



# Civil Resolution Tribunal

Date Issued: April 28, 2020

File: SC-2019-005796

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Huang v. Yang*, 2020 BCCRT 458

BETWEEN:

HELEN HUANG

**APPLICANT**

AND:

LIQIN YANG and CANADA KANGTAI HEALTHCARE CO. LTD.

**RESPONDENTS**

AND:

Ping Dong

**RESPONDENT BY THIRD PARTY CLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about a missing necklace. On July 10, 2019, the applicant, Helen Huang, went to get a massage at the respondent clinic Canada Kangtai Healthcare Co. Ltd. (Kangtai). Kangtai filed a third party claim against Ping Dong, who was the assigned massage therapist. Ms. Huang did not name Mr. Dong as a respondent to her claim. Ms. Huang says Mr. Dong removed her necklace without her knowledge and failed to tell her where it was, which Mr. Dong denies. The respondents could not locate the necklace when Ms. Huang notified them 24 hours after the massage. Ms. Huang claims \$2,900 as the replacement necklace cost.
2. The respondent Liqin Yang is Kangtai's owner. Kangtai and Ms. Yang say Mr. Dong is Kangtai's sub-contractor, and not their employee. So, Kangtai and Ms. Yang say if any respondent is responsible for the necklace, it can only be Mr. Dong. However, all respondents say Mr. Dong informed the applicant when he removed her necklace and where he had placed it, on top of her clothes and handbag. The respondents deny being responsible for the applicant's necklace.
3. Ms. Huang is self-represented. Ms. Yang represented herself and Kangtai. Mr. Dong is self-represented.

## **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* (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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the

tribunal's mandate of proportional and speedy dispute resolution, and while this dispute involves conflicting evidence about what was said, I find I can fairly hear this dispute through written submissions.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. whether during a massage treatment Mr. Dong removed Ms. Huang's necklace and placed it on her removed clothing and handbag without her knowledge or consent, and
  - b. if so, to what extent can Ms. Huang receive the claimed necklace replacement cost from any of the respondents.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant must prove her claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. There is limited evidence before me. Ms. Huang submitted a July 31, 2017 invoice from Van Cleef & Arpels, for \$17,900 (Hong Kong dollars) for a "Vintage Alhambra Pendant" in 18K yellow gold. I infer the claimed \$2,900 is an equivalent in Canadian dollars. I note Ms. Huang did not provide a photo of the necklace, and so Mr. Dong

could not comment whether the necklace he handled was the pendant in the submitted invoice.

11. As referenced above, Ms. Huang's submission is that Mr. Dong removed her necklace without her consent and that she was not aware of its removal. She says this was the first time a massage therapist has ever removed her necklace in order to provide a massage.
12. Kangtai's evidence includes a signed August 27, 2019 statement from Mr. Dong. He said that by the time he entered the massage room, Ms. Huang was already face-down on the massage bed. Mr. Dong wrote that he asked Ms. Huang to remove her necklace, and that "initially, she did not respond". He added that since the necklace made giving a massage difficult, he removed it. He said that once removed, he told Ms. Huang that he had put it on top of her clothes and handbag. Mr. Dong stated that Ms. Huang acknowledged this. Mr. Dong said the 1-hour massage proceeded, and he left the room before Ms. Huang got up to get dressed. He said that 24 hours later, Kangtai called and told him that his client Ms. Huang said she had lost her necklace.
13. Ms. Huang chose not to provide a specific response to Mr. Dong's evidence, despite having the opportunity to do so. On balance, I find Mr. Dong removed Ms. Huang's necklace at the beginning of the massage appointment with Ms. Huang's implied and later express consent. Ms. Huang does not say she was asleep and she does not explain how her pendant necklace could be removed from her neck without her being aware of its removal, particularly bearing in mind she was face down on the massage table. I find Ms. Huang's submission that this was the first time her necklace had been removed during a massage does not help her argument that she was not aware of its removal. I find it would be even more likely Ms. Huang would notice her necklace being removed if that had never happened before.
14. On balance, I find it likely Ms. Huang was awake and aware her necklace was being removed. So, I find Ms. Huang gave her implied consent when she did not respond

to Mr. Dong about removing the necklace, and then her express consent when she acknowledged its removal and placement on her clothes and handbag.

15. As noted above, Kangtai was unable to locate Ms. Huang's necklace. I find I have insufficient evidence before me that the necklace was left behind on Kangtai's property. Knowing her expensive necklace had been removed, I find Ms. Huang would likely have taken care to ensure she had it in her possession before she left the clinic. Again, I say this because I accept Mr. Dong placed the necklace on top of Ms. Huang's pile of clothes and her handbag, with Ms. Huang's knowledge. I also accept that 24 hours passed before Ms. Huang contacted Kangtai about her missing necklace, which I find supports a conclusion the necklace was not left behind at Kangtai. It may be that Ms. Huang left the necklace in her purse after the massage treatment and later lost it, but I cannot find that is Kangtai's responsibility.
16. Given my conclusions above, I find Ms. Huang's claims must be dismissed. Given this, I do not need to address Mr. Dong's potential liability, or Ms. Yang's. Given my dismissal of Ms. Huang's claims against Kangtai and Ms. Yang, I also dismiss Kangtai's third party claim against Mr. Dong.
17. Under section 49 of the CRTA and tribunal rules, as both Kangtai and Ms. Huang were unsuccessful in their respective claims, in the circumstances I find they each should bear the responsibility for their paid tribunal fees. No dispute-related expenses were claimed.

## **ORDER**

18. I order Ms. Huang's claims, Kangtai's third party claims, and this dispute dismissed.

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Shelley Lopez, Vice Chair