

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2023-485-197
[2025] NZHC 1596**

BETWEEN	COMMERCE COMMISSION Plaintiff
AND	BACHCARE LIMITED Defendant

Hearing:	16 June 2025
Counsel:	V L Heine KC and D Houghton for Plaintiff J Every-Palmer KC and G Richards for Defendant
Judgment:	16 June 2025

RESULTS JUDGMENT OF McQUEEN J

[1] For reasons to be given I am satisfied that the agreed declarations sought by the Commerce Commission and not opposed by Bachcare Ltd are appropriate and should be made. Accordingly, I make the declarations as set out in Appendix 1 to this judgment.

[2] I direct that the confidential documents at Tabs 3 and 8 to 12 of the Bundle of Documents and Appendix 1 to the Commission's written submissions dated 6 June 2025 may not be accessed without leave of a Judge and after the Court has heard from the parties, pursuant to r 5 of the Senior Courts (Access to Court Documents) Rules 2017.

[3] In accordance with the agreement of the parties, no order for costs is made.

McQueen J

Solicitors:
Meredith Connell, Auckland for Plaintiff
Avid Legal, Wellington for Defendant

APPENDIX 1

Agreed Declarations

The Court declares that:

1. The defendant Bachcare Ltd (**Bachcare**), was a party to standard form consumer contracts that included the Guest Terms and Conditions published on its accommodation booking platform between 25 October 2019 and 6 April 2020 (**Version A T&Cs**):
2. The Version A T&Cs included two clauses (**Version A Particular Terms**) as follows:

4. Cancellations and booking changes

1. If the booking is cancelled or reduced nights requested before the start of the stay, any accommodation costs and service fee paid shall be forfeited with no refund due.
2. If you cancel the booking after the final payment due date, you remain liable for the balance of funds due for the booked stay period.
3. Should Bachcare be able to re-book the days cancelled or reduced, Bachcare will refund the applicable monies paid for the nights re-booked, less a 15% + GST administration fee. The guest is responsible for contacting the Bachcare Support Office no later than 21 days after the original commencement of the canceled or reduced booking to ascertain eligibility for a re-booking refund.
4. Premature departure during a booking will not be eligible for any refunds.

15. Unavailability

If the property becomes unavailable for any reason after booking request is confirmed, Bachcare may shift you into another property that can accommodate your booking in either the existing community or a nearby community. If this is not possible, Bachcare will cancel the booking and refund the relevant accommodation, service fee and add-on monies paid. None of Bachcare, its holiday manager nor the property owner will have any further liability in connection with the unavailability of the property after booking.

- 3 The Version A Particular Terms are Unfair Contract Terms within the meaning of s 46L(1) of the Fair Trading Act (**FTA**) because, when taking into account the contract as a whole and the extent to which the terms were transparent they:
 - (a) cause a significant imbalance in the parties' rights and obligations arising under the contract:
 - (b) are not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the terms; and
 - (c) would cause detriment to Guests if they were applied, enforced or relied on.
- 4 Bachcare was further a party to standard form consumer contracts that included the Guest Terms and Conditions published on its accommodation booking platform between 7 April 2020 – 14 April 2020 (**Version B T&Cs**):

- 5 The Version B T&Cs included two clauses (**Version B Particular Terms**) as follows:

4. Cancellations and booking changes

If the booking is cancelled or reduced nights requested before the start of the stay, any accommodation fees, additional or add-on fees, and service fee paid shall be forfeited with no refund due.

If you cancel the booking after the final payment due date, you remain liable for the balance of funds due for the booked stay period.

If you fail to pay any amount when due Bachcare may treat that failure as a cancellation by you of the booking.

Premature departure during a booking will not be eligible for any refunds.

The Service Fee is non-refundable under any circumstances once your Booking is confirmed.

15. Unavailability

If the property becomes unavailable for any reason after the booking request is confirmed, Bachcare may shift you into another property that can accommodate your booking in either the existing community or a nearby community. If this is not possible, Bachcare will cancel the booking and:

1. If the Property Owner or Bachcare is responsible for the property becoming unavailable, refund the relevant accommodation, and additional or add-on fees paid (but not any service fees); or
2. If the property has become unavailable for any other reason, Bachcare may, at its discretion, provide you with a credit for the relevant accommodation, and additional or add-on fees paid (but not any service fees).
3. None of Bachcare, its holiday manager nor the property owner will have any other liability or responsibility in connection with the unavailability of any property for any reason after booking.

- 6 The Version B Particular Terms are Unfair Contract Terms within the meaning of s 46L(1) of the Fair Trading Act (**FTA**) because, when taking into account the contract as a whole and the extent to which the terms were transparent they:
- (a) cause a significant imbalance in the parties' rights and obligations arising under the contract;
 - (b) are not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the terms; and
 - (c) would cause detriment to Guests if they were applied, enforced or relied on.
- 7 Bachcare was further a party to standard form consumer contracts that included the Guest Terms and Conditions published on its accommodation booking platform between 14 July 2020 – 19 August 2020 (**Version C T&Cs**):
- 8 The Version C T&Cs included two clauses (**Version C Particular Terms**) as follows:

4. Cancellations and booking changes

If the booking is cancelled or reduced nights requested by you more than 60 days before the start of the stay, we will refund any add-on fees that have been paid but the Service Fee shall be forfeited with no refund due and:

- if you have not fully paid the accommodation costs, the amount paid in respect of accommodation costs is forfeit and no refund due;
- if you have fully paid the accommodation costs, we will refund 70% of the accommodation costs with the remainder being forfeit and no refund due.

If the booking is cancelled by you 60 or less days before the start of the stay, we will refund any add-on fees paid but all accommodation fees and the Service Fee shall be forfeit and no refund due.

If you cancel the booking after the final payment due date, you remain liable for the balance of funds due for the booked stay period.

If you fail to pay any amount when due, Bachcare may treat that failure as a cancellation by you of the booking.

Premature departure during a booking will not be eligible for any refunds.

The Service Fee is non-refundable under any circumstances once your Booking is confirmed.

Booking changes are by agreement only once your Booking is confirmed.

15. Unavailability

If the property becomes unavailable for any reason after the booking request is confirmed, Bachcare may shift you into another property that can accommodate your booking in either the existing community or a nearby community. If this is not possible, Bachcare will cancel the booking and:

1. If the Property Owner or Bachcare is responsible for the property becoming unavailable, refund the relevant accommodation, and additional or add-on fees paid (but not any service fees); or
2. If the property has become unavailable for any other reason, Bachcare may, at its discretion, provide you with a credit for the relevant accommodation, and additional or add-on fees paid (but not any service fees).
3. None of Bachcare, its holiday manager nor the property owner will have any other liability or responsibility in connection with the unavailability of any property for any reason after booking.

9. The Version C Particular Terms, are unfair contract terms within the meaning of s 46L(1) of the Fair Trading Act (**FTA**) because, when taking into account the contract as a whole and the extent to which the terms were transparent they:
 - (a) cause a significant imbalance in the parties' rights and obligations arising under the contract:
 - (b) are not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the terms; and
 - (c) would cause detriment to Guests if they were applied, enforced or relied on.
10. Bachcare was further a party to standard form consumer contracts that included the Guest Terms and Conditions published on its Platform between 14 July 2022 – 1 April 2025 (**Version D T&Cs**).
11. The Version D T&Cs included three clauses (**Version D Particular Terms**) as follows:

10.3.3 If you wish to cancel the Rental Contract with the Owner more than 30 days before the start of the **Holiday Period**, you will be entitled to a refund from the Owner of the Rental Charges you have paid minus:

- a. 30% of the Rental Charges (as defined in paragraph 2.1.3(d)); and
- b. all reasonably incurred charges for any other services that the Owner provided to you up to the date you cancelled the Rental Contract.

Acting as the Owner's agent, we will try and facilitate this refund to you from the Owner

11.4 **Unavailability of the Holiday Period:** We (or we on an Owner's behalf, as applicable) also have the right to cancel the Booking, the Booking Contract and/or the Rental Contract where the Owner notifies us that the Property is unavailable for your intended **Holiday Period** (and this is not due to an Unexpected Event (when paragraph 12 applies) or for one of the reasons referred to in paragraph 11 (when paragraph 11 applies)). If this occurs, the Owner will refund you (and we will try and facilitate this acting as the Owner's agent) an amount equal to:

- a. the Rental Charges that you have already paid for the Booking;
- b. an amount equivalent to the Booking Fee; and
- c. an amount equivalent the Bachcare Service Charges that you have already paid for the Booking.

12. Events Outside Our or the Owner's Reasonable Control

12.1 **Force majeure leading to cancellation:** We, acting as agent on the Owner's behalf, and the Owner have a right, to end the Rental Contract and cancel the Booking if an event occurs beyond your, our or the Owner's reasonable control (**Unexpected Event**). Examples of Unexpected Events include any law, guidance or action taken by a national or local government or public authority or any consequences of them; a fire or accident; epidemic or pandemic; act of God, flood, adverse weather conditions or other natural disaster, or any other event of any nature which prevents or is likely to prevent:

12.1.1 you and your guests from staying at the Property for some or all of the **Holiday Period**; or

12.1.2 the Owner complying with its obligations under the Rental Contract.

12.2 **Alternatives after such a cancellation:** If an Unexpected Event happens that results in the Booking or Rental Contract being cancelled by us on the Owner's behalf or by an Owner, you may select one of the following alternative options:

12.2.1 **alternative dates:** we will try and help arrange alternative dates for you and your guests at the same Property. However, we will not be responsible for any costs associated with arranging alternative dates and arranging this may be subject to the payment of additional charges by you if the Total Charges for the alternative dates are higher than the Total Charges for the original Booking. We will always get your approval in advance of arranging any alternative accommodation and notify you of the additional costs; or

12.2.2 **alternative accommodation:** we will try and help arrange alternative accommodation for you and your guests of an equivalent type and standard in a similar location. However, we will not be responsible for any costs associated with arranging alternative accommodation and arranging this may be subject to the payment of additional charges by you if the Total Charges for the alternative are higher than the Total Charges for the original Booking. We will always get your approval in advance of arranging any alternative accommodation and notify you of the additional costs.

12.3 **Consequences after an option has been provided:** After providing you with your preferred option under paragraph 12.2, we and the Owner will have no further responsibility to you in relation to your original Booking.

12 The Version D Particular Terms, are unfair contract terms within the meaning of s 46L(1) of the Fair Trading Act (**FTA**) because when taking into account the contract as a whole and the extent to which the terms were transparent they:

- (a) cause a significant imbalance in the parties' rights and obligations arising under the contract:
- (b) are not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the terms; and
- (c) would cause detriment to Guests if they were applied, enforced or relied on.

13. Bachcare has published new Guest Terms and Conditions on 2 April 2025 (**New Terms and Conditions**). There are still bookings made under the Version D T&Cs that are yet to be completed by Guests. Bachcare does not have the power to unilaterally vary the existing agreements entered into by these Guests under the Version D T&Cs. Bachcare will offer these Guests who contracted under the Version D T&Cs the benefit of any more advantageous position that would have pertained on cancellation under the New Terms and Conditions. On the basis it makes this offer, Bachcare may complete bookings entered under the Version D T&CS as a term of this decision and without breaching the prohibition in section 26A(1)(b) of the Fair Trading Act 1986.