



Civil Resolution Tribunal

Date Issued: March 1, 2019

File: SC-2018-001563

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wei v. Lang*, 2019 BCCRT 246

BETWEEN:

Lillian Wei

APPLICANT

AND:

Suka Lang

RESPONDENT

AND:

Lillian Wei

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Lillian Wei says she was treated unfairly by the respondent Suka Lang while working as an independent contractor at the respondent's acupuncture clinic (Clinic) in 2017.
2. Ms. Wei describes working as an independent contractor at the Clinic between January 2017 and September 2017, when she says Ms. Lang terminated her without providing the 30-day notice she says the parties' contract required.
3. Ms. Wei seeks \$500 for emotional trauma, \$200 for counselling services she received, and \$2,243.96 she says Ms. Lang owes to her for breach of contract.
4. Ms. Lang denies any liability and says that Ms. Wei's contract was terminated because Ms. Wei breached a material term of the agreement.
5. Ms. Lang filed a counterclaim, saying that Ms. Wei breached their contract by working within a 2.5-mile radius of the Clinic less than 12 months after being terminated. Ms. Lang says Ms. Wei also duplicated and kept a client list, without consent. Ms. Lang claims \$5,000 in damages for loss of business due to Ms. Wei's breach of contract. However, in her submissions, Ms. Lang abandoned this counterclaim.
6. Ms. Wei says that she was hired as a contractor under a verbal agreement and that the written agreement 6 months after she started is invalid or that the restrictive covenant it contains is unenforceable.
7. The parties are each self-represented.

JURISDICTION AND PROCEDURE

8. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal 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.

9. 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, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
10. 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.
11. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

12. The outstanding issues in this dispute are two-fold. First, whether Ms. Wei is entitled to 30 days' notice under the agreement with Ms. Lang to work as an independent contractor Acupuncturist. Second, whether Ms. Lang breached the agreement giving rise to additional damages for Ms. Wei.

EVIDENCE AND ANALYSIS

13. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence but comment on it here only to the extent necessary to explain my decision.
14. In January 2017, Ms. Wei started working, as an independent contractor providing acupuncture services at the Clinic, based on a verbal agreement (contract) reached with VH, who was Ms. Lang's then business partner.
15. I find that this contract was for Ms. Wei to provide acupuncture care at the Clinic to the professional standards expected of a registered acupuncturist. I find it was an implied term of the contract that Ms. Wei would employ reasonable professionalism about matters including booking and attending on clients, tidiness and safe use and disposal of equipment.
16. Ms. Wei says it was an implied term of this verbal contract that she would receive 30 days' notice in the event of termination.
17. In *Lauridsen v. Mortgage Executives*, 2002 BCPC 131, at paragraph 66, the court held that an obligation to give notice is not normally an implied term of an independent contractor arrangement.
18. Even if 30 days' notice is a reasonable term to imply, which it may not be, I find that such notice is not required given my conclusion below that Ms. Wei breached a material term of the contract.
19. If there was a material breach of the implied terms of contract, I find that either Ms. Wei or Ms. Lang, on behalf of the Clinic, were able to terminate the contract, without notice.
20. Ms. Lang says no written contract was ever entered. She presented Ms. Wei with an agreement on July 9, 2017, but they never signed it.

21. Having reviewed the July 9, 2017 document called Professional Services Agreement (PSA), I find that, because it is not signed or witnessed, there was no written agreement between the parties.
22. Because the only evidence of a restrictive covenant or non-compete clause was that included in the PSA, I find there was no restrictive covenant or non-compete clause agreed to by the parties. While Ms. Lang abandoned her counterclaim in submissions, I would have dismissed it due to the lack of agreement to the restrictive covenant and the lack of evidence about the client list issue.
23. The central question is whether Ms. Wei breached a material term of the contract such that Ms. Lang was entitled to terminate her, without notice.
24. Ms. Lang describes Ms. Wei failing to conduct herself in an acceptable manner while a contractor at the Clinic due to issues including:
 - a. Reading patient files where she was not involved in the care,
 - b. Looking into other treatment areas,
 - c. Arriving late for booked appointments,
 - d. Arguing with another practitioner,
 - e. Fighting with the Clinic's Registered Massage Therapist (RMT),
 - f. Wearing overly casual clothing,
 - g. Commenting on how others at the Clinic smelled,
 - h. Using acupuncture needles on herself, and
 - i. Leaving needles in treatment beds and otherwise not safely disposing of them.
25. Ms. Wei disputes these allegations about her conduct. She says that if Ms. Lang had these concerns, she was obliged to report them to the College of Traditional

Chinese Medicine Practitioners and Acupuncturists of British Columbia (College). Ms. Wei says Ms. Lang has not done so.

26. I do not accept that the absence of a report to a professional regulator is, alone, definitive evidence that Ms. Wei was performing to an expected standard in her professional and other work-related obligations under the contract. The dispute before me is about the contractual obligations.
27. On September 8, 2017, Ms. Lang wrote to Ms. Wei warning her that, if she did not address her conduct and improve it, her role at the Clinic would be terminated. Ms. Lang met with Ms. Wei to review the issues in person to review the letter. The letter is signed by Ms. Wei, acknowledging receipt of it.
28. Ms. Lang says she clearly communicated that Ms. Wei's behavior was unacceptable and would result in termination if it continued.
29. I find that the September 8, 2017 written warning letter communicated to Ms. Wei that her conduct was not meeting expectations, and that she would be terminated if her behavior continued. Specifically, the concerns about lateness, failing to end treatment times with the allotted 55 minutes, peering into treatment areas where she was not providing treatment, and incorrectly disposing of a hypodermic needle, were listed.
30. I find that Ms. Lang communicated to Ms. Wei, through the written warning and in person meeting, that there were major concerns with her performance and that she would be terminated, without notice, if the concerns continued.
31. On balance, I find that there were substantial problems with Ms. Wei's work at the Clinic. I base this finding on the September 8, 2017 warning letter, and the evidence from the long-time office manager at the Clinic, EH, who directly observed Ms. Wei peering into treatment areas where she was not providing treatment. EH also received complaints from other practitioners who felt uncomfortable with Ms. Wei's behavior.

32. Turning to the question of the disposal of an injection syringe, Ms. Wei says she cleaned up after another practitioner who had not disposed of the syringe into the sharps container.
33. Ms. Lang says it was Ms. Wei who disposed of an injection syringe improperly.
34. EH provided evidence that she emptied the garbage bins each morning. She observed an injection syringe that had been placed in the garbage rather than the sharps container, one morning after Ms. Wei had been the only practitioner treating patients with injection therapy.
35. I accept EH's evidence and find that Ms. Wei failed to dispose of the syringe safely, into the designated sharps container.
36. I find that Ms. Wei's conduct in peering into other treatment rooms and failing to dispose safely of the syringe are, even without considering the other concerns, sufficient to establish that she was in breach of the material term of the contract that she conduct herself reasonably in fulfilling her independent contractor role.
37. Over the next two and a half weeks, Ms. Wei's behavior continued to be problematic. Ms. Lang found that personal items in her locker had been rifled through and empty food wrappers had been left on top of her items. Ms. Lang says Ms. Wei admitted to this behavior. Ms. Wei did not contest this account.
38. On September 25, 2017, Ms. Lang went to the Clinic and asked Ms. Wei to leave.
39. I have reviewed the evidence filed by Ms. Wei which she says shows that Ms. Lang was aggressive or abusive toward her. I find it does not establish that Ms. Lang treated her inappropriately. The text message chains filed in evidence were often incomplete and did not clearly identify the texting parties. Their content does not establish Ms. Wei's claims.
40. Ms. Wei expressed concern that Ms. Lang had asked her to do extra tasks, including picking up equipment or supplies, or writing blog posts. While the texts do reflect these requests, it also appears clear that Ms. Wei could have declined them.

41. I have found that Ms. Wei breached an implied material term of the contract with the Clinic, of which Ms. Lang is the owner. I find that Ms. Wei continued to fail to fulfil her obligations under the contract, even after a clear written warning from Ms. Lang.
42. For these reasons, I find Ms. Lang was entitled terminate the contract with Ms. Wei without giving her 30 days' notice or payment in lieu of that notice.
43. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As the respondent did not pay tribunal fees in the main dispute where she succeeded make no order for tribunal fees.

ORDER

44. I dismiss the claim and counterclaim, and this dispute.

Julie K. Gibson, Tribunal Member