



# Civil Resolution Tribunal

Date Issued: March 15, 2019

File: SC-2018-003615

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *SHAHGOU v. Limelight Wellness Center Ltd.*, 2019 BCCRT 327

**B E T W E E N :**

**SOMAYEH SHAHGOU**

**APPLICANT**

**A N D :**

**Limelight Wellness Center Ltd.**

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

### **INTRODUCTION**

1. The applicant, SOMAYEH SHAHGOU, purchased a laser hair removal service package from the respondent, Limelight Wellness Center Ltd. The applicant says the treatments were not effective and damaged part of her forehead. She seeks a refund of the \$2,000 she paid for the respondent's services.

2. The respondent denies the applicant's claims.
3. The applicant is self-represented. The respondent is represented by its principal, Azam Azimi.

## **JURISDICTION AND PROCEDURE**

4. 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* (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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
6. 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.
7. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether the applicant is entitled to a refund of the \$2,000 she paid for hair removal services.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. I find the applicant has not met the burden of proving her claim.
11. The parties agree that the applicant paid \$2,000 for a series of laser hair removal treatments. The applicant attended a consultation with the respondent on July 19, 2016, which included a test of the laser treatment under her arms. The applicant had her first treatment on August 1, 2016.
12. The parties disagree about some of the dates on which treatments were performed, and the total number of treatments. The respondent provided no treatment or appointment records to support its submission about the treatment dates. As such records would routinely be maintained by a business, I accept the applicant's evidence on this point. The applicant says she had 8 treatments between August 1 and December 31, 2016, and 6 treatments between January 1 and July 29, 2017, for a total of 14 treatments.
13. The parties agree that the applicant paid a total of \$2,000 for all 14 treatments. The respondent says the treatments from March 2017 onwards were offered to the applicant free of charge, after her paid package was finished, to make sure the applicant got the results she wanted.
14. The applicant says the treatments were not successful, as they did not remove her facial and body hair. She says that after the first 4 sessions, the respondent began using a different laser machine. The applicant says that she agreed to the use of the

Soprano machine, but after that the respondent used another machine. The applicant says this was a breach of their contract, and that she did not consent to the use of any machine other than the Soprano.

15. The respondent disputes this, and says the Soprano machine was used for the first 9 sessions, until March 11, 2017. Again, as the respondent provided no treatment records to support this assertion, I accept the applicant's evidence on this point. However, I find that using the Soprano machine did not breach the parties' contract, and did not constitute negligence by the respondent.
16. Both parties provided copies of a consent form dated July 19, 2016, and signed by the applicant. The applicant agrees that she signed the form, but says she signed it immediately before her first treatment on August 1, 2016, and dated it retroactively at the request of the respondent's technician. I accept all of this evidence.
17. I find that for the purposes of this dispute, it does not matter whether the applicant signed the consent form on July 19 or August 1, since she agrees that she signed it. The applicant says the respondent did not give her a copy of the consent form until after she filed this dispute. Again, I find that does not change the outcome of this dispute.
18. The applicant also says the technician did not give her time to read the consent form before she signed it, and told her it was "not a big deal". I am not persuaded by this evidence. Rather, I find the applicant gave her consent to the treatments and agreed to the content of the form when she signed it.
19. The consent form states that the applicant authorized the respondent to "perform Soprano ice Laser hair removal procedure and any other measures which in their opinion may be necessary". Thus, the applicant agreed to treatments other than the Soprano machine, and the fact that the respondent used another machine at some point did not constitute a breach of the parties' contract.
20. Based on the photos provided by the applicant, I accept that the treatments did not remove all of her facial or body hair. However, I find that the applicant was aware of

this risk before she started the treatments, as it is clearly set out in the consent form. The consent form states, in part:

The goal of this treatment is improvement not perfection. Clinical results may vary depending on individual factors, including medical history, skin and hair type and individual response to treatment...

...I also understand that some people may not experience complete hair loss even with multiple laser treatments.

...I understand that no guarantee can be given as to the final result obtained.

...I understand that payments for the above named procedure(s) are non-refundable.

21. Based on the content of this consent form, I find the parties' contract did not guarantee satisfactory hair removal results, and that the payment was non-refundable regardless of outcome.

### ***Forehead Damage***

22. The applicant also says the respondent damaged her forehead by removing hair at her right temple area, above her hairline. The respondent says this is not possible, as the area in question was not treated with the laser.
23. I find the applicant has not proven her claim for forehead damage. Some of the photos provided by the applicant show an uneven hairline on her right forehead area. However, I find the evidence before me does not establish that the uneven hairline was caused by the respondent.
24. The applicant provided some medical records, including a February 9, 2018 chart note from her family doctor. The chart note says that the applicant needed a note because she had been going for laser hair removal treatments, but after they

changed their machine it did not work and she grew even more hair, and also they overdid it and she lost hair in her right temple area.

25. I find that this notation by the applicant's family doctor is not an opinion about what happened and why, but rather is a record of what the applicant said during the appointment. This is confirmed by the fact that the notation is contained under the heading "subjective". Under the heading "objective", the doctor wrote that the applicant had linear hair loss in her right forehead area, but did not provide an opinion about what caused that hair loss. Also, the doctor wrote that she was not able to provide the applicant with a note. For these reasons, I find that the chart note does not establish that the respondent caused the applicant's right temple hair loss.
26. For all of these reasons, I find the applicant has not established her entitlement to any refund of the laser hair removal treatment fees. I dismiss her claims.

#### ***Damages Claimed by Respondent***

27. On the Dispute Response Form, the respondent requested damages in the amount of 10% of the applicant's total claim, as a penalty for a meritless claim under section 20(5) of the *Small Claims Rules*. Although the respondent did not file a counterclaim, I will address this in order to provide a thorough response.
28. The *Small Claims Rules* do not apply to the tribunal, and there is no corresponding tribunal rule that would entitle the respondent to damages on this basis. Also, while the applicant's claims were unsuccessful, I find they do not meet the test of "no reasonable basis for success", as contemplated in the rule cited by the respondent. For these reasons, I do not order the applicant to pay damages.
29. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss her claim for reimbursement of tribunal fees and dispute-related expenses.

## **ORDER**

30. I dismiss the parties' claims and this dispute.

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Kate Campbell, Tribunal Member