



Civil Resolution Tribunal

Date Issued: February 10, 2021

File: SC-2020-007671

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Highland Salon and Medi Spa Inc. v. Hurley*, 2021 BCCRT 157

B E T W E E N :

HIGHLAND SALON AND MEDI SPA INC.

APPLICANT

A N D :

ZAKERY HURLEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Highland Salon and Medi Spa Inc. (Highland) is a hair salon and spa. From November 2019 to September 30, 2020, the respondent hair stylist Zakery Hurley worked at Highland, on a chair rental basis based on the parties' verbal agreement. Highland says Mr. Hurley failed to give 30 days' notice of ending the chair rental agreement "as is customary and expected in this industry". Highland also says

that when departing on his last day Mr. Hurley interrupted Highland's business and ability to earn income because he allegedly unplugged various electrical connections when he removed his own point of sale (POS) system. Highland also says Mr. Hurley failed to pay for certain products and services, and damaged Highland's furniture. Highland claims a total of \$3,341.50.

2. Mr. Hurley says the parties had no contract and as a chair renter he was not required to give 30 days' notice. He says to his knowledge he only unplugged his own POS terminal to take it with him when he left. Mr. Hurley says in any event Highland suffered no business interruption or financial loss. Mr. Hurley also says he tried to pay Highland for the \$32.48 in products he owes for, but Highland refused payment. Mr. Hurley says he is owed commission on product sales, but chose not to file a counterclaim. Mr. Hurley also says he obtained a service from a Highland employee in a swap/trade, and so he owes nothing for that service. Finally, Mr. Hurley denies damaging his workstation as alleged.
3. Highland is represented by its owner, Heidi Currie. Mr. Hurley is self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that

includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

6. Section 42 of the CRTA says the CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Whether Mr. Hurley was required to give any notice of his leaving Highland, and if so, what is the appropriate remedy,
 - b. Whether Mr. Hurley negligently caused Highland business losses when he removed his POS terminal, and if so what is the appropriate remedy,
 - c. Whether Mr. Hurley owes Highland for products or services, and if so, how much, and
 - d. Whether Mr. Hurley damaged Highland's property, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Highland must prove its claims on a balance of probabilities. I have read all the evidence and submissions before me but refer only to what I find relevant to provide context for my decision.

10. The parties agree:

- a. From November 2019 to Wednesday September 30, 2020, Mr. Hurley rented a chair at Highland's salon for \$892.50 (including tax) per month.
- b. There was no written chair rental contract.
- c. Mr. Hurley owes and should pay Highland \$32.48 for a cleanser product.

The chair rental agreement – was notice required?

11. Mr. Hurley left Highland after his last client on September 30, 2020, taking with him his tools, supplies, and his POS system. It is undisputed he did not give any notice to Highland before his departure. This meant he did not pay Highland rent for October 2020, which is what Highland claims in this section.
12. Mr. Hurley says the parties' verbal agreement was that it was "month-to-month" and required no notice of termination. In contrast, in the Dispute Notice filed at the outset of this proceeding, Highland said it is "customary and expected" in the industry to give 30 days' notice. Yet, Highland did not submit any evidence to support this assertion, such as from other hair stylists.
13. Mr. Hurley submitted a statement from a former Highland employee, KD, who said that no notice was required by departing chair rental stylists, in the industry or at Highland. Mr. Hurley also submitted a statement from his current salon, whose owner wrote Mr. Hurley was an independent contractor as a chair renter. On balance, I find there is no evidence before me to support a conclusion that there was an "industry standard" that required Mr. Hurley to give any notice of his leaving Highland.
14. In its later submissions, Highland says that when Mr. Hurley started in 2019 they were "surprised" to learn he had not given notice at his previous salon and had left there late at night without notice. Highland says Mr. Hurley assured them that he would not "do that to us". Mr. Hurley denies any concerns about his departure from the former salon.

15. I find it unlikely Highland discussed Mr. Hurley's departure from his former salon or that the parties had any discussion about his giving notice on his departure from Highland. I find if Highland had been concerned that he had left his former salon without notice, it would have likely obtained a written agreement with him about notice. Plus, Highland did not mention Mr. Hurley's alleged promise in the Dispute Notice and only raised it in later arguments. On balance, I find the parties had no agreement about Mr. Hurley giving notice of his departure from Highland.
16. I turn then to whether there was an implied notice requirement, under the common law. As discussed further below, this turns on whether Mr. Hurley was an "independent contractor", or a "dependent contractor" or something closer to an employee. I note Highland argues Mr. Hurley was "treated like" an employee, for instance by giving him key access and invitations to parties. However, there is no real suggestion he was in fact Highland's employee, and there is no evidence he earned any kind of wage from Highland, apart from a small 10% commission on selling Highland's products.
17. The distinction between "dependent contractor" and "independent contractor" matters because if Mr. Hurley is truly an independent contractor, there is no implied obligation to give reasonable notice to end the contract (see *Marbry Distributors Ltd. v. Avreca Int. Inc.*, 1999 BCCA 172, *TCF Ventures Corp. v. The Cambie Malone's Corporation*, 2017 BCCA 129 at paragraphs 23 and 24, and *Lauridsen v. Mortgage Executives*, 2002 BCPC 0131).
18. The evidence indicates Mr. Hurley had his own client list and his income was substantially derived from the services he solicited and provided. As noted above, Mr. Hurley paid Highland \$892.50 per month to rent a chair in Highland's salon, regardless of whether he worked or not, though I acknowledge Highland granted rent relief for a couple of weeks in May 2020 due to the pandemic. With this rental fee, it is uncontested Mr. Hurley had access to Highland's "back-bar" of shampoo and other hair products. It is further undisputed Highland gave Mr. Hurley use of its mobile booking app, unspecified insurance coverage and liability coverage, and access to

other unspecified electronic systems. However, notably Mr. Hurley had his own hair styling tools and POS system.

19. In *Dennis v. Fothergill*, 2012 BCSC 1510, a personal injury dispute, the court noted the plaintiff was an “independent contractor” working as a hair stylist under a chair rental arrangement. There is case law (not cited by the parties) that addresses the intermediate category of “dependent contractor” (see *Meridian Distribution Ltd. v. Endeavor Design Inc.*, 2019 BCSC 2406, citing *Marbry*). As referenced above, the distinction matters because if Mr. Hurley was a “dependent contractor”, there may have been an implied condition that he give Highland “reasonable notice” of his ending their chair rental agreement.
20. As set out in *Marbry*, the relevant factors to consider when determining whether someone is a dependent contractor include: duration/permanency of the relationship, degree of reliance/closeness of the relationship, and degree of exclusivity. As set out in *Liebreich v. Farmers of North America*, 2019 BCSC1074, the relevant factors fall into an “overarching four-fold test”: level of worker control, ownership of equipment and tools, profit/loss opportunity, and business integration. There is no one conclusive test, and instead the court or tribunal’s role is to determine the total relationship of the parties guided by all the relevant factors.
21. I find there is insufficient evidence to support a conclusion Mr. Hurley was a “dependent contractor”. I find all of the above supports a conclusion Mr. Hurley was an “independent contractor”, which I note is not particularly contested. Mr. Hurley only worked at Highland for about a year, he owned his own equipment, the chair rental arrangement left him subject to profit or loss, and he was minimally integrated into Highland’s systems. There is also no indication he agreed to work exclusively at Highland.
22. Given Mr. Hurley was an independent contractor, under the case law cited above I find there was no implied obligation that he give Highland notice of his departure. I have already found above Mr. Hurley did not expressly agree to give Highland any notice. It follows that I dismiss this aspect of Highland’s claim.

Did Mr. Hurley interrupt Highland's business when he removed his POS system?

23. Highland says at about 7pm on September 30, 2020, after Mr. Hurley's last client, he pulled out his POS terminal, and disconnected Highland's computer booking system, internet and telephone. Highland says this left a Highland employee SC with no means to conclude her sale, check out her client KS, or book further services. Highland's schedule shows SC had KS booked for a "teeth whitening promo" from 6:30pm to at least 8pm. Highland submitted a statement from AC, Ms. Currie's spouse, that he reconnected Highland's systems on October 1, 2020, a process that he says took him about an hour.
24. Highland submitted a November 28, 2020 signed statement from SC. SC said that KS was Mr. Hurley's good friend, and that at the time SC started with KS Mr. Hurley was the only other person working. SC wrote that during her consultation KS told her that she was very interested in having a \$500 treatment, and that a client often buys 3 such treatments for optimum results. SC wrote that when she went to "check out" KS, Mr. Hurley had gone and there was no computer and no POS machine, and the internet had gone out. SC wrote she took KS's credit card number to run through later, and that KS left without being able to book the proposed treatments or having the opportunity to tip SC. However, SC said she told KS they would let her know when the payment had gone through for the treatment provided.
25. Highland submitted an invoice to SC's teeth whitening client for \$140.70, and an October 1, 2020 Visa slip showing KS paid the bill, without any tip. Highland does not explain how the absence of a tip is its loss, rather than SC's loss. Highland also does not explain why it did not simply contact KS the next day about booking the additional treatments, given SC said she would contact her to let her know when the teeth whitening payment went through.
26. Mr. Hurley submitted a signed November 29, 2020 from KS. KS wrote she ultimately concluded she would not be able to afford any further treatments, and that she had texted SC this. KS stated that the \$140.70 payment that went through included a tip.

KS denies being friends with Mr. Hurley as SC alleged, but says she was friends with Mr. Hurley's last client on September 30, 2020. Contrary to Highland's submission, I find nothing inappropriate in Mr. Hurley obtaining KS's statement for this dispute.

27. I find that on the evidence it is not clear that Mr. Hurley caused Highland's computer systems to go down. However, even if he did, I find his doing so did not cause Highland any proven loss. I accept KS's statement that she decided not to buy any further treatments, and any missing tip was SC's loss, not Highland's. I dismiss this aspect of Highland's claim.

Does Mr. Hurley owe Highland for products or services he used?

28. As noted above, the parties agree Mr. Hurley owes Highland \$32.48 for cleanser products. So, I allow this aspect of the claim. I note Highland did not dispute Mr. Hurley's statement he tried to repay \$32.48 and that Highland refused to accept it.
29. Next, Highland says Mr. Hurley obtained a \$500 spa treatment at Highland without paying for it. Mr. Hurley says he obtained the treatment as a trade with another Highland employee, DH. In DH's November 29, 2020 statement, DH wrote that she occasionally did such trades, and that no payment was required to Highland. DH also wrote that Ms. Currie was present the day she did the procedure for Mr. Hurley, without objection.
30. While Highland argues DH is a disgruntled ex-employee, I find in the circumstances Highland has not proved Mr. Hurley owes any money for the spa treatment. As noted, there is no written contract and no independent witness statement or salon policy that might support Highland's claim. I dismiss this aspect of Highland's claim.

Did Mr. Hurley damage Highland's workstation?

31. Highland claims "up to \$1,500" for replacement of a workstation shelf it says Mr. Hurley damaged. Highland says only Mr. Hurley used that workstation. AC wrote that he could repair the shelf himself for \$240, but that it could cost more.

32. Highland submitted photos of a shiny white shelf. The shelf's edge appears to have blotchy stains of varying degrees. In one photo, it shows the entire right side of the shelf stained, with the left side relatively clean.
33. Mr. Hurley says after he returned to the salon following its spring 2020 closure due to the pandemic, he discovered the stain on the shelf and covered it with a towel. He says he is not responsible for the stain and that in any event it is reasonable wear and tear in a hair salon. In a November 29, 2020 statement, a Highland former employee KD, wrote that Mr. Hurley had told her in May 2020, after the salon reopened, there was a stain on his workstation that he did not create. There is no direct evidence that Mr. Hurley caused the stain.
34. Even if Mr. Hurley was the only stylist who used his workstation, I find Highland has not proved he is responsible for the stain. First, there are undisputedly others moving through the salon, presumably including cleaners. Second, even if Mr. Hurley caused the stain, Highland has not proved it is beyond reasonable wear and tear that would be included in his chair rental agreement. Highland also says Mr. Hurley left his workstation dirty with garbage left behind. Highland did not submit photos of this, and I find the allegation unsupported. I dismiss this property damage aspect of Highland's claim.

Interest and fees

35. In summary, I have allowed only the \$32.48 for the cleanser product that Mr. Hurley admits he owes Highland. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Hurley owes pre-judgment interest on the \$32.48 under the COIA, from September 30, 2020 to the date of this decision. This equals \$0.05.
36. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Highland was largely unsuccessful and did not accept Mr. Hurley's pre-dispute offer to reimburse the \$32.48 I have ordered. So, I dismiss

Highland's claim for CRT fee reimbursement. Mr. Hurley did not pay fees and neither party claimed dispute-related expenses.

ORDERS

37. Within 30 days of this decision, I order Mr. Hurley to pay Highland a total of \$32.53, broken down as follows:
 - a. \$32.48 in debt for cleanser products, and
 - b. \$0.05 in pre-judgment COIA interest.
38. I dismiss Highland's remaining claims.
39. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under *the COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
40. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the

same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair