



Civil Resolution Tribunal

Date Issued: March 9, 2022

File: SC-2021-003888

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *David v. 1137890 B.C. Ltd.*, 2022 BCCRT 258

BETWEEN:

MARIA SALUD DAVID

APPLICANT

AND:

1137890 B.C. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. On May 14, 2019, the applicant, Maria Salud David, attended the Derma Clinic operated by the respondent, 1137890 B.C. Ltd. (Derma) for eyelash extensions. Ms.

David alleges Derma's technician S was negligent during the eyelash extension process, leaving her with pain and redness and ultimately having to have the extensions removed. Ms. David claims \$218.96 as a refund of what she paid Derma including tip.

2. Derma denies using defective products or that S was negligent in her application of the extensions. Derma says Ms. David did not care for her extensions as instructed. Derma also says Ms. David signed a liability waiver. Derma asks that I dismiss the claim.
3. Ms. David is self-represented and Derma is represented by its owner Kathryn Teranishi.

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. CRTA section 39 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 properly able to assess and weigh the documentary evidence and submissions before me. Some of the evidence in this dispute amounts to a "she said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour 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. 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. CRTA section 42 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. David submitted evidence after the CRT's deadline. Despite requests, she failed to provide an explanation for why the evidence was late or why it was relevant. They are all undated photos of Ms. David's face and eyelashes, most of which were reproduced in Ms. David's emails to Derma which Derma submitted in evidence. Ms. David also included her itinerary for her travel outside Canada on May 15, 2019. Given the CRT's flexible mandate, I allow the evidence, despite it largely being duplication, because Derma had an opportunity to respond to it and so was not prejudiced.
9. Derma initially argued Ms. David's claim was out of time but did not pursue that argument in later submissions. Given my conclusion below, I have decided it is unnecessary to address this argument.
10. Finally, I note Ms. David indicated in her final reply submission for her non-contractual interest claim that her uploaded text did not save, and she asked that it be retrieved. Since I have dismissed Ms. David's claim, I find it unnecessary to consider her arguments about interest, which would only apply if she had been successful. I did not pursue the missing text.

ISSUE

11. The issue in this dispute is whether Derma's technician was negligent in her application of eyelash extensions on Ms. David, and if so, whether Ms. David is entitled to the claimed \$218.96 refund.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant Ms. David must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions but refer only to what I find relevant to provide context for my decision.
13. The evidence shows the "hybrid full set" extension procedure cost \$160, plus \$20 for a "lash shampoo", which totalled \$189 inclusive of \$9 tax. Ms. David paid this on May 14, 2019 at the end of her visit, plus a \$28.56 tip.
14. In this dispute, Ms. David does not sue for personal injury damages. Rather, she claims a refund of what she paid Derma. However, the basis for Ms. David's refund claim is that she says Derma's employee S was negligent in her application of the lashes and by allegedly using faulty or defective glue. I find photos in evidence show that immediately after the procedure Ms. David's eyelashes and eyes appeared normal. Photos taken within a day however show her right eye bloodshot. Ms. David says some lashes fell out and the rest became matted. She undisputedly had the extensions removed 3 days later after travel to a foreign country. Derma denies negligence.
15. In a submitted Statement of Facts, the parties agree:
 - a. Derma performed eyelash extensions on Ms. David on May 14, 2019.
 - b. Ms. David was immediately in contact with Derma to inform them the eyelashes were falling out and that she experienced trauma to her eye because of the eyelash extensions procedure.

c. Ms. David signed a liability waiver prior to Derma doing the eyelash extensions.

16. The liability waiver Ms. David initialed and signed included the following:

Ms. David will be “fully responsible for any and all results, which may arise” from the extension services. Ms. David agrees to hold Derma and its employees “free from any and all claims or suits for damage, injuries or complications resulting from any beauty services” Derma provides.

17. Based on the liability waiver, I find Ms. David agreed that she would be responsible for any unexpected or negative outcome. More significantly, she also expressly agreed not make “any claims” against Derma resulting from its services. In the circumstances, I find that includes this refund claim.

18. So, I find Ms. David’s claim must fail. It follows that I do not need to consider whether Derma was negligent or if its treatment was the cause of Ms. David’s later-diagnosed eye irritation. I dismiss Ms. David’s claim.

19. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Ms. David was unsuccessful, so I dismiss her claim for CRT fee reimbursement. Derma did not pay fees and neither party claimed dispute-related expenses.

ORDER

20. I dismiss Ms. David’s claims and this dispute.

Shelley Lopez, Vice Chair