Date Issued: September 19, 2019

File: SC-2019-002768

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Diana Draper dba Clear Water Naturopathic Medicine v. Castlegar Chiropractic Corp.,* 2019 BCCRT 1111

B E T W E E N :

DIANA DRAPER (Doing Business As CLEAR WATER NATUROPATHIC MEDICINE

APPLICANT

A N D :

CASTLEGAR CHIROPRACTIC CORP.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Julie K. Gibson

INTRODUCTION

1. This dispute is about money naturopathic medicine patients paid to a clinic for laboratory tests.

2. The applicant Diana Draper, doing business as Clear Water Naturopathic Medicine, says she worked as an independent contractor at the respondent Castlegar Chiropractic Corp. from September 1, 2018 to February 2, 2018. The applicant says that, under the contract, the respondent agreed to pay for all laboratory services she ordered for patients, and to pay her a percentage of billing for her naturopathic medicine services.

3. The applicant says that she requisitioned blood work for patients before leaving the respondent clinic, but that the respondent cancelled its accounts with those laboratories so that the tests were not conducted. The applicant says that the patients had paid the respondent for these tests. The applicant reactivated the accounts and paid the test fees so that the results would be obtained. The applicant says the respondent refused to reimburse her for the lab test expenses. The applicant claims $2,528.90 for reimbursement of amounts she paid for lab services, where the respondent had already collected payment from the patients.

4. The respondent says the contract included a mandatory mediation and arbitration clause. The respondent says that, on January 31, 2019 the parties settled all issues arising under the contract. As part of that settlement, the respondent says it had no further obligations about the laboratory tests.

5. The respondent also says that the laboratory tests are a matter of contract between the respondent and the individual patients and lab test providers, and do not involve the applicant. The respondent asks that the dispute be dismissed.

6. The applicant represents herself. Dr. David Bzdel represents the respondent.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.

9. 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.

10. 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

11. The issue in this dispute is whether the applicant is entitled under the parties' contract to reimbursement for amounts she paid to laboratories to obtain patients' test results.

EVIDENCE AND ANALYSIS

12. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I refer to the evidence and submissions only as I find necessary to provide context for my decision.

13. On September 1, 2018, the applicant and respondent entered a written agreement (contract) under which the applicant was to provide naturopathic health services at the respondent clinic.

14. The contract provided that either party may terminate it on 90 days' written notice.

15. The contract also said that any dispute under it must be resolved by mediation or, if that failed to produce a consent resolution, arbitration.

16. In submissions, the respondent concedes that it was responsible for paying the laboratory for lab tests under the contract. That is, patients would pay the respondent to arrange any tests that the applicant ordered, and the respondent would then pay the laboratory's account for those tests.

17. On January 31, 2019, the parties agreed, by email, to end the contract through a lump sum payment by the applicant for the dispensary, which I take to mean supplements and consumables, and the respondent providing the applicant her final pay cheque for the period ending February 1, 2019. The applicant wrote to the respondent saying, "Our contract is now complete and all of our obligations/rights under the contract are done as of this weekend." The respondent replied confirming its agreement to end the contract on this basis.

18. Based on this exchange of emails, I find that on January 31, 2019 the parties settled their issue about how to end the contract. The parties expressly agreed that the contract would no longer govern their obligations after February 2, 2019.

19. Based on the emails, I also find that the applicant's lump sum payment was intended to be a fixed amount, regardless of what happened during the final few days of the applicant's work. That is, if the applicant sold more dispensary in the last few days, her lump sum payable would not be reduced.

20. I did not have enough evidence before me to determine if any laboratory tests ordered in the last few days of the contract would impact compensation to the applicant. Having said that, the applicant did not contest the amount of her pay cheque for the period ending February 1, 2019.

21. On February 1 or 2, 2019, the applicant worked her last day at the respondent clinic.

22. On February 5, 2019, the applicant emailed the respondent to say that a patient went to have blood work done and was denied service because the respondent's account had been closed. The applicant noted that there were outstanding balances on both Rocky Mountain and Lifelabs accounts that the respondent had closed. The applicant asked the respondent to refund the patient what the person paid it for the blood tests, or to pay the applicant the outstanding balance so that she could obtain and access the patient results.

23. The respondent agrees that two patients were denied service for laboratory tests ordered by the applicant before she left the clinic. The respondent says it offered these patients full reimbursement of the amounts paid to it. Reimbursement was made to one patient, but the other patient was deemed a security risk. I accept the respondent's evidence that, in that instance, reimbursement was offered but not completed.

24. A patient, LN, provided a statement saying that the applicant ordered tests for her, but that she was denied service on February 5, 2019. As of August 1, 2019, she says that the respondent has not reimbursed her for the amount she paid for the laboratory tests. I mention this to provide context but, as this claim is not made by the patient, I make no finding regarding it.

25. Sometime in February 2019, the applicant says she paid the outstanding balances to the laboratories to obtain the test results for some of her patients.

26. I find that this dispute is not covered by the parties' contract, because the contract ended by agreement on February 2, 2019. Therefore, I find that I can resolve the dispute rather than deferring to the contract's mediation/arbitration clause.

27. The question here is whether the respondent is obliged to refund the applicant the amounts she says she paid to the laboratory companies in February 2019.

28. The legal doctrine of privity of contract prevents someone who is not a party to a contract from enforcing the contract for their benefit (*Holmes* v*. United Furniture Warehouse GP*, 2012 BCCA 227 at paragraph 10).

29. Here, the applicant was not a party to the agreement between the respondent and the individual patients, whereby those patients paid the respondent a fee to have the respondent arrange laboratory tests. The applicant ordered the tests, but the agreement to pay in exchange for having the test done was between the patient and the respondent. The patients are not parties to this dispute.

30. Prior to February 2, 2019, the applicant and respondent had a contract which provided for how the applicant would be paid from revenues for services, including laboratory tests, that the respondent had arranged for patients. However, I have found that the contract applies only up until February 2, 2019.

31. Therefore, even if there are patients who did not receive a refund for laboratory test fees paid to the respondent where the tests were not provided, the claim is between the patients and the respondent, not the applicant and respondent.

32. For these reasons, I find that that the applicant is not entitled to reimbursement for payments she voluntarily made directly to laboratories, after the contract ended, for patient testing. I dismiss the applicant's claims and her dispute.

33. Under section 49 of the CRTA 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. The applicant was unsuccessful and so I dismiss her claim for tribunal fees. The applicant did not make a claim for dispute-related expenses.

ORDER

34. I dismiss the applicant's claims and her dispute.

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Julie K. Gibson, Tribunal Member