



# Civil Resolution Tribunal

Date Issued: June 30, 2021

Date of Amended Decision: August 13, 2021

File: SC-2020-007293

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dhanju v. Samari*, 2021 BCCRT 719

B E T W E E N :

PAVNEET DHANJU

**APPLICANT**

A N D :

SAHAR SAMARI (Doing Business As SPARKED SKIN & LASER)

**RESPONDENT**

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## **AMENDED REASONS FOR DECISION**

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Tribunal Member:

David Jiang

### **INTRODUCTION**

1. This dispute is about skin and body treatments. The applicant, Pavneet Dhanju, hired the respondent, Sahar Samari (doing business as Sparked Skin & Laser), to provide

the treatments. Ms. Dhanju says she paid for the treatments in advance and seeks a partial refund of \$2,844. She alleges that Ms. Samari provided about half of the contracted-for services and breached the contract by refusing to provide more.

2. Ms. Samari disagrees. She says she provided 80% of the treatments under the contract and Ms. Dhanju ended the treatments early. She says Ms. Dhanju also unreasonably refused a refund of \$1,340. She says that, in any event, Ms. Dhanju's payment is non-refundable under the contract's terms.
3. The parties are self-represented.
4. For the reasons that follow, I find Ms. Dhanju is entitled to a refund under the provisions of the *Business Practices and Consumer Protection Act* (BPCPA). I order Ms. Samari to pay the amounts set out below.

## **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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
7. Section 42 of the CRTA says 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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

### ***The CRT's Jurisdiction and the BPCPA***

9. Section 171 of the BPCPA states that the Provincial Court has jurisdiction over proceedings to recover damage or loss for failure to comply with the BPCPA. The CRT does not have jurisdiction to award remedies for a breach of the BPCPA. However, the CRT may consider the BPCPA in deciding whether the parties' contract should be cancelled and if Ms. Dhanju is entitled to a refund.
10. As this dispute is about a refund and the BPCPA provisions are mandatory, I did not find it necessary for the parties to make submissions on the application of the BPCPA in these circumstances.

### **ISSUE**

11. The issue in this dispute is whether Ms. Samari must provide Ms. Dhanju a refund of any amount.

### **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, the applicant Ms. Dhanju must prove her claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
13. On February 11, 2020, Ms. Dhanju went to Ms. Samari's business. The parties entered into an agreement that is partially documented in Ms. Dhanju's chart notes, the parties' text messages, and an online ad.

14. I find the parties' agreement had the following terms. Ms. Samari's February 2020 chart notes show that Ms. Dhanju agreed to 8 "BodyFX" treatments to 4 areas of her body. The total price was \$4,400. She also agreed to the platinum bridal package for \$1,179, which included 6 forma "facelift" sessions, 2 teeth whitening sessions, and a "hydrafacial" treatment. Ms. Samari described similar terms for the bridal package in a text message to Ms. Dhanju on February 10, 2020. The text messages did not include information about the 8 BodyFX treatments. The total price for both the BodyFX treatments and bridal package was \$5,579. As described below, Ms. Dhanju paid for both services in advance.
15. I find the parties subsequently amended their agreement to include chin treatments. The parties' February 24, 2020 text messages show that Ms. Dhanju agreed to pay \$720 for 6 sessions. Ms. Dhanju did not pay for these sessions in advance. I also find the parties amended their agreement again on February 25, 2020. Ms. Dhanju filled out and signed a form about her medical history. One term said that she agreed that "all packages and treatments are non-refundable".
16. The evidence and submissions indicate that, aside from the text messages and this form, Ms. Samari did not provide Ms. Dhanju a copy of any written contract terms. There is no indication Ms. Samari provided a copy of her chart notes.
17. The parties next met on February 18, 2020. Ms. Dhanju paid \$5,570. While less than the quoted amount, Ms. Samari nonetheless began treatments and did not ask for further funds. So, I find she considered this to be full payment.
18. I find from Ms. Dhanju's submissions and the chart notes that Ms. Dhanju attended for treatments 5 times, on February 18, 23, 25, March 3, and 10, 2020. I find that Ms. Samari provided 4 BodyFX treatments, 3 forma treatments, and 3 chin treatments.
19. On March 20, 2020 Ms. Dhanju texted Ms. Samari to complain about some of the sessions. Ms. Dhanju said she wanted to cancel all her remaining appointments. I find Ms. Samari accepted Ms. Dhanju's cancellation request in the text messages, though she refused to provide a refund.

20. Ms. Dhanju then emailed Ms. Samari that day. She suggested Ms. Samari provide the remaining treatments, substitute treatments of equal value, or provide a “fair” refund, otherwise she would take legal action. Ms. Samari replied on March 22, 2020 that she had “fired” Ms. Dhanju as a client but would provide a partial refund for services not provided. I find by this time the parties’ contract remained cancelled as Ms. Samari did not wish to provide further treatments to Ms. Dhanju. Emails show the parties never agreed on the refund amount.

### ***The Business Practices and Consumer Protection Act (BPCPA)***

21. 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. Section 17 lists certain exclusions but these do not apply.

22. It is undisputed that Ms. Samari is a supplier and Ms. Dhanju is a consumer under the BPCPA, and that they were involved in a consumer transaction. I find that they entered into a future performance contract as the supply of the treatment services would be provided in the future, after the contract was made in February 2020.

23. I next consider whether Ms. Dhanju could cancel the contract under the BPCPA. Section 23(3) requires a supplier to give a copy of the future performance contract to the consumer within 15 days after the contract is entered into. Sections 19 and 23(2) require such contracts to contain certain information. Section 23(5) says that a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than 1 year after the date the consumer receives a copy of the contract, if the contract does not contain the information required in sections 19 and 23(2).

24. In these circumstances, I find that Ms. Samari provided a copy of the contract through the text messages about the bridal package and chin treatments and the February 25, 2020 consent form. I find the contract lacked the information required under the BPCPA. This included a detailed description of the services to be supplied as required

under section 19(e) and an itemized purchase price under section 19(f). This is because the messages and consent form do not mention the BodyFX treatments or how much they cost. Only Ms. Samari's chart notes outline this information. Ms. Dhanju also provided online ads and social media posts that mention BodyFX treatments. However, they were not particular to Ms. Dhanju's contract. For example, one ad provided a price of \$1,400, rather than the \$4,400 actually charged. The ad was also nearly devoid of information.

25. The parties' contract also did not state the dates on which the services would be supplied or when they would be completed as required under section 23(2)(b).
26. Section 54 of the BPCPA requires a consumer who wishes to cancel a future performance contract to give notice by any method that creates evidence of their intention to cancel the contract on a specific date. I find Ms. Dhanju cancelled the contract on March 20, 2020. This is well within 1 year of February 25, 2020, when Ms. Dhanju received a copy of the contract. I also find she also gave the reason as required by section 54(2). The in the text messages she said she was dissatisfied with the service. I do not need to consider the validity of this reason, as the BPCPA only requires that a reason is given.
27. Section 27 of the BPCPA says that if a consumer cancels a contract, the supplier must refund to the consumer all money received, without deduction, within 15 days after the notice of cancellation has been given. Section 55 says the consumer may recover the refund from the supplier as a debt due. Given this, I find that Ms. Samari must refund the claimed amount of \$2,844. I do not order more because I find Ms. Dhanju is restricted to her claimed amount.
28. I acknowledge that Ms. Dhanju signed the consent form stating that all packages and treatments were non-refundable. However, the terms of a contract cannot override mandatory legislation such as the BPCPA.

29. The *Court Order Interest Act* applies to the CRT. The Ms. Dhanju is entitled to pre-judgment interest on the \$2,844 debt from April 4, 2020, the last date Ms. Samari had to return the money by, to the date of this decision. This equals \$26.10.
30. 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.
31. I find the applicant is entitled to reimbursement of \$125 in CRT fees and \$23 in dispute-related expenses. Ms. Dhanju spent the latter amount on 2 company searches about Ms. Samari's business. Receipts shows Ms. Dhanju paid for the searches shortly before filing her application for dispute resolution. Given their timing and nature, I find them to be dispute-related expenses CRTA section 49.

## **ORDERS**

32. Within 14 days of the date of this order, I order Ms. Samari to pay Ms. Dhanju a total of \$3,018.10, broken down as follows:
  - a. \$2,844 as in debt,
  - b. \$26.10 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$148, for \$125 in CRT fees and \$23 for dispute-related expenses.
33. Ms. Dhanju is entitled to post-judgment interest, as applicable.
34. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020

ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

35. 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.

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David Jiang, Tribunal Member

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Amendment Notes

<sup>i</sup> Paragraphs 19, 23, 26 and 27 have been amended to correct an inadvertent error under section 64 of the *Civil Resolution Tribunal Act*.