



Civil Resolution Tribunal

Date Issued: November 2, 2018

File: SC-2018-001222

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *ding v. Big Feet Health Group Limited*, 2018 BCCRT 682

B E T W E E N :

mo rong ding

APPLICANT

A N D :

Big Feet Health Group Limited

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Michael J. Kleisinger

INTRODUCTION

- 1) The applicant, mo rong ding, says that she was injured during massage and fire cupping treatments she received at the respondent company, Big Feet Health Group Limited. The applicant asks for \$2,650 for past and future physiotherapy expenses and \$2,000 in damages for pain and suffering. For the reasons that follow, I find that the applicant has not proven her claims and I dismiss this dispute.

- 2) Both parties represent themselves. Amy Dong, who operates the respondent company, represents the respondent.

JURISDICTION AND PROCEDURE

- 3) These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
- 4) The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, despite some conflicts in the parties' evidence. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized the tribunal's process and found that oral hearings are not necessarily required when credibility is in issue. I found that I was able to properly assess and weigh the documentary evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and the speedy resolution of disputes, I found that an oral hearing was not necessary.
- 5) The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
- 6) Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - 1) order a party to do or stop doing something;
 - 2) order a party to pay money;

- 3) order any other terms or conditions the tribunal considers appropriate.

ISSUES

- 7) The issue in this dispute is whether the applicant has proven that the respondent acted negligently when performing massage and fire cupping treatments on the applicant.

EVIDENCE AND ANALYSIS

Facts

- 8) Throughout various locations in the Lower Mainland, the respondent offers various services to the public, including massage, acupuncture, reflexology and fire cupping. Ms. Dong operates one of the locations. Ms. Dong says she is a certified massage therapist.
- 9) The parties agree that the applicant attended the respondent on two occasions within one month. Ms. Dong treated the applicant on both occasions.
- 10) On February 8, 2018, Ms. Dong performed a massage on the applicant, including her right arm. After the massage, Ms. Dong performed fire cupping on the applicant's upper back and the underside of her right arm to address discomfort she had in those areas. The applicant says that Ms. Dong told her that the cupping procedure may be a "little bit painful."
- 11) The applicant says that she found the cupping procedure painful. The pain, swelling and bruising continued after she left the respondent's office and got worse. The applicant provided an undated photo of a large bruise on the underside of her right arm.
- 12) On February 12, 2018, the applicant attended a doctor who referred her to physiotherapy to treat "impingement symptoms." The applicant did not provide any evidence from her doctor beyond the prescription referral note.

13) The applicant subsequently attended a physiotherapist on several occasions for treatment. The applicant's physiotherapist provided a letter saying the applicant came to him with complaints of arm pain and immobility. The physiotherapist said the applicant had a "tricep and lat strain" that prevented her from performing her daily activities and hobbies such as going to the gym. The physiotherapist suggested the applicant's injuries improved after several appointments, allowing her to return to the gym, although she continued to have some lingering elbow discomfort. The physiotherapist did not comment on the applicant's past health or future prognosis or treatment.

Positions of the Parties

14) The applicant says that the Ms. Dong injured her and that the respondent should pay for her physiotherapy bills of \$650. The applicant seeks another \$2,000 for future physiotherapy treatments and \$2,000 for pain and suffering.

15) Ms. Dong says that the applicant had a previous injury, which is why she came to her for treatment. The applicant denies this and says she attended the respondent for relaxation purposes and because a friend had invited her. The applicant, who has the burden of proving her claims, has not provided evidence from her doctor of her general health before seeking treatment from the respondent. I find it more likely than not that the applicant had some sort of pre-existing issue with her arm and upper back which is why she attended the respondent on two occasions in one month and had both massage and cupping performed on her right arm and upper back.

Discussion

16) In order to succeed in a claim of negligence, the applicant must prove each of the following on a balance of probabilities:

(a) The respondent owed the applicant a duty of care;

(b) The respondent breached the standard of care;

(c) The applicant sustained a loss;

(d) The respondent's breach of the standard of care caused the applicant's damages, in fact and law.

Mustapha v. Culligan of Canada Ltd., 2008 SCC 27 at paragraph 3

17) I am satisfied that the respondent owed its customer a duty of care. Based on the applicant's evidence and that of her physiotherapist, I am also satisfied that the applicant sustained a loss; namely, pain, bruising and immobility in her right arm.

18) I find that the applicant has not proven the other elements necessary for a finding of negligence. In order to succeed in this dispute, the applicant must provide evidence showing what the standard of care is for certified massage therapists who provide massage and fire cupping services to the public. With that standard in mind, the applicant must also provide evidence, preferably from a certified massage therapist, that Ms. Dong's actions fell below the standard of care and caused the applicant's injuries. The physiotherapist's letter did not address these crucial issues. Without some evidence from someone appropriately qualified about massage and cupping techniques, I cannot find that Ms. Dong or the respondent did something wrong that caused the applicant's injuries.

19) I find that the applicant has not provided sufficient evidence to prove her case and, as such, I dismiss this dispute.

ORDER

20) I dismiss this dispute.

Michael J. Kleisinger, Tribunal Member

