



# Civil Resolution Tribunal

Date Issued: April 12, 2021

File: SC-2020-008438

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hess v. Mostafavi (dba Nasim Permanent Makeup)*, 2021 BCCRT 381

B E T W E E N :

MELANIE HESS

**APPLICANT**

A N D :

NASIM MOSTAFAVI (Doing Business As NASIM PERMANENT  
MAKEUP)

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This is a dispute about microblading services. In 2017, the applicant, Melanie Hess, purchased and received eyebrow microblading services from the respondent,

Nasim Mostafavi (doing business as Nasim Permanent Makeup). Ms. Hess says Miss Mostafavi misrepresented the risks of the microblading procedures, and was negligent in performing them, which she says caused red discoloration on the skin around both her eyebrows. She wants Miss Mostafavi to pay her \$5,000 for damages and for reimbursement of colour removal treatments.

2. Miss Mostafavi says Ms. Hess' misrepresentation claims are vague. She says she was not negligent, and that she performed the microblading services to industry standards. She also says the liability waiver Ms. Hess signed before the first microblading procedure provides a full defense to Ms. Hess' claims. Miss Mostafavi says she does not owe Ms. Hess anything.
3. Both parties are self-represented in this dispute.

## **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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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.
8. Ms. Hess submitted some evidence late. Miss Mostafavi objects to the admission of this late evidence because she says none of it was new, and it could have been submitted by the deadline with due diligence. However, Miss Mostafavi provided a thorough response to the late evidence in her submissions. She also relied on one piece of the late evidence to support her own position. In the circumstances, and given the CRT's mandate to be flexible, I find that Miss Mostafavi would not be prejudiced by the admission of the late evidence. So, I have allowed Ms. Hess' late evidence and I have considered it in my decision.

## **ISSUES**

9. The issues in this dispute are:
  - a. Was Miss Mostafavi negligent in performing the microblading services?
  - b. Did Miss Mostafavi misrepresent the risks of microblading such that the waiver is not binding on Ms. Hess?

## EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant, Ms. Hess, must prove her claims on a balance of probabilities. This means I must find it is more likely than not that Ms. Hess' position is correct.
11. I have read all the parties' evidence and submissions, but I refer only to what is necessary to explain my decision.
12. At the outset, I note Ms. Hess made submissions about her claims being made in time, but Miss Mostafavi did not argue this point. I accept that Ms. Hess did not discover her claims until April 2019 when Miss Mostafavi determined the red discolouration under Ms. Hess' eyebrows would not go away on its own. So, I find Ms. Hess started this dispute in time.
13. Ms. Hess says she wanted to revitalize her eyebrows and she decided on microblading. Neither of the parties provided a definition of microblading. Google's Oxford Languages dictionary defines "microblading" as "a semipermanent technique for enhancing the appearance of the eyebrows, in which pigment is scratched into the skin in fine, short strokes resembling hair, using a hand tool with a blade formed of tiny needles."
14. The basic facts are not in dispute. At some point in late 2016 or early 2017 Ms. Hess purchased one eyebrow microblading treatment and one touch up treatment from Miss Mostafavi through a "Groupon." The parties agree that on February 7, 2017 they met for a consultation at Sheida Hair and Beauty Salon (Sheida). Sheida is not a party to this dispute. Immediately after the consultation Ms. Hess signed a "DISCLOSUER & RELEASE FORM" (waiver) (reproduced as written), and then Miss Mostafavi performed the initial microblading service on Ms. Hess' eyebrows. Ms. Hess received a touch up microblading service from Miss Mostafavi in April 2017.
15. It is undisputed that Ms. Hess was initially satisfied with the results of the microblading, however by August 2018 she noticed red discolouration on the skin

under her eyebrows. She returned to Miss Mostafavi at that time who told her to wait, and that the discolouration should fade with time.

16. By the spring of 2019 the discolouration had not faded, and Ms. Hess returned to Miss Mostafavi. On April 2, 2019 and June 7, 2019 Miss Mostafavi performed colour removal treatments which the parties agree were unsuccessful in removing the red discolouration. Ms. Hess returned to Miss Mostafavi on October 15, 2019 at which time Miss Mostafavi referred her to a tattoo removal artist at a different salon.
17. It is undisputed that between October 2019 and October 2020 Ms. Hess received a series of tattoo removal treatments at a different salon which improved, but did not eliminate, the red discolouration on the skin around her eyebrows.

**Was Miss Mostafavi negligent in performing the microblading services?**

18. To establish negligence Ms. Hess must prove that Miss Mostafavi owed her a duty of care, breached the required standard of care, and that the breach caused Ms. Hess to suffer damages (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
19. I find that in providing microblading services to Ms. Hess, Miss Mostafavi owed her a duty of care. At issue is the standard of care. Since microblading is a technical procedure outside ordinary knowledge, I find expert opinion evidence is necessary to establish Miss Mostafavi's required standard of care (see *Bergen v. Guliker*, 2015 BCCA 283).
20. Ms. Hess submitted a statement from Jen Tung, which she relies on as expert evidence. Jen Tung said they are a tattoo removal artist certified in microblading from Phi Academy with 2 years' experience. I am satisfied that Jen Tung is qualified as an expert in microblading procedures under CRT rule 8.3.
21. Jen Tung explained the procedures used on Ms. Hess but only speculated about why the discolouration occurred. They also acknowledged they have no expertise with the brand of pigment Miss Mostafavi used. I find Jen Tung's opinion does not

establish the required standard of care or that Miss Mostafavi breached it. So, I place no weight on Jen Tung's opinion.

22. Ms. Hess submitted links to various internet articles about microblading to support her claims that Miss Mostafavi was negligent. However, I cannot rely on the content of websites from live links, as the content may have changed. In any event, I have no evidence that these internet articles established the requisite standard of care or that Miss Mostafavi breached it.
23. Based on her experience with Jen Tung, Ms. Hess alleges that Miss Mostafavi failed to give her appropriate instructions to prepare for the procedure. However, I find Ms. Hess' experience with Jen Tung is not determinative of the instructions or care Miss Mostafavi ought to have given her. Jen Tung's opinion does not address the instructions Miss Mostafavi ought to have given Ms. Hess for the type of pigment she used. Even if Ms. Hess did prove Miss Mostafavi failed to give her proper instructions, which I found she has not, I find such a failure would not prove causation on the evidence before me.
24. Contrary to Ms. Hess' allegation, I find the fact that Sheida or Miss Mostafavi may not have had a business license at the material time is not determinative of Miss Mostafavi's negligence.
25. On balance, I find Ms. Hess has not established Miss Mostafavi's required standard of care for providing microblading services, and so she has not shown that Miss Mostafavi was negligent. I dismiss this aspect of her claim.

**Did Miss Mostafavi misrepresent the risks of microblading such that the waiver is not binding on Ms. Hess?**

26. Ms. Hess says Miss Mostafavi misrepresented the risks of microblading. She also says the waiver is confusing and ambiguous about those risks. She says that had she known and understood the risks, she would not have signed the waiver and would not have had the microblading procedures. In contrast, Miss Mostafavi says

Ms. Hess' misrepresentation claim is vague, and that the waiver provides a full defense to Ms. Hess' claims.

27. In her submissions, Ms. Hess says that during her consultation with Miss Mostafavi on February 7, 2017, before signing the waiver, she specifically asked her if the microblading pigment would "go away with time" or would "disappear" with time. She says Miss Mostafavi answered "yes" and did not mention any risks of the procedure (the alleged statement). Ms. Hess says this alleged statement was a misrepresentation, as it was ultimately untrue. She says she relied on the misrepresentation in good faith in deciding to sign the waiver and have the microblading procedures.
28. Generally, a party signing a document which they know affects their legal rights is bound by its terms regardless of whether they read or understood it. There are exceptions in cases of fraud, misrepresentation, or when the party seeking to enforce the document knows or reasonably should know that the other party is mistaken about its terms. (See *Karroll v. Silver Star Mountain Resorts*, 1998 CanLII 3094 (BC SC)). I must determine whether the alleged statement constitutes a misrepresentation such that Ms. Hess is not bound by the waiver.
29. While Ms. Hess has not specifically framed her claim as such, I find her claim is that the alleged statement was a negligent misrepresentation, which is when someone fails to take reasonable care to ensure that their statement is true. To prove a negligent misrepresentation Ms. Hess must show that Miss Mostafavi owed her a duty of care; Miss Mostafavi negligently made an untrue, inaccurate, or misleading statement; and Ms. Hess reasonably relied on the statement which caused her to incur damages (see *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)).
30. I have already found Miss Mostafavi owed Ms. Hess a duty of care. However, for the following reasons, I find Ms. Hess has not established that Miss Mostafavi made an untrue, inaccurate, or misleading statement.

31. First, I find Ms. Hess' submissions are imprecise as to what she specifically asked Miss Mostafavi during their consultation. At one point in her submissions she says she asked if the pigment would "go away with time," and at another point in her submissions she says she asked if the pigment would "disappear" with time. While the meaning of these two questions appears to be the same in the circumstances, I find the specific language Ms. Hess used is crucial to her claim. I say this because Miss Mostafavi's evidence is that she told Ms. Hess the pigment would fade with time. While this is only a difference of a few words, I find there is a significant difference in meaning between these two statements. I find stating that the pigment would "disappear" or "go away with time" implies it would disappear or go away completely, whereas stating that it would "fade" with time implies only that it would lighten or change colour. The alleged statement occurred more than 4 years ago, and memories of that specific conversation have undoubtedly faded. As such, I find Ms. Hess' inability to specify precisely what Miss Mostafavi promised her during their consultation detracts from the reliability of her claim.
32. Second, on the totality of the evidence, I find it is unlikely Miss Mostafavi would have promised Ms. Hess the pigment would completely go away or disappear over time. Miss. Mostafavi's evidence is that microblading is a form of tattoo that fades over time, and I find the wording in the waiver is consistent with this. The waiver's first page states that tattooing is considered permanent, but that it will fade with time. It says a tattoo can only be removed with a surgical procedure, and that any effective removal may leave permanent scarring or disfigurement. It also says there is no warranty or guarantee of the results of the permanent makeup procedure. Ms. Hess initialed next to each of these paragraphs.
33. Ms. Hess says these paragraphs are confusing because microblading is a semipermanent procedure, and the clauses refer neither to microblading nor semipermanent makeup but refer to other specific procedures. While I agree that these paragraphs do not specifically refer to microblading, I find that, by definition, microblading involves scratching pigment into the skin with needles, which is a form of tattoo. Ms. Hess does not argue that microblading is not a form of tattoo. The



waiver clearly states that tattooing is considered permanent. So, I find the relevant paragraphs of the waiver were clear such that by initialing next to each of them Ms. Hess knew or should have known that microblading was considered permanent and that the results of the microblading procedures were not guaranteed.

34. On the evidence before me, I find Ms. Hess has not established that Miss Mostafavi made an untrue, inaccurate, or misleading statement before Ms. Hess signed the waiver. So, I find Ms. Hess has not proven Miss Mostafavi made any negligent misrepresentations.
35. Ms. Hess says that after the consultation, she thought the waiver was “pro forma,” and was primarily about releasing photos and consenting to the procedure. However, I find Ms. Hess’ assumption about the nature of the waiver was not reasonable based on its contents. While the waiver’s final page is a “photograph model release,” the earliest mention of photos is at the bottom of the second page, by which point Ms. Hess had already initialed the document 14 times.
36. Ms. Hess also argues that the waiver is not binding on her because Miss Mostafavi did not specifically bring its contents to her attention or make sure she understood it before she signed it. Both parties made detailed submissions about the waiver’s enforceability and cited court decisions to support their positions. However, having found Miss Mostafavi was not negligent and did not make any negligent misrepresentations, I find there is no basis on which to award Ms. Hess damages. So, I find it is not necessary to address the parties’ submissions about the enforceability of the waiver. I dismiss Ms. Hess’ claims.
37. 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. I see no reason in this case not to follow that general rule. Since Ms. Hess was unsuccessful, I find she is not entitled to reimbursement of her CRT fees. She did not claim any dispute-related expenses.

## **ORDERS**

38. I dismiss Ms. Hess' claims and this dispute.

---

Sarah Orr, Tribunal Member