



Civil Resolution Tribunal

Date Issued: July 15, 2022

File: SC-2021-000467

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Speed v. The Rosenthal Clinic*, 2022 BCCRT 814

BETWEEN:

SYLVIA DONNA SPEED

APPLICANT

AND:

THE ROSENTHAL CLINIC

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. This dispute is about cosmetic filler procedures. The applicant, Sylvia Donna Speed, says the respondent, The Rosenthal Clinic (the Clinic), negligently performed both a

1st procedure and a follow-up 2nd procedure. Ms. Speed says before the 2nd procedure was done, she told the Clinic she considered it a fix for the 1st procedure and that she expected it would be done at no charge rather than the stated \$1,228.50 cost. Ms. Speed says she later discovered the Clinic charged her credit card the \$1,228.50. In this dispute, Ms. Speed claims the \$1,228.50 plus \$300 for her time spent dealing with this matter, for a total of \$1,528.50.

2. The Clinic says it explained the procedure to Ms. Speed and she agreed to both procedures and the associated costs. The Clinic denies any negligence and says the 2nd procedure was to address a new area Ms. Speed wanted treated. The Clinic says it owes nothing.
3. Ms. Speed is self-represented. The Clinic is represented by its president and CEO, Jerry Asner.

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). CRTA section 2 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. 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. As named, the respondent “The Rosenthal Clinic” is legally a non-entity. It is not a corporation, a registered partnership, nor is it an individual. However, nothing turns on this because I have dismissed Ms. Speed’s claims as discussed below.

ISSUES

9. The issues are
 - a. Whether the Clinic misled Ms. Speed or improperly charged her for the cosmetic filler procedures,
 - b. Whether the Clinic was negligent in performing those procedures, and
 - c. Whether Ms. Speed is entitled to any refund.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Ms. Speed must prove her claim on a balance of probabilities (meaning “more likely than not”). I have read the parties’ submitted documentary evidence and arguments but refer only to what I find relevant to provide context for my decision.
11. The Clinic’s records show that Ms. Speed had the 1st filler procedure under her eyes on October 20, 2021. She paid \$1,809.94 for this. Ms. Speed emailed the Clinic on

October 26, 2021 and said she was “doing fine today” and thanked Dr. Rosenthal for doing a “professional and thorough job”.

12. At a follow-up visit on November 10, 2021, the Clinic’s records indicate Ms. Speed wanted to explore having filler put into cheeks, which she felt appeared more hollowed after the 1st procedure. That 2nd procedure was done on November 16, 2021.
13. First, Ms. Speed alleges the Clinic was negligent in how they performed both procedures and says she looked “freakish” after the 1st procedure. She submitted no photos. The photos contained in the Clinic’s evidence do not show any obvious problem in her facial appearance. Ms. Speed submitted no expert evidence from another cosmetician or physician. In the absence of obvious defects, I find expert evidence is required because this is a technical matter outside ordinary experience (see *Bergen v. Guliker*, 2015 BCCA 283). Here, there is none. I also note Ms. Speed signed a consent form in October 2021 for the eye filler procedure, acknowledging there are risks and that results were not guaranteed. Further, Ms. Speed’s own email after the 1st procedure is inconsistent with her assertion she appeared freakish. The fact that Ms. Speed may have wanted more filler after the 1st procedure does not mean the Clinic (or Dr. Rosenthal) negligently performed that 1st procedure. So, for all these reasons I find it unproven the Clinic was negligent in performing the procedures.
14. Second, Ms. Speed initially argued the Clinic improperly charged her for the 2nd procedure. However, in her submissions she admits that the Clinic told her the associated cost was the claimed \$1,228.50 and that she “reluctantly mumbled and nodded my head” because she wanted her “face fixed”. I find Ms. Speed consented to the charge and chose to have the 2nd procedure completed knowing she would have to pay for it. So, I find the Clinic did not mislead Ms. Speed about the charges. I dismiss the \$1,228.50 aspect of Ms. Speed’s claim.
15. With that, I also dismiss the \$300 “time spent” aspect of Ms. Speed’s claim, since she was unsuccessful with her main allegations. I would have dismissed the \$300 in any

event, as under the CRT's rules time spent is generally not compensated except in extraordinary cases. This is not an extraordinary case.

16. 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. As Ms. Speed was not successful, I find she is not entitled to reimbursement of CRT fees. The Clinic did not pay CRT fees or claim any dispute-related expenses.

ORDER

17. I dismiss Ms. Speed's claims and this dispute.

Shelley Lopez, Acting Chair and Vice Chair