



Civil Resolution Tribunal

Date Issued: June 2, 2022

File: SC-2021-007960

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Navey v. Central Park Denture and Implant Centre Ltd.*, 2022 BCCRT 646

B E T W E E N :

JOYCE NAVEY

APPLICANT

A N D :

CENTRAL PARK DENTURE AND IMPLANT CENTRE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The respondent, Central Park Denture and Implant Centre Ltd. (Central), provided upper and lower dentures for the applicant, Joyce Navey. Ms. Navey says when she eats, food slips under the bottom dentures with almost every bite, making it painful

and inconvenient to eat. She is also dissatisfied with the dentures' tooth alignment and colour. Ms. Navey seeks a full refund of the \$4,650 she paid Central for the dentures. Ms. Navey represents herself.

2. Central denies Ms. Navey's claims on several grounds. In particular it says Ms. Navey has unrealistic expectations given her "oral environment" and prematurely stopped coming to Central for adjustments that would have addressed her concerns. Central is represented by its owner, Tracy Merkley, the denturist who worked with Ms. Navey to create and adjust the dentures at issue.
3. For the reasons set out below, I dismiss Ms. Navey's claims.

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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

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 Central provided deficient dentures or denture-fitting services, and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Ms. Navey must prove her claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
10. There was no written contract, but it is undisputed that in May 2021 Central agreed to create a complete set of dentures for Ms. Navey for \$4,650.
11. Treatment records show that Ms. Navey had an initial impression taken May 10, a final impression taken May 12, and 3 more appointments in May before the dentures were delivered on May 31. There were 3 follow-up or adjustment appointments in June, 4 in July and 2 in August, although it is not clear if they were all in person.
12. I pause to note Ms. Navey's objection to the treatment record evidence. Ms. Navey says she believes Central fabricated the treatment notes to strengthen its position in negotiations and settlement discussions. She says the patient chart is therefore confidential and cannot be part of the evidence. While I am not persuaded by Ms. Navey's arguments that the treatment records were fabricated, I note that Central did

not fully explain why it provided 2 versions and when the modifications were made. Ultimately, I find I am able to resolve the dispute without relying on the treatment record notes. So, I used the treatment records for the appointment dates only, which are not disputed.

13. Due to a scheduling error at Central, Ms. Merkley missed Ms. Navey's third August appointment. After that, Ms. Navey decided to stop attending Central's office. Ms. Navey says she "got the sense" that Ms. Merkley did not know how to fix the problem. She asked for a refund but did not receive a response.
14. Ms. Navey's primary argument is that the dentures Ms. Merkley created do not fit properly, allowing food to slip underneath her bottom dentures when she eats. She says this is uncomfortable, frustrating, and sometimes painful. Ms. Navey's secondary arguments are that the tooth shape, alignment and colour were not what she asked for.
15. Typically, there is an implied term in professional service contracts that the work will be performed to a reasonably competent standard. Generally, an allegation that a professional's work was below the standard requires expert evidence to prove. This is because the standard expected of professionals in a particular industry is generally outside the common knowledge of ordinary people. The 2 exceptions to this rule are when the deficiency is not technical in nature or where the work is obviously substandard (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112).
16. Central does not challenge, and I accept, Ms. Navey's evidence that she has worn upper and lower dentures for around 50 years. Approximately 20 years ago, she had dental implant posts inserted into her lower jawbone to act as an anchor.
17. Ms. Navey says since getting the implants, it had been extremely rare for food to go under her bottom denture. She says her old dentures still fit and work perfectly, with food getting under the dentures being "extremely rare".

18. The parties' text messages show that the issue of food under the bottom denture improved somewhat after the first "reline" procedure in July 2021. However, in early August, Ms. Navey reported that food was still getting under the lower denture enough that she put in her old dentures to eat.
19. Ms. Navey does not challenge, and I accept, that Ms. Merkley has been a practicing dentist for 36 years and served as an examiner for dentist qualifying in BC. Ms. Merkley says it is unrealistic for Ms. Navey to expect that food will never get under her dentures. She does not provide any supporting evidence about how often one should expect food to get under dentures.
20. Ms. Merkley says at the initial consult, Ms. Navey explained that she had recently had 2 other sets of dentures made by 2 other denturists and was not happy with them, so they gave her a refund. Ms. Navey confirms this and says she actually rejected 3 sets of dentures. I place significant weight on this evidence, which supports Ms. Merkley's argument that Ms. Navey's performance expectations are not reasonable. Ms. Merkley says before accepting Ms. Navey as a client, she explained the limitations of dentures in Ms. Navey's specific "oral environment". This is undisputed.
21. Ms. Navey relies on a statement from Kent Roberts, a licensed dentist since 1997. Mr. Roberts examined Ms. Navey's old dentures and the dentures Central provided. I infer, although it is not stated, that Mr. Roberts examined Ms. Navey with the dentures in. I accept Mr. Roberts' evidence as expert opinion evidence about the dentures under the CRT's rules. Mr. Roberts said he could not see any obvious reason why Ms. Navey was having difficulties. However, he added that "the peripheries are quite thick" compared to Ms. Navey's old dentures. He also said there is a larger gap between the tissues and the denture edge. Mr. Roberts said the combination of the thicker peripheries and larger gap is causing more food to be trapped underneath the dentures.
22. In response, Ms. Merkley says the peripheral thickness is part of a specific technique to acquire suction and "block out the food." She says given time wearing the dentures, the gap is reduced and blocking out the food is the usual outcome. She says Ms.

Navey has not spent enough time wearing the dentures. On balance, I accept this explanation. I find that nothing in Mr. Roberts' brief statement contradicts Ms. Merkley's evidence about the technique she employed or the need to spend time wearing dentures.

23. I find Mr. Roberts' evidence does not assist in establishing the standard of care for a reasonably competent denturist creating and fitting dentures. While I accept Mr. Roberts' description of the issues with the dentures and his opinion that they are causing food to get under the dentures, I find this alone does not establish that the dentures were defective or that Ms. Merkley's work fell below the standard of a reasonably competent denturist. As well, Mr. Roberts does not express an opinion on whether the further adjustments will improve the dentures' fit and resolve the issue of food getting under the dentures.
24. Ms. Merkley says denturists are required to provide 3 months of unlimited adjustments as new dentures settle in. She says she always provides 5 years of adjustments if necessary. Ms. Navey did not dispute these statements, and I accept them. Ms. Merkley suggests that Ms. Navey abandoned the process before a satisfactory outcome could be achieved.
25. Ms. Merkley says Ms. Navey's dentures were 19 years old when Ms. Navey approached Central. Ms. Navey says they were 13 years old. I find nothing turns on the difference. Ms. Merkley says most customers replace their dentures every 5 years or so, and a longer wait means it takes longer to get used to a new fit and feel, and requires more adjustments. Ms. Navey does not dispute this, and I accept it.
26. I find that Ms. Navey did not give Ms. Merkley an adequate opportunity to address her concerns before abandoning the process. I acknowledge that there were approximately 9 appointments, but the time period was less than 3 months, which is the minimum time denturists must provide adjustments. There is no expert evidence to indicate that this was unreasonable or that Ms. Merkley was not competent to make the dentures fit. As well, Navey did not say how much time she wore the dentures. I conclude that Ms. Navey did not have sufficient reason to believe that Ms. Merkley

was incapable of addressing her concerns. While I accept that Ms. Navey had to drive 45 minutes to her appointments at Central, she was aware of the distance when she engaged Central. I find Ms. Navey abandoned the process at least in part because she was upset that Ms. Merkley missed an appointment. I find the single missed appointment did not entitle Ms. Merkley to stop coming and claim a refund.

27. For those reasons, I find Ms. Navey has not met her burden of proving that Central breached the standard of care or the implied term of reasonably competent work related to fit and food getting under the dentures.
28. I turn to Ms. Navey's secondary arguments about tooth shape, alignment and colour.
29. Ms. Navey says the denture teeth were not perfectly aligned as she requested. From the photos of the dentures in and out of her mouth, I am unable to see any alignment imperfection. As well, it is undisputed that Ms. Navey had 2 viewings with a "wax try" that allowed her to see the denture teeth placement in her mouth. She made minor changes after the first viewing and Ms. Merkley suggested she take them home and spend some time with the wax models and get a second opinion. Ms. Navey signed a form accepting responsibility for the appearance of her dentures after the second wax try. So, I find the tooth shape and alignment were substantially as Ms. Navey requested, and to the extent that they were not, she accepted responsibility.
30. As for the shade or colour, Ms. Navey says she wanted all the teeth to be "the whitest white possible". It is undisputed that the denture's back teeth are a shade darker than the front. Ms. Merkley says this is how the manufacturer makes the dentures and it cannot be changed. An email from the supplier or manufacturer confirms the back teeth are not made in the same bright white shade as it looks unnatural.
31. Ms. Merkley does not dispute that she failed to explain to Ms. Navey when discussing colour that the back teeth would be a shade darker than the front teeth. However, I do not agree with Ms. Navey about the significance of this omission. In the photo of Ms. Navey's smile with the dentures in there is no visible shade difference and the teeth are brilliantly white. I find Ms. Navey has not established that Ms. Merkley's

failure to advise about the shade difference was, as Ms. Navey suggests, a breach of the College of Denturists of British Columbia's professional standards, or a breach of contract.

32. I will briefly address the application of the *Sale of Goods Act* (SGA), which Ms. Navey raised. Section 18 of the SGA says there is an implied condition that goods are reasonably fit for their purpose, are of "merchantable quality", and are reasonably durable. As I have found that Ms. Navey prematurely stopped the adjustment appointments, I cannot conclude that the dentures were not reasonably fit for their purpose. I also find Ms. Navey has not demonstrated how the dentures were not of merchantable quality or not reasonably durable.
33. I conclude that Ms. Navey has not proved that Central breached SGA or the parties' contract or that Ms. Merkley breached the standard of care of a reasonably competent dentist. It follows that I dismiss Ms. Navey's claims.
34. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Central was successful but did not pay CRT fees or claim expenses. I dismiss Ms. Navey's claim for reimbursement of CRT fees.

ORDER

35. I dismiss Ms. Navey's claim and this dispute.

Micah Carmody, Tribunal Member