



# Civil Resolution Tribunal

Date Issued: August 29, 2022

File: SC-2021-009493

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ortiz v. All Beauty Laser Ltd.*, 2022 BCCRT 963

BETWEEN:

LEYLA ROOZBEH ORTIZ

**APPLICANT**

AND:

ALL BEAUTY LASER LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about a claimed refund for prepaid services.
2. The applicant, Leyla Roozbeh Ortiz, purchased a package of 7 laser hair removal treatments from the respondent, All Beauty Laser Ltd. (ABL). Ms. Ortiz says she was not satisfied with the services and cancelled her prepaid package after the second

treatment but that ABL refused to provide her any refund. Ms. Ortiz also says ABL must provide her with a refund under the *Business Practices and Consumer Protection Act (BPCPA)*. Ms. Ortiz claims \$2,244.49, which she says is the value of the unused 5 treatments.

3. ABL denies it owes Ms. Ortiz any refund for the prepaid services she purchased because she chose not to continue with the treatments. It also says Ms. Ortiz agreed to ABL's no-refund cancellation policy when she signed ABL's waiver and consent form.
4. Ms. Ortiz is represented by an articulated student, Natasha Sanders. ABL is represented by a partner, Ali Nilforoush.

## **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.
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. Ortiz is entitled to a refund.

## **ISSUE**

10. The issue in this dispute is whether ABL must provide Ms. Ortiz a refund for the prepaid services and, if so, how much.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, as the applicant Ms. Ortiz must prove her claim on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and weighed the evidence, but only refer to that which is relevant to explain my decision.
12. On January 19, 2021 Ms. Ortiz went to ABL's clinic for a laser hair removal treatment. On the same date she paid ABL a total of \$3,142 for 7 laser hair removal treatments, including the January 19, 2021 treatment. Ms. Ortiz returned to the same location for a second treatment on February 24, 2021. None of this is disputed.
13. On January 19, 2021 Ms. Ortiz signed ABL's waiver and consent form. Ms. Ortiz says this form is a contract between the parties, which ABL denies. I find the form cannot be the parties' entire agreement because it does not specifically describe the treatments ABL agreed to provide or the cost Ms. Ortiz agreed to pay. Rather, I find

the parties' agreement is a combination of the signed waiver and consent form, and their verbal agreement that Ms. Ortiz would pay \$3,142 total for 7 laser hair removal treatments.

14. I agree with ABL and find the waiver and consent form includes ABL's cancellation policy. It says that ABL will not refund any of the purchased package cost after the first treatment session. As Ms. Ortiz signed the form, I find she agreed to ABL's cancellation policy. However, the terms of a contract cannot override mandatory legislation such as the BPCPA.
15. Section 17 of the BPCPA defines a "future performance contract" as a contract between a supplier and consumer for goods or services for which the supply or payment in full is not made at the same time as the contract. Section 17 lists certain exclusions which I find do not apply here.
16. I find ABL is a supplier and Ms. Ortiz is a consumer under the BPCPA. Although Ms. Ortiz paid in full for all 7 treatments on the January 19, 2021 contract date, I find the services were not fully supplied on that date. So, I find the parties' agreement is a future performance contract under the BPCPA.
17. As noted by Ms. Ortiz, section 23(3) of the BPCPA requires a supplier (ABL) to give a copy of the future performance contract to the consumer (Ms. Ortiz) within 15 days after the contract is made (January 19, 2021). It is undisputed ABL did not provide Ms. Ortiz with a copy of the signed waiver and consent form within that 15-day period. Contrary to ABL's argument, it does not matter that Ms. Ortiz did not ask for a copy, or that she could have taken a photo of the forms on January 19, 2021. As a supplier, ABL is required to comply with the BPCPA, including giving a copy of the parties' agreement to Ms. Ortiz.
18. Ms. Ortiz also says the parties' agreement did not contain information it should have, under BPCPA sections 19. I find the written consent and waiver form do not contain some of the information required under BPCPA section 19, including a description of

the services, any terms of payment or itemized purchase price, notice of Ms. Ortiz' right of cancellation, and the supplier's contact information.

19. Under section 23(5) of the BCPCA, a consumer can cancel a future performance contract by giving notice of the cancellation within 1 year of receiving a copy of the contract if the contract does not contain the information required under BPCPA section 19. Once the notice of cancellation is given, the supplier must refund all monies received, without deduction, within 15 days of the cancellation notice.
20. In a March 8, 2021 text message, Ms. Ortiz asked ABL for a refund for the remaining laser sessions, as she was not seeing results and had pain and itching. Ms. Ortiz says this message was notice of cancellation of the parties' agreement under the BPCPA and so ABL was obliged to give her a refund. I find that Ms. Ortiz later retracted her March 8, 2021 cancellation notice and so find ABL was not required to pay her a refund under the BPCPA.
21. The parties agree that Ms. Ortiz and Mr. Nilforoush spoke by telephone on March 9, 2021. Both parties say Mr. Nilforoush offered for ABL to use a different machine (the Triton) for Ms. Ortiz' remaining treatments. This is consistent with the parties' messages in April 2022 where Ms. Ortiz asked to book her next appointment and Mr. Nilforoush says he wanted to book Ms. Ortiz with the "other machine", as explained before.
22. Contrary to Ms. Ortiz' argument, I find the March 9, 2021 conversation was not a "revival" of the original contract, as the parties agreed to slightly different terms. Rather, I find the parties verbally amended their January 19, 2021 contract during the March 9, 2021 telephone conversation. As Ms. Ortiz agreed to the amended terms, and booked another appointment, I find it necessarily implied that she retracted her March 8, 2021 cancellation notice in order to amend the original agreement and continue with her laser hair removal treatments.
23. Ms. Ortiz says the contract was not revived as the parties intended because, when she arrived at the Surrey location for her May 4, 2021 appointment, the Triton

machine was not available. So, Ms. Ortiz argues, the parties' agreement remained cancelled. For the below reasons, I disagree.

24. First, I find Ms. Ortiz has not proven that ABL agreed to provide Triton laser treatments to her at the Surrey clinic location, as she argues. Mr. Nilforoush says he explained to Ms. Ortiz on March 9, 2021 that the Triton machine was only available at ABL's West Vancouver location, which Ms. Ortiz denies.
25. The parties' messages show that Ms. Ortiz asked for a follow up appointment in April 2021, with a specific technician (M) who treated Ms. Ortiz previously in Surrey. Mr. Nilforoush wrote that he wanted to book Ms. Ortiz for another machine. Mr. Nilforoush then gave Ms. Ortiz the choice between an appointment with technician M in Surrey, or an appointment in West Vancouver. Mr. Nilforoush's message does not say the Triton laser machine was only available in West Vancouver. However, I find no other reasonable explanation why Mr. Nilforoush would give Ms. Ortiz the option to book either in Surrey with M as requested, or in West Vancouver. So, I infer Mr. Nilforoush gave Ms. Ortiz the option of having a treatment done with the Triton machine in West Vancouver, or treatment done by technician M in Surrey.
26. Given the parties' messages in evidence, and the lack of any further evidence, I find Ms. Ortiz has not proven that ABL agreed to treat her with the Triton laser machine at the Surrey clinic.
27. Second, as noted above, I find Ms. Ortiz retracted her March 8, 2021 cancellation notice. So, I find the retracted cancellation notice did not "remain" in place when Ms. Ortiz discovered the Triton machine was not available for her May 4, 2021 appointment.
28. Ms. Ortiz says she again asked for a refund of her prepaid package on May 4, 2021. Under section 54 of the BCPCA, notice of cancellation may be given in a method that permits a person to produce evidence that the contract was cancelled on a specific date, including personal delivery of a notice, or sending it by mail, email or facsimile. Despite the several messages submitted by both parties, there is no message or

other written notice from Ms. Ortiz cancelling the parties' agreement on, or after, May 4, 2021.

29. It is undisputed that Ms. Ortiz requested that her bank charge back to ABL part of Ms. Ortiz' prepaid package payment, around May 12, 2021. However, I do not find this chargeback request is cancellation notice under BPCPA section 54, because it was not directed to ABL, but rather to a third party.
30. As I find Ms. Ortiz did not provide cancellation notice under sections 23(5) and 54 of the BCPCA on or after May 4, 2021, I find she is not entitled to a refund under section 27 of the BCPCA.
31. I also find Ms. Ortiz is not entitled to a refund under the parties' agreement because the parties' agreement terms are that ABL would not provide any refunds upon cancellation after the first treatment. As Ms. Ortiz is not entitled to a refund under the BPCPA, I find the no-refund policy set out in the parties' agreement applies.
32. Overall, I find Ms. Ortiz is not entitled to a refund of any part of her prepaid services payment, under either the BPCPA or the parties' agreement.
33. 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. As Ms. Ortiz was not successful in this dispute, I find she is not entitled to reimbursement of her paid CRT fees. As the successful party, ABL paid no CRT fees and claimed no dispute-related expenses.

## **ORDERS**

34. I dismiss Ms. Ortiz' claims and this dispute.

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Sherelle Goodwin, Tribunal Member