



Civil Resolution Tribunal

Date Issued: May 10, 2019

File: SC-2018-005336

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Heung v. HARMONIC SPA & BEAUTY 2015 INC.*, 2019 BCCRT 559

B E T W E E N :

Elsa Siu Fan Heung

APPLICANT

A N D :

HARMONIC SPA & BEAUTY 2015 INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about facialist services the respondent, HARMONIC SPA & BEAUTY 2015 INC., provided to the applicant, Elsa Siu Fan Heung. The applicant says the respondent was negligent in providing the services, leaving her with “holes” in her

face and scars, psychological trauma, extreme anxiety, and heightened facial sensitivity. The applicant claims \$3,500 as compensation for pain and suffering.

2. The respondent denies liability and says the applicant has not proved any breach of the applicable standard of care or that she sustained any injury or damage.
3. The applicant is represented by a family member and the respondent is represented by an employee or principal, Katie (Tini) Man. For the reasons that follow, I dismiss the applicant's claims.

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 9.3(2), 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 is whether the respondent was negligent in providing facialist services to the applicant, and if so, what is the appropriate remedy.

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 referenced the evidence and submissions as necessary to give context to my decision.
10. The applicant bought a 10-treatment “spa package” from the respondent for \$2,200. The alleged ‘incident’ occurred on the 5th facial treatment, on August 5, 2017. After this dispute began, the respondent refunded the applicant \$1,500 for the unused treatments from the package. As such, the applicant’s remaining claim is for \$3,500, for pain and suffering damages she says she is owed as a result of the respondent’s alleged negligence.
11. The applicant says the facial was supposed to “improve her face”, and not “make it worse”. There is no evidence that the respondent ever guaranteed any particular result. The respondent says each person’s skin will respond to treatment differently, which I accept noting it is not particularly disputed.
12. The applicant says as a result of the facial, she sustained the following injuries: two holes in the face, which she also describes as scars, psychological trauma, extreme anxiety, and heightened facial sensitivity. She says she attended the doctor shortly after and was prescribed anti-inflammatory medication, but this was of no help. The

applicant says it has almost been a year of her coping with her “psychological/mental scars”. She says that every time she sees knives or sharp items, or if she incurs the smallest of injuries, she is extremely anxious and thinks back to the 5th facial.

13. The applicant says that while the scars on her face may seem minimal to someone else, they have caused her serious emotional distress and pain. She says her emotional damage is especially great because of how important physical appearance and self-image is in Chinese culture.
14. The applicant says she has asked at least 6 doctors and attended at least 15 appointments about what she can do to improve her face, and she says the mere fact of these appointments shows her anxiety and trauma.
15. Yet, despite all of these treatments, the applicant has not provided any expert opinion or even a medical chart note that is critical of the treatment provided by the respondent, even though the applicant is apparently aware such opinions are typically required.
16. In particular, the applicant acknowledges that she has no expert opinions but says that in some cases a court (or tribunal) may find that someone has been injured without the need for such reports, and cites *Mustapha v. Culligan of Canada Ltd.*, [2008] 2 SCR 114, along with *Saadati v. Moorhead*, [2017] 1 SCR 543. However, neither of these 2 cases support the proposition that the applicant does not need expert opinion in this case to establish that the respondent’s facial treatment fell below the applicable standard of care.
17. It is uncontroversial that the general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure did cause the claimed damages.

18. Clearly, the respondent owed the applicant patient a duty of care, which is undisputed. The issue here is whether the respondent breached the applicable standard of care, and, whether the applicant has proven any such breach caused her claimed damages. As noted, the burden of proof rests with the applicant, and I find she has not proved any breach or damage.
19. I have reviewed the applicant's photos of her face. In the context of a facial treatment, I am unable to conclude the respondent caused holes in the applicant's face or scarred her. What I see is some redness and enlarged pores around the left side of the applicant's nose and around her left eyebrow. I cannot tell if the photos were taken directly after the facial when continued redness would be reasonably expected. The applicant did not state when the photos were taken.
20. Based on the numerous medical notes provided by the applicant, which at most document "tiny pits" beside her nose, there is simply nothing in them that is critical of the care provided by the respondent. In context, and based on the photos, I agree "tiny pits" are consistent with enlarged pores. While there are 2 or 3 pores in the photos that appear slightly larger than others, the fact is there are also many other enlarged pores. The respondent says the applicant's enlarged pores were pre-existing and there is no evidence to the contrary before me. None of the doctor's notes say the respondent's treatment was the cause of the pits, apart from re-stating the applicant's subjective history. There is also no opinion from another facialist. To some extent, the prescriptions indicate the applicant was treated with medication before the August 2017 facial in question, which suggests she had a pre-existing condition unrelated to the facial.
21. Thus, as discussed below the critical obstacle for the applicant is the absence of expert opinion about the standard of care and whether the respondent breached it.
22. Generally, in claims of professional negligence, it is necessary for the applicant to show a breach of the standard of care through expert opinion evidence. I find the respondent's facial treatments falls under the umbrella of 'professional' treatment. While I recognize there is not an absolute rule, I find expert opinion evidence is

necessary in this case, because the subject matter is technical and outside the knowledge and experience of the ordinary person (see *Bergen v. Guliker*, 2015 BCCA 283).

23. An expert can explain the relevant standard of care and demonstrate how the conduct in the dispute fell below that standard. I find that expert evidence would be necessary in order for the applicant to prove her claims. Such evidence is required to determine whether or not the respondent exercised the care and skill of a reasonably competent facialist in accordance with the standards of the profession. The applicant chose not to provide the necessary evidence.
24. In particular, the applicant's photos simply do not establish on their own that the respondent was negligent. The enlarged pores and mild redness are not so extreme that I could draw that conclusion. I am unable to discern to what extent redness and/or enlarged pores are reasonably expected after a facial treatment. I cannot discern to what extent the applicant's enlarged pores pre-existed the facial treatment. The fact that the applicant sought and received medical treatment after the August 2017 facial also does not show the respondent was negligent.
25. Even if I had found the respondent was negligent, I find the applicant has not proved her claimed damages. None of the medical information or notes provided support the extent of the anxiety and distress she says she suffered. I acknowledge the applicant's statement about self-image being important in her culture, and I recognize that a specific diagnosis is not necessarily required for compensation for mental injury. However, I find the material point is that her own physician's records, including the applicant's recorded "subjective presentation" statements, do not support the severity of the damages claimed. I find this conclusion is consistent with the focus on symptoms and effects, as referenced in *Saadati*.
26. Given my conclusions above, I find the applicant's claims must be dismissed.

27. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I therefore dismiss her claims for reimbursement of tribunal fees and dispute-related expenses.

ORDER

28. I dismiss the applicant's claims and this dispute.

Shelley Lopez, Vice Chair