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a refund of a paid deposit. The applicants, Melissa Locke and Richard Kenneth Wadsworth, paid the respondent, Lloyds Travel & Cruises Ltd. (Lloyds), a deposit to reserve a cottage and an event centre at La Casa Cottage

Resorts, which Lloyds operated. The applicants cancelled the July 2020 booking due to the COVID-19 pandemic restrictions and claim a \$1,331.60 refund of their paid deposit.

2. The applicants admittedly knew at the time of booking that the deposit was non-refundable within 45 days of the event date, but argue they are entitled to a refund because Lloyds failed to comply with the *Business Practices Consumer Protection Act* (BPCPA) in the parties' contract.
3. Lloyds says the parties' contract complied with the BPCPA and that the deposit is non-refundable under the agreement, because the applicants cancelled the booking within 45 days of the event date.
4. Ms. Locke represents the applicants, although from the evidence submitted she has obtained legal advice about the application of the BPCPA. Lloyds is represented by an employee or principal.

JURISDICTION AND PROCEDURE

5. 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.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's

mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute through written submissions.

7. Under section 42 of the CRTA, 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.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT 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.

ISSUE

9. The issue in this dispute is whether the parties' contract complied with the BPCPA, and if not, whether the applicants are entitled to a refund of their \$1,331.60 deposit.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicants have the burden of proving their claims, on a balance of probabilities. While I have reviewed the evidence and submissions before me, I have only referenced below what I find is necessary to give context to my decision.
11. On September 6, 2019, the applicants booked accommodation at La Casa Cottages for July 6 to 8, 2020. At the time of booking, the applicants paid a \$1,311.60 deposit. Ms. Locke acknowledges that in the reservation confirmation she received (Confirmation), a paragraph stated the deposit was non-refundable if cancelled within 45 days of the booked date. I note that in the September 6, 2019 Confirmation, it notes the applicants declined the trip cancellation and insurance options, which is also reflected in the applicants' earlier reservation booking made on the same date (Reservation).

12. Due to the COVID-19 pandemic, on May 24, 2020, Ms. Locke contacted La Casa Resorts to cancel and unsuccessfully tried to get her deposit back. This was within 45 days of the July booked dates. None of this is disputed.
13. I note there is no '*force majeure*' clause in the parties' agreement in evidence, which is a clause that addresses what the parties will do if something unforeseeable happens. In the absence of such a clause, I considered whether the law of contract frustration might apply but find I do not need to address that in great detail. I say this because the applicants do not argue contract frustration and instead rely solely on the BPCPA arguments detailed below. Plus, I find the contract was not frustrated, because as has been found in many prior non-binding but persuasive CRT decisions, Lloyds offered a future stay credit for the applicants and so I find there is insufficient evidence the pandemic made it impossible or impracticable for the booking to proceed, which is required in order to find a contract frustrated (see *Wilkie v. Jeong*, 2017 BCSC 2131). In particular, it is undisputed La Casa Cottages remained open in July 2020.
14. I turn then to the applicants' claim Lloyds' alleged breaches of the BPCPA entitles them to a full refund of their paid deposit.
15. It is undisputed the applicants' booking was a future performance contract as defined in the BPCPA. Section 17 of the BPCPA says a future performance contract means a contract between a supplier and a consumer for the supply of goods or services 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. Here, because the booked event was for a future date and the entire cost was not paid when the contract was made, the parties' agreement was a future performance contract.
16. Lloyds was undisputedly a supplier and Ms. Locke was undisputedly a consumer. I say Ms. Locke and not Mr. Wadsworth, because there is no evidence before me as to which of them paid but the weight of the evidence shows it was only Ms. Locke who contracted with Lloyds. So, I find Mr. Wadsworth has not shown he paid the

deposit and was not a party to the contract, and so I dismiss his claim. The balance of my reasons address Ms. Locke's claim.

17. Ms. Locke notes that in *Seidel v. TELUS Communications Inc.*, 2011 SCC 15, the Supreme Court of Canada made it clear the BPCPA is "all about consumer protection" and that the BPCPA's terms should be interpreted "generously in favour of consumers". I agree with this general principle.

18. Ms. Locke argues her contract with Lloyds failed to comply with the BPCPA in the following ways:

- a. Lloyds' Confirmation email amounted to the parties' contract and did not set out Lloyds' name as supplier, as required by BPCPA section 19(a). Instead, the Confirmation gave the name "La Casa Cottages" under the heading "Accommodation Information", which is different from "La Casa Cottage Resort" set out in Lloyds' email subject line. Lloyds admits it does business as "La Casa Cottage Resort".
- b. The Confirmation did not contain the date Ms. Locke agreed to the contract, contrary to section 19(d) of the BPCPA. Ms. Locke says the September 6, 2019 date on the Reservation email that contained their booking request was only the result of Ms. Locke's email system, and so that was insufficient under the BPCPA.
- c. The Confirmation says the charges will appear on the applicants' credit card statement as "Lloyd's Travel", but otherwise Lloyds' name is not mentioned in the Confirmation, and so Ms. Locke says Lloyds further breached section 19(a).
- d. The Confirmation does not provide a detailed description of the booked cottage beyond "Cottage Type: Guest House & Event Centre", and in particular the number of rooms, furnishings, amenities are not mentioned. Ms. Locke says this is contrary to BPCPA section 19(e) that requires a "detailed description of the goods or services to be supplied under the contract".

19. Section 19 of the BPCPA requires a supplier to include in the contract the supplier's name and, if different, the name under which the supplier carries on business. Ms. Locke relies on the non-binding CRT decision in *International Trading Ltd. v. Li*, 2019 BCCRT 934, in which the tribunal member found that the applicant, which also did business as Super Cabinet World, had failed to include both names in its contract. In that case, the tribunal member found the BPCPA breach allowed the consumer to cancel the contract.
20. Here, the applicants sought to cancel the contract on May 24, 2020, which Ms. Locke says triggered her right to a full refund under sections 23, 27, and 54 of the BPCPA, due to Lloyds' failure to comply with section 19 of the BPCPA.
21. Ms. Locke further relies on various other non-binding CRT decisions, such as *Finkelstein v. Campbell et al*, 2019 BCCRT 1031, which held that although a contract had a non-refundable clause a refund was owing for failure to comply with the mandatory BPCPA requirements. I agree that if Lloyds breached the BPCPA requirements and if Ms. Locke cancelled the contract as provided for under the BPCPA, the deposit must be returned as per the BPCPA.
22. I also agree with Ms. Locke that her prior March 2019 stay at La Casa Cottage Resorts is not relevant to whether Lloyds fulfilled the BPCPA requirements in the September 2019 contract at issue in this dispute.
23. Lloyds' other argument is that the website which Ms. Locke used to make the booking here is lacasacottageresort.com and it mentions Lloyds in places. I find nothing turns on this, given my conclusions below.
24. Lloyds also argues the purpose of the BPCPA was to ensure consumers are not "duped". As noted, the legislation is mandatory and under the BPCPA and CRTA I have no discretion to choose not to apply it, just because the applicants were not duped or misled. I say they were not duped because I find Ms. Locke understood what she was booking, particularly as she had booked and stayed at La Casa Cottage Resorts earlier the same year, in the same cottage. However, nothing

prevents Ms. Lloyd's reliance on the BPCPA terms as a "sword", in order to obtain a refund of their deposit that under the parties' contract is undisputedly non-refundable.

25. I turn then to the evidence before me and my analysis of whether Lloyds breached the BPCPA such that Ms. Lloyd is entitled to a refund.
26. First, I find the Reservation and the Confirmation together formed the parties' contract. In the Reservation, it clearly identifies "Lloyds Travel & Cruises DBA La Casa Cottage Resort". Further, the Confirmation was emailed about 2 hours later and is titled "Reservation Confirmation for La Casa Cottage Report" and refers to that name repeatedly, along with "La Casa Cottages". As Ms. Locke notes, the Confirmation also mentions "Lloyds Travel". I find Lloyds complied with section 19(a) of the BPCPA in setting out the supplier's names as required.
27. Second, bearing in mind my finding the Reservation and the Confirmation together form the parties' contract, I find it did show the date the contract was made, namely September 6, 2019. In particular, the Reservation says "booked on" September 6, 2019 on its face. As noted, the Confirmation was emailed to Ms. Locke and I further find that the email receipt showing September 6, 2019 is sufficient in all the circumstances.
28. Third, I find the description of "Guest House & Event Centre" is sufficiently specific to meet the BPCPA requirements. The Reservation identifies the cottage as EC000. The applicants rely on a non-binding CRT decision, *Skelly v. A&B Tailor Shop Inc.*, 2019 BCCRT 187, in which the tribunal member implicitly found that a description of "blue suit" in a contract for tailoring services was insufficient. I find those circumstances distinguishable, and in any event that decision is not binding on me. Here, there is no real argument that Ms. Locke could not reasonably understand what she booked when they booked a guest house cottage and the event centre. In any event, I do not accept Ms. Locke's assertion that a "detailed description of the goods" required specification of number of rooms and amenities, though I note the reservation listed a housekeeping fee. Further, Ms. Locke's lawyer wrote Lloyds on

December 11, 2020, saying that Ms. Locke had booked a 10-bedroom cottage, so I find it likely the EC000 reference code on the reservation identified the particular cottage Ms. Locke chose. I also note Ms. Locke's email evidence shows she knew she had rented the "large guest house (mansion)" for this booking, and so as noted there is no suggestion Ms. Locke was misled about what she was booking.

29. Finally, I find Lloyds is not bound by its earlier gratuitous offer of a "returning stay credit", since the applicants rejected that offer and proceeded with this litigation.
30. In summary, I find the parties' contract adequately identified Lloyds and its other business names, the contract date, and the description of the accommodation booked. So, I find Lloyds did not breach section 19 of the BPCPA and therefore find the applicants are not entitled to a refund under the BPCPA. As noted, the contract itself undisputedly says the deposit is non-refundable if the reservation is cancelled within 45 days of the booked date, which is what happened here.
31. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. I see no reason to deviate from that practice here. The applicants were unsuccessful and the respondent did not pay fees or claim expenses, so I make no order for fees and expenses.

ORDER

32. I order the applicants' claim and this dispute dismissed.

Shelley Lopez, Vice Chair