



Civil Resolution Tribunal

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File: SC-2018-009390

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Burton v. Drs. Gill, Truong and Kooner Inc.*, 2019 BCCRT 993

B E T W E E N :

SVETLANA BURTON

APPLICANT

A N D :

DRS. GILL, TRUONG AND KOONER INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about dental services. The applicant, SVETLANA BURTON, says that the respondent, DRS. GILL, TRUONG AND KOONER INC., gave her an incorrect partial denture and that she needs additional dental work to address the problem. The applicant asks for an order that the respondents pay her \$5,000 in compensation. The respondent denies responsibility for the applicant's claims.

2. The applicant is self-represented. The respondent is represented by one of its directors, Julian Truong, and a legal representative.

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 118 of the *Civil Resolution Tribunal Act* (CRTA). 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, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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.

ISSUE

7. The issue in this dispute is whether the respondent is responsible for the damage to the applicant's teeth and the \$5,000 in damages she claims.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties have provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
9. The applicant began to attend the respondent's clinic for dental care starting in 2012. Her chart indicates that she had missing teeth, issues with sensitivity and previous dental work including crowns and restorations.
10. In 2015, the applicant attended the clinic after a motor vehicle accident that she believed had resulted in some dental damage. One of the applicant's teeth was fractured, and a dentist recommended extraction of the tooth and the provision of a lower partial denture. A denturist who is not a party to this dispute manufactured the lower partial denture, and the applicant received it in October of 2015.
11. The applicant was not happy with the denture's fit. The respondent adjusted the denture and fillings on surrounding teeth several times. While the applicant reported some improvement after these adjustments, she still had some discomfort that she felt was coming from the denture. She visited a denturist (unrelated to the respondent) who attempted to remedy the problem, apparently without success.
12. The applicant came to believe that the denture was not the appropriate treatment option for her, and that the respondent had failed to address her concerns. She decided that she was no longer comfortable receiving treatment from the respondent's clinic, and sought assistance elsewhere. These other practitioners have recommended that the applicant undergo a number of dental and endodontic procedures.

13. The applicant says that the respondent did not take her pain seriously, failed to advise her of all treatment options, treated her in a dismissive manner, and did not accommodate her other health issues. She states that the partial denture never fit properly and caused damage to some of her teeth. The applicant says she has obtained an estimate of \$5,695 to repair this damage. She says that she wishes to abandon the amount over \$5,000, which is the limit of the tribunal's small claims jurisdiction. The applicant provided a letter from an occupational therapist who commented on the detrimental effect of the applicant's dental problems on her physical and mental health. Although the applicant suggested that she wished the respondent to correct her dental damage, she also indicated that she was not comfortable receiving further care from the respondent.
14. The respondent says that the applicant has not established that it was negligent in her treatment or that she sustained losses as a result. The respondent submits that the applicant has not provided the required expert evidence to establish the applicable standard of care or to show that it failed to meet the applicable standard of care. It also says that the applicant has not proven that its treatment caused the damage that she claims. According to the respondent, the applicant has a heavily restored mouth and poor dental hygiene, which it says may be responsible for the recommended care rather than the treatment provided by the respondent.
15. In response, the applicant says that she has tried, without success, to get an expert opinion to support her claims. She suggests that the other dentists in her region do not wish to cause conflict with the respondent and are hesitant to assist her. She also says that the cost of obtaining an expert opinion elsewhere is prohibitive and challenging due to the impacts of other health issues.
16. I acknowledge the applicant's concerns. However, to be successful in this dispute, the law is clear that the applicant must establish that: the respondent owed her a duty of care, the respondent failed to meet the applicable standard of care, that she sustained a loss, and that her loss was related to the respondent's breach of the standard of care. The applicant's allegations concern professional negligence in that

she says that the respondent's services fell below the standard of a reasonably competent dentist. In such cases, it generally is necessary for an applicant to prove a breach of the applicable standard of care with expert evidence as this is outside the knowledge or expertise of an ordinary person (see, for example, *ter Neuzen v. Korn*, [1995] 3 SCR 674 and *Bergen v. Guliker*, 2015 BCCA 283).

17. The applicant provided a letter from an occupational therapist who commented on the "impact of the dental treatment" the applicant has had. This letter does not mention the denture or any other specific dental treatments, and is not expressly critical of the respondent's work. While an occupational therapist may be able to comment on health impacts, I am not satisfied that this type of professional is the appropriate party to assess the work of a dentist.
18. I find that the applicant has not provided any evidence (expert or otherwise) to establish the appropriate standard of care or that the respondent failed to meet that standard. In particular, there is no evidence to comment on whether a reasonably competent dentist would have recommended a partial denture or another treatment in the applicant's circumstances. Further, the applicant has not established that the denture was made incorrectly or, if it was, this was due to the conduct of the respondent rather than the denturist who manufactured it. Finally, the applicant has not shown that the symptoms and tooth damage she describes are from the denture rather than the other dental issues from which she suffers.
19. I acknowledge the applicant's report of dental difficulties and her belief that these difficulties are related to the lower partial denture recommended by the respondent. However, I find that she has not proven that the respondent was negligent or that she sustained damages as a result. Accordingly, I dismiss the applicant's claim for damages.
20. Even if I had found a breach of the standard of care, I find that the applicant has not proved that she is entitled to the claimed damages. The applicant reports that she has received estimates of \$5,695 for required dental work. An October 10, 2018 email message from an outreach worker details estimates for \$1,673 in endodontics

work and \$1,117.20 in dental work that is needed “prior to getting partials done”. There is no documentation from the practitioners about these estimates or the possible relationship between the work and the denture. The \$2,790.20 detailed in the email message is less than the \$5,695 identified by the applicant. No explanation was provided for this discrepancy, although it may relate to amounts that are expected to be covered by insurance. I find that the applicant has not proven the amount of the damages she claims or that they are related to the denture or treatment provided by the respondent.

21. Under section 49 of the CRTA, and tribunal rules, the tribunal generally will order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Here, the respondent was the successful party. The respondent made a claim for reimbursement of the \$25 fee paid to the tribunal for filing a paper dispute response. I find that the respondent is entitled to reimbursement of that amount.
22. The respondent also claimed \$41.83 in dispute-related expenses. These expenses appear to flow from the respondent’s choice to seek assistance from its legal representative in preparing its response. Rule 9.4(3)(b) states that, except in extraordinary cases, the tribunal will not order one party to pay to another party any fees charged by a lawyer or another representative in the tribunal dispute process in a small claims matter. I find that, in this situation, the expenses claimed by the respondent are disbursements paid to a lawyer, which are analogous to legal fees. I do not find that the circumstances of the case are extraordinary such that reimbursement would be warranted, and I decline to make the requested order. I dismiss the respondent’s claim for reimbursement of dispute-related expenses.

ORDERS

23. Within 30 days of the date of this order, I order the applicant to pay the respondent \$25 as reimbursement for tribunal fees.
24. I dismiss the respondent’s claim for reimbursement of dispute-related expenses.

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

Lynn Scrivener, Tribunal Member