



# Civil Resolution Tribunal

Date Issued: September 16, 2022

File: SC-2022-001216

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lengefeld v. Beachcomber Hot Tubs Inc.*, 2022 BCCRT 1028

B E T W E E N :

MARCO LENGEFELD

**APPLICANT**

A N D :

BEACHCOMBER HOT TUBS INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

### INTRODUCTION

1. Marco Lengefeld bought a hot tub manufactured by Beachcomber Hot Tubs Inc. (Beachcomber). The hot tub leaked, and Beachcomber arranged for a technician to repair the leak under the hot tub's warranty. Mr. Lengefeld claims that after these repairs, the hot tub still leaked. He says that Beachcomber failed to repair it again, in breach of the warranty. He asks for \$3,500, which he says is the amount it will

cost to fix the hot tub, or in the alternative, an order that Beachcomber provide him with a new hot tub. Mr. Lengefeld is self-represented.

2. Beachcomber says that after Mr. Lengefeld reported the new leak, it asked Mr. Lengefeld to try tightening some internal pipe unions. It says that Mr. Lengefeld never responded. Beachcomber says that the technician properly repaired the leak. Beachcomber asks me to dismiss Mr. Lengefeld's claims. Beachcomber is represented by an employee.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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 sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.
5. 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.

6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
7. I note that in its submissions, Beachcomber said that it was unable to load some of its evidence to the CRT's online portal. I asked the CRT staff to give Beachcomber an opportunity to email any evidence it had been unable to upload. Beachcomber did not respond. I find that Beachcomber has had a reasonable opportunity to provide the evidence it wants me to rely on.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did Beachcomber breach the warranty?
  - b. If so, what remedy is appropriate?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, Mr. Lengefeld as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. The following background facts are undisputed. Mr. Lengefeld bought a hot tub in August 2015, from a Beachcomber-affiliated dealer in Alberta. Mr. Lengefeld is an Alberta resident. As mentioned above, Beachcomber is the hot tub's manufacturer, and is based in BC. The dealer installed the hot tub in September 2015.
11. Mr. Lengefeld first discovered a leak in September 2017. He made a warranty claim with the dealer. He was dissatisfied with the warranty service and sued the dealer in Alberta Small Claims Court in June 2018. That case settled in October 2018. Beachcomber was not a party to that court case. Again, none of these facts are disputed.

12. I note that the warranty document in evidence does not say whether Beachcomber or the dealer is responsible for warranty service. As mentioned above, it was initially the dealer who provided this service. After the court case settled, Mr. Lengefeld and the dealer continued to disagree about repairs. In a September 26, 2019 email, a Beachcomber employee, AM, said that Beachcomber had taken over responsibility for the warranty from the dealer. AM committed to providing service under the warranty until its expiry on September 22, 2020. So, I find that Beachcomber was bound by the warranty at the times relevant to this dispute. Beachcomber does not argue otherwise.
13. Mr. Lengefeld says that the hot tub was never properly repaired after the court case settled. Beachcomber does not dispute that there was an active leak in the summer of 2019 that required repair. Mr. Lengefeld also said that the circuit board needed replacing at that time, which Beachcomber disputes. More on this below. The parties attempted to get the leak repaired in September and October 2019, but it did not happen. The parties blame each other for the delay, but I find that nothing turns on whose fault this was because Mr. Lengefeld does not claim any damages about delayed service.
14. It is undisputed that repairs could not take place in the winter. Beachcomber hired a hot tub repair technician, Ken Nicholls, in early 2020. Ken Nicholls attended Mr. Lengefeld's home on May 30, 2020. According to Mr. Lengefeld, they removed the hot tub's foam insulation during that visit. Ken Nicholls returned on June 2, 2020, and filled up the hot tub. With the hot tub full, they were able to isolate a leak. I accept Mr. Lengefeld's evidence about what happened during the May 30 and June 2 visits, which is supported by several photos and a video.
15. Mr. Lengefeld admittedly did not want to use the hot tub in the summer, so a repair was not scheduled until late August. Ken Nicholls attended and repaired a pipe on August 28, 2020. Mr. Lengefeld says that he did not reinstall the foam insulation, which is undisputed and supported by photos. Mr. Lengefeld also says that Ken

Nicholls failed to replace a broken circuit board and damaged jet. More on this below.

16. When Mr. Lengefeld refilled the hot tub on September 12, 2020, he says that he immediately saw a leak. I accept this evidence, which is supported by a video that clearly shows a leak at a fitting. He texted Ken Nicholls that it needed to be fixed “today”. He says that Ken Nicholls promised to repair it in a subsequent phone call, but never did. There is no evidence from Ken Nicholls confirming the details of this conversation, but I find that nothing turns on it given what Mr. Lengefeld did next.
17. Mr. Lengefeld also emailed AM on September 12, 2020. AM responded on September 17, 2020. They said that they had spoken to Ken Nicholls, who suggested that Mr. Lengefeld tighten the unions on the tub.
18. Mr. Lengefeld responded by questioning Ken Nicholls’s work quality. He did not ask for Ken Nicholls to return to fix the hot tub. In response, AM asked whether Mr. Nicholls had attempted to tighten the unions, which they described as “a common and extremely easy fix for a leak”. AM said that if Mr. Lengefeld had tightened the unions and that had not fixed the leak, “then we need to address that”. AM asked Mr. Lengefeld to respond, but he never did. Beachcomber says that it did not hear from Mr. Lengefeld again until he started this CRT dispute in February 2022.
19. So, did Beachcomber breach the warranty by failing to fix the September 12, 2020 leak? In one sense, I agree with Mr. Lengefeld. I find that the warranty clearly required Beachcomber to fix the ongoing leak. I find that this applied even to “easy fixes” like tightening pipe unions. Mr. Lengefeld was under no obligation to fix his own hot tub.
20. The difficulty with Mr. Lengefeld’s claim is that he does not address the obvious question of whether he did try tightening the unions, and if he did, what happened. He provides no evidence that the hot tub continued to leak after September 17, 2020, the last time he emailed Beachcomber. This is noteworthy because the evidence shows that Mr. Lengefeld had always been diligent about communicating

with the dealer and Beachcomber about any ongoing issues with his hot tub. He sent many emails, initiated several phone calls, and even confronted a salesperson at a home and garden show (there is a video of this in evidence).

21. In the face of Mr. Lengefeld's silence, it is unclear what he expected Beachcomber to do. While it was unreasonable for Beachcomber to ask Mr. Lengefeld to fix his own hot tub, it was also unreasonable for Mr. Lengefeld to expect Beachcomber to send a technician to fix a leak that Mr. Lengefeld failed to confirm still existed. At that point, I find that it was reasonable for Beachcomber to assume that Mr. Lengefeld had solved the problem on his own and did not require further service. This is especially true because AM explicitly indicated that Beachcomber would address an ongoing leak if necessary. In other words, I find that it is implicit in the warranty contract that Mr. Lengefeld had to reasonably maintain communication with Beachcomber to clearly identify the issue requiring repair. Beachcomber could not fix what it did not know about.
22. I therefore find that Mr. Lengefeld's own conduct means that he is not entitled to damages arising from the hot tub leak on September 12, 2020.
23. As for the allegations about the circuit board and jet, I find these claims unproven. With respect to the circuit board, Mr. Lengefeld said in a July 3, 2019 email to the dealer that the circuit board shut off if the jets were fully on. The only other evidence about this is a photo of the hot tub's specifications and a photo of Mr. Lengefeld's breaker. There is no evidence from a hot tub technician about the circuit board. As for the jet, Mr. Lengefeld provided a photo that appears to show one jet cover missing. It is not possible to tell whether the jet is "damaged" as Mr. Lengefeld says, or simply missing a cover.
24. For these reasons, I dismiss Mr. Lengefeld's damages claim. I note that even if Mr. Lengefeld had been successful, I would not have ordered Beachcomber to give him a new hot tub. I say this because the CRT can only make orders requiring someone to do something, known as injunctions, in very limited circumstances under its small claims jurisdiction. None of those circumstances would have applied here. I also

note that the hot tub originally cost over \$10,000, which is well above the CRT's \$5,000 small claims monetary limit.

25. 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. Mr. Lengefeld was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. Beachcomber did not claim any dispute-related expenses or pay any CRT fees.

## **ORDER**

26. I dismiss Mr. Lengefeld's claims, and this dispute.

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Eric Regehr, Tribunal Member