



Civil Resolution Tribunal

Date Issued: March 22, 2021

File: SC-2020-007574

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stief v. Chen (dba Dr AW Chen & Associates)*, 2021 BCCRT 316

B E T W E E N :

MANFRED E. STIEF

APPLICANT

A N D :

ANTONIO CHEN (Doing Business As DR AW CHEN & ASSOCIATES)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about dental work. The applicant, Manfred E. Stief, says the respondent dentist, Antonio Chen (Doing Business As Dr. AW Chen & Associates), “fraudulently collected” \$6,800 for a tooth implant and dental crown. Mr. Stief claims

a refund of \$5,000, the monetary limit for small claims in the Civil Resolution Tribunal (CRT).

2. In particular, Mr. Stief alleges Dr. Chen told him the implant and crown process would be complete within 2 months, and yet Dr. Chen knew it was going to take 7 or 8 months. Mr. Stief ultimately had the implant installed but the implant-supported crown remains outstanding. Dr. Chen says Mr. Stief was told the implant process would take 6 months, and that there was some additional delay due to the COVID-19 pandemic.
3. Mr. Stief is self-represented. Dr. Chen is represented by an employee.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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.
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.

ISSUE

8. The issue in this dispute is whether Dr. Chen “fraudulently” collected payment under the parties’ dental services contract, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Stief must prove his 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. In August 2019, Mr. Stief developed severe tooth pain and attended Dr. Chen’s dental office. The parties agree that Dr. Chen charged \$6,800 for the implant and crown process, which Mr. Stief paid by credit card on August 16, 2019.
11. The parties agree that the \$6,800 covered the initial examination, drainage, x-rays, extraction of the affected tooth, artificial bone, and the surgical installation of the implant and an implant-supported crown. To the extent Mr. Stief argues it, I have no evidence before me to support a conclusion that this was an unreasonable fee.
12. On August 16, 2019 Dr. Chen extracted the affected tooth and x-rays were taken.
13. The implant was installed on September 16, 2019. Emails between Mr. Stief and Dr. Chen’s assistant show that later in the day Mr. Stief tried to remove sutures with a tweezer. On September 21, 2019, Mr. Stief emailed about “this 6-months wait”. Dr. Chen submits that it explained to Mr. Stief that the implant would need 6 months to heal before installing the implant-supported crown.
14. In October 2019, Mr. Stief had 4 fillings and the email evidence shows he agreed to use \$800 of his \$6,800 payment, still partially sitting as a credit on his account for work not yet completed, as payment for the fillings. This left a \$458 credit on his account. The evidence also shows that Mr. Stief agreed that if he did attend for the final implant-supported crown, he would then owe \$800. It is undisputed Mr. Stief never attended Dr. Chan for the final implant-supported crown.

15. So, at least by September 21, 2019, the parties agree Dr. Chen told Mr. Stief it would take until February or March 2020 to complete the tooth implant and crown work in 2 more sessions. However, the COVID-19 pandemic became an issue around that time, including from Mr. Stief's perspective, and then Dr. Chen's office completely shut down between April and July 1, 2020.
16. In this dispute, Mr. Stief alleges Dr. Chen or his staff told him initially that the "whole works" would be completed within 2 months, and yet he says they knew it would in fact take 7 to 8 months, even before the COVID-19 pandemic.
17. First, Mr. Stief submitted no evidence beyond a statement of account from Dr. Chen and his own submissions. He submitted no evidence from a qualified dentist critical of the treatment he received, and expert evidence is normally required to prove a professional's negligence (see *Bergen v. Guliker*, 2015 BCCA 283). To the extent Mr. Stief argues it, I find there is simply nothing before me that would establish Dr. Chen was negligent in the dental care provided, including with respect to the 6-month healing period.
18. I turn then to what appears to be Mr. Stief's central issue at the root of his "fraud" allegation, namely that he was allegedly told the implant procedure would take 2 months but took longer. He says that had he known how long it would take, he would not have paid \$6,800 up front. However, apart from Mr. Stief's own submission, there is no evidence before me that Dr. Chen or his staff ever said it would only take 2 months. I acknowledge mid-August 2019 emails that show Dr. Chen's staff said they could hopefully complete the bulk of the work by October, subject to scheduling the appointment date. But I find there is nothing in these emails that amount to a guarantee for completion.
19. Dr. Chen submits they told Mr. Stief the process would take 6 months, but that with the pandemic there was a delay with receiving the crown. Mr. Stief bears the burden of proof in this dispute and I cannot conclude Dr. Chen ever guaranteed the process would be completed in 2 months. Further, in his submissions, Mr. Stief says, "My question to this two-months completion process was denied at this first meeting on

August 16, 2019". So, on his own evidence I find Mr. Stief was told at the outset that the process would not be completed in 2 months.

20. Between February and August 2020, Mr. Stief regularly corresponded with Dr. Chen's assistant about coming into the office for the final implant-supported crown and "custom abutment" that was part of the procedure. Mr. Stief kept putting it off, given the ongoing pandemic. Up to this point, Mr. Stief never requested a refund of the \$458 that was sitting as a credit on his account with Dr. Chen, and instead chose to continue a "wait and see" approach in terms of the pandemic and when he might schedule the crown placement. I find this approach does not support a conclusion Mr. Stief is entitled to a full refund of what he paid for the implant and crown, particularly since he has the implant. Again, there is no evidence before me that the implant itself was not done properly or that it needs to be redone.
21. Given my findings above, I find Mr. Stief is not entitled to any refund for work that was completed. As noted, there remains a \$458 credit on his account, and I find he is entitled to a refund of that amount on the basis Dr. Chen is no longer obliged to fit Mr. Stief with the implant-supported crown.
22. Mr. Stief claims contractual interest, in part based on what he says he charges others for his time and in part based on what he has paid in credit card interest. However, the parties never had an agreement that Dr. Chen would pay interest. I find Mr. Stief chose to provide the \$6,800 payment up front, which is supported by the emails in evidence, in order to secure that pricing. So, I find there is no basis to award Mr. Stief contractual interest.
23. However, the *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Stief is entitled to pre-judgment COIA interest on the \$458, from September 30, 2020 to the date of this decision. I use September 30, the date Mr. Stief filed this CRT dispute, because he was offered the refund earlier but for reasons unknown never provided Dr. Chen with the means to return him the money. This interest equals \$0.98.

24. I note Mr. Stief appears to argue he is entitled to payment directly to an as yet not specified bank account. I find this would prevent finality and certainty to this dispute. I decline to make such an order. Nothing in this decision prevents Dr. Chen from making the payment ordered below by mailing a cheque to Mr. Stief at the address he indicated on the CRT Dispute Notice.
25. 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. In this dispute, Mr. Stief recovered the \$458 deposit balance that Dr. Chen offered to pay Mr. Stief before this CRT dispute began. The evidence shows Mr. Stief never gave Dr. Chen the banking information to allow the direct deposit Mr. Stief said he wanted, and instead started this CRT dispute. So, Dr. Chen never had the opportunity to provide the \$458 refund. Given this, I dismiss Mr. Stief's claim for reimbursement of CRT fees. Dr. Chen was substantially successful but did not pay CRT fees. No dispute-related expenses were claimed, so I make no order about them.

ORDERS

26. Within 30 days of this decision, I order Dr. Chen to pay Mr. Stief a total of \$458.98, being a \$458 refund and \$0.98 in pre-judgment interest under the COIA. I dismiss the balance of Mr. Stief's claims.
27. Mr. Stief is entitled to post-judgment interest, as applicable.
28. 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.

29. 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