



# Civil Resolution Tribunal

Date Issued: December 23, 2021

File: SC-2021-000537

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vroom v. Viva Care Hears Inc.*, 2021 BCCRT 1341

B E T W E E N :

JOAN VROOM

**APPLICANT**

A N D :

VIVA CARE HEARS INC. and INTACT INSURANCE COMPANY AND,  
IN FRENCH, INTACT COMPAGNIE D'ASSURANCE

**RESPONDENTS**

A N D :

JOAN VROOM

**RESPONDENT TO COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. This dispute is about replacement hearing aids.
2. The applicant and respondent by counterclaim, Joan Vroom, lost her “Phonak” hearing aids (Phonaks) and made a claim through her home insurance for replacements. The respondent, Intact Insurance Company and, in French, Intact Compagnie D'Assurance (Intact) was Mrs. Vroom’s insurer.
3. The respondent and applicant by counterclaim, Viva Care Hears Inc. (Viva), is a clinic that provides hearing loss related services and sells and supplies hearing aids.
4. Viva sent a quote to Intact to replace the Phonaks on Mrs. Vroom’s behalf. Intact then released the insurance funds directly to Viva for the replacements. Viva supplied “ReSound” hearing aids (ReSounds) that Mrs. Vroom says she never ordered and were not fitted to her ears. She returned the ReSounds to Viva and Viva kept her insurance proceeds. Mrs. Vroom claims \$4,897.00 for the returned hearing aids.
5. Viva says Mrs. Vroom authorized Intact to release the funds for new hearing aids and says the ReSounds are superior to the Phonaks. Viva says the Intact proceeds did not cover the full cost of the ReSounds. In the counterclaim, Viva seeks \$1,000 for the balance allegedly owing on the ReSounds.
6. Mrs. Vroom did not make any specific allegations against Intact in the Dispute Notice. Intact also did not file a Dispute Response as required or participate in this proceeding. I discuss Intact’s default status below.
7. Mrs. Vroom is represented by lawyer, Marie-Noel Campbell. Viva is represented by the company director.

## **JURISDICTION AND PROCEDURE**

8. 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.

9. 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 some respects, both participating parties of this dispute call into question the credibility, or truthfulness, of the other. 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.
10. 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.
11. 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.

## **ISSUES**

12. The issues in this dispute are:
  - a. Is Mrs. Vroom entitled to recover the claimed \$4,897.00 from either or both of the respondents?
  - b. If not, must Mrs. Vroom pay Viva the claimed \$1,000 balance for the Resounds?

## **EVIDENCE AND ANALYSIS**

13. In a civil proceeding like this one, the applicant, Mrs. Vroom must prove her claims on a balance of probabilities (which means “more likely than not”). Viva has the same burden on to prove the counterclaim.
14. I have read all the parties’ submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

### ***Background***

15. In 2018, a Hearing Instrument Practitioner (HIP) with Viva was helping Mrs. Vroom with her hearing devices and molds. Mrs. Vroom told the HIP that she lost her Phonaks purchased at Costco and the HIP suggested she make a claim for replacement hearing aids under her home insurance policy. This is undisputed.
16. On November 2, 2018 Viva quoted Mrs. Vroom \$5,725 for Phonak in the canal hearing aids and \$172 for custom ear molds and it sent the quote to her home insurer, Intact. The HealthLink BC fact sheet in evidence defines “in the canal” hearing aids as devices made to fit the shape and size of a person’s ear canal.
17. Viva’s undisputed evidence is that Viva could not supply the Phonak brand hearing aids because they were exclusively sold through Costco. It says the parties agreed Viva would supply a different in the canal hearing aid brand with enhanced technology at the quoted price. I accept this was their agreement because Mrs. Vroom does not dispute it.
18. On November 11, 2018 Mrs. Vroom emailed Viva that Intact received the quote and she was waiting to hear from them about a settlement. Mrs. Vroom wrote: “Just to confirm you will not order anything on my behalf until we discuss this further” and she thanked Viva for putting the quote together.
19. On November 21, 2018 an Intact claims adjuster emailed Viva that it would proceed with Mrs. Vroom’s quote from Viva for the replacement hearing aids. It asked Viva to collect the \$1,000 deductible directly from Mrs. Vroom and invoice the remaining to

Intact as per its quote. I find Viva did not tell Mrs. Vroom about Intact's November email because she emailed Viva on December 5, 2018 to ask if it had heard from Intact. She wrote that she spoken with an Intact adjuster who agreed to "pay out the claim" directly to Viva by e-transfer to avoid delay.

20. On December 10, 2018 Viva replied to Mrs. Vroom that it spoke with Intact and if she agreed to pay the \$1,000 deductible, Intact would pay the balance directly. I find Mrs. Vroom never replied to Viva's email and there is no clear evidence that she agreed to pay Viva the \$1,000 deductible portion. However, I find the emails do show that Mrs. Vroom had consented to Intact releasing her insurance payout directly to Viva.
21. Viva's records show that Viva received Mrs. Vroom's \$4,897 insurance payout from Intact on December 20, 2018.
22. After several months, Mrs. Vroom had not received the replacement hearing aids with molds or an appointment to fit them. This is undisputed. On April 15, 2019 Mrs. Vroom told Viva that she lost confidence in it and would prefer to deal with Ears Hearing Clinics (Ears). She asked Viva to transfer the \$4,897 it received from Intact for the replacement hearing aids to Ears. Two months later, in June 2019, Viva delivered a boxed set of hearing aids made by ReSound directly to Ears.
23. I note the undisputed evidence is that Viva had the ReSounds sourced or in stock since 2018. Mrs. Vroom says Viva had not told her anything about the ReSounds, which I accept. There is no documented communication showing Viva discussed ReSounds with Mrs. Vroom or that it intended to supply ReSounds.
24. The parties agree that Mrs. Vroom declined to accept the ReSounds and Ears shipped the ReSounds back to Viva. Viva says it received them and their accessories still stored in their original packaging.

### ***Claims Between Mrs. Vroom and Viva***

25. Mrs. Vroom says Viva owes her a \$4,897 refund because she never agreed to purchase ReSounds, they were never fitted for her, she never took possession of

them and they were returned. She says without the insurance proceeds she has been left using an old pair of hearing aids that do not function.

26. Viva argues that Mrs. Vroom owes it \$1,000 more for the ReSounds. It says Mrs. Vroom just does not understand that ReSounds have the same style and “fit the same” but provide better technology than the Phonaks. It also argues it had no obligation to fit the hearing aids until Mrs. Vroom paid the \$1,000 balance.
27. I find the fact that Mrs. Vroom consented to the release of her insurance proceeds to Viva does not mean she agreed to purchase ReSounds. Mrs. Vroom specifically asked Viva not to “order” anything until they discussed it. As explained above, I find Viva never discussed the ReSounds with her prior to delivering them to Ears. Therefore, I find Mrs. Vroom never agreed to purchase the ReSounds and was not required to accept them.
28. Since Viva supplied the ReSounds and still has them, I find it is in the best position to provide evidence about them. Yet Viva provided no specification sheet or other information about the ReSound’s fit or technology. So, I am also not satisfied they were equivalent or better to Phonaks as it asserts.
29. Further, I find the contract between these parties was not just to supply hearing aids, but to fit them as well. I do not accept Viva’s assertion that the ReSounds “fit the same” as the Phonaks. Viva does not say how it came to this conclusion considering it delivered the hearing aids straight to Ears without fitting them. I accept HealthLinkBC’s uncontested fact sheet in evidence that in the canal hearing aids must be made to fit. So, I find the replacement hearing aids had to be made to fit Mrs. Vroom’s unique ear canals and I find they were not.
30. Given the importance of a person’s ability to hear, I find an implied term of the contract was that Viva would supply and fit the replacements within a reasonable time. As mentioned, Viva did not deliver the ReSounds until 6 months after it received the insurance proceeds. I do not accept Viva’s assertion that the delay was because the parties agreed Viva would hold off the fitting until Mrs. Vroom’s existing hearing aids’

warranty expired. This assertion is inconsistent with Mrs. Vroom's December email expressing urgency and her follow up email for a status update. It was also 2 months after Mrs. Vroom told Viva she moved her services to Ears and Viva's detailed client file does not mention holding off a fitting for this reason.

31. I find 6 months is an unreasonable length of time for someone with hearing loss to wait for in-stock replacements after her insurer paid most of the cost. I find Viva breached the contract by not providing fitted replacements within a reasonable time. I find nothing turns on Mrs. Vroom changing services providers before any replacements were delivered.
32. In summary, I find Mrs. Vroom never agreed to purchase the ReSounds that Viva delivered, and as they were not fitted, I find she was entitled to return them for a refund. I also find Viva breached the contract by not supplying and fitting replacement hearing aids within a reasonable time after receiving payment from Intact for replacement devices. So, I find Mrs. Vroom is entitled to damages arising from the breach. I find the \$4,897 loss of insurance proceeds is the appropriate measure of Mrs. Vroom's damages.
33. I find Viva must pay Mrs. Vroom a total of \$4,897 in damages and I dismiss Viva's counterclaim.

### ***Claim Against Intact***

34. I find the CRT service records show that Mrs. Vroom properly served the Dispute Notice by registered mail to Intact's corporate office and Intact is in default for not filing a Dispute Response as required under the CRT rules. However, this does not necessarily mean Intact is liable to Mrs. Vroom. Under CRT rule 4.3(1), I still have discretion to decide Mrs. Vroom's claims against Intact.
35. Despite naming Intact as a respondent, Mrs. Vroom did not make any specific allegations against Intact in the Dispute Notice or explain the basis for her legal claim. The emails show that she asked Intact to release the funds directly to Viva, which it did. I find Mrs. Vroom has not identified any reason that Intact would be liable to her

for Viva not supplying the quoted fitted hearing aids or to otherwise compensate her for the claimed \$4,897. For these reasons, I dismiss Mrs. Vroom's claim against Intact.

### ***Interest, Fees and Dispute-Related Expenses***

36. The *Court Order Interest Act* applies to the CRT. I find Mrs. Vroom is entitled to pre-judgment interest on the \$4,897 damages award from December 20, 2018, the date Intact released the funds to Viva, to the date of this decision. The interest equals \$178.10.

37. 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 Mrs. Vroom is entitled to reimbursement of \$175 in paid CRT fees. She did not claim any specific expenses. As Viva was the unsuccessful party on the counterclaim, I dismiss its claim for fees and expenses.

## **ORDERS**

38. Within 30 days of the date of this order, I order Viva to pay Mrs. Vroom a total of \$5,250.10, broken down as follows:

- a. \$4,897 in damages,
- b. \$178.10 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 CRT fees.

39. Mrs. Vroom is entitled to post-judgment interest, as applicable.

40. I dismiss Mrs. Vroom's claims against Intact.

41. I dismiss Viva's counterclaims.



42. 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.
43. 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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Trisha Apland, Tribunal Member