



Civil Resolution Tribunal

Date Issued: September 15, 2022

File: SC-2021-008637

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cedar Sky Chiropractic Inc v. Lam*, 2022 BCCRT 1022

BETWEEN:

CEDAR SKY CHIROPRACTIC INC

APPLICANT

AND:

HUE LAM and DES FRIEDLAND (Doing Business As DES
FRIEDLAND & ASSOCIATES)

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about payment for alleged chiropractic and other treatments.
2. The applicant, Cedar Sky Chiropractic Inc (Cedar), says the respondent, Hue Lam, received several treatments at its clinics related to a motor vehicle accident (MVA). Cedar says Ms. Lam signed a direction to pay instructing her lawyer in the MVA

proceeding, the other respondent Des Friedland (Doing Business as Des Friedland & Associates), to hold back proceeds of any settlement or judgment resulting from Ms. Lam's MVA claim to cover Cedar's treatment fees. Cedar says Mr. Friedland and Ms. Lam have not honoured the direction to pay. Cedar claims \$3,230 in unpaid treatment fees.

3. Ms. Lam says she was advised that payments were going to be made by her lawyer or insurer when her MVA claim settled. She says she was unaware Mr. Friedland had not paid Cedar. Ms. Lam does not dispute that she received some treatments from Cedar, but disputes the extent of Cedar's claimed treatments.
4. Mr. Friedland says he was never sent a direction to pay. He also says some of Cedar's claimed treatments were not provided as alleged in any event.
5. Cedar is represented by its principal, Du Phan. Mr. Friedland is self-represented. Ms. Lam is also self-represented. However, Mr. Friedland provided evidence for both himself and Ms. Lam, and Ms. Lam adopted Mr. Friedland's submissions as her own.

JURISDICTION AND PROCEDURE

6. 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.
7. 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, both parties in this dispute call into question the credibility, or truthfulness, of the other. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue

8. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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.
9. 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.
10. 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.

Other proceedings

11. The parties refer to other proceedings in BC Provincial Court in their evidence and submissions. However, those claims are unrelated and involve other parties, so I have not addressed them further in this decision.

ISSUE

12. The issue in this dispute is to what extent, if any, either Mr. Friedland or Ms. Lam are responsible to pay Cedar for its claimed treatment fees.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, as the applicant Cedar must prove its claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.
14. The parties agree to the following facts:
 - a. Ms. Lam attended Cedar's clinics after being in an MVA.
 - b. Mr. Friedland represented Ms. Lam in the "ICBC settlement process" for her MVA claim.
 - c. Ms. Lam signed a direction to pay provided by Cedar.
 - d. Cedar has not been paid for any services rendered.
15. The signed November 15, 2017 direction to pay in evidence directed Mr. Friedland to hold back proceeds of any settlement related to Ms. Lam's MVA claim and pay Cedar the full amount of fees due and owing for Ms. Lam's chiropractic, acupuncture, and acupressure treatments with Dr. Du. T. Phan and Nancy Song. More on the direction to pay below.

Is Mr. Friedland responsible to pay Cedar's claimed treatment fees?

16. As noted, Mr. Friedland says he did not receive the direction to pay or any list of treatments from Cedar before Ms. Lam's MVA claim resolved. Cedar says it sent Mr. Friedland its statement of account by fax and mail on January 31, 2020, before Ms. Lam's MVA claim was "closed". However, I note that in an agreed statement of facts completed by the parties, Cedar indicated that it was not aware when Ms. Lam's MVA claim resolved, and Ms. Lam and Mr. Friedland both agreed that Ms. Lam's MVA claim resolved around March 22, 2019. Given this, I accept Ms. Lam's MVA claim resolved around March 2019, and before Cedar says it sent Mr. Friedland its statement of account.

17. Further, Cedar did not say whether the direction to pay was included with the statement of account Cedar says it sent on January 31, 2020. The evidence shows that Mr. Friedland responded to an August 21, 2020 demand letter from Cedar's lawyer on September 2, 2020. Based on these letters, I find Mr. Friedland received the direction to pay by September 2, 2020 at the latest. However, the documentary evidence does not show that Cedar sent Mr. Friedland the direction to pay or its statement of account by fax, mail, or any other method before March 2019, when I find Ms. Lam's MVA claim resolved. Therefore, I also find it likely that Mr. Friedland was not aware of the direction to pay before he paid out the settlement proceeds to Ms. Lam. As noted, Cedar bears the burden of proving its claims. Here, I find Cedar has not proved that it sent Mr. Friedland the direction to pay before Ms. Lam's MVA claim resolved, and when Mr. Friedland would have paid out the settlement proceeds.
18. Even if Cedar did send Mr. Friedland the direction to pay before Ms. Lam's claim resolved, it is unclear on what basis Mr. Friedland would be personally liable to pay for Ms. Lam's treatments. However, given my finding above, it is unnecessary for me to address this issue. Given all the above, I dismiss Cedar's claims against Mr. Friedland.

Is Ms. Lam responsible to pay Cedar's claimed treatment fees?

19. Given the signed direction to pay, I find that Ms. Lam agreed to pay Cedar for any treatments she received. Therefore, I find Ms. Lam is responsible to pay for Cedar's proven treatments.
20. As noted, in its application for dispute resolution Cedar claimed \$3,230 for unpaid treatments provided to Ms. Lam between November 15, 2017 and September 8, 2018. Cedar provided a list of treatment fees with dates and amounts, totaling \$3,230. Cedar also provided dated treatment notes that correspond with all the dates on the list of treatment fees, except for one \$110 treatment fee on March 2, 2018.
21. Ms. Lam disputes the extent of treatments Cedar says it provided, including treatments on August 25, 2018 and September 8, 2018, when she was undisputedly

out of the country, and a March 2, 2018 treatment. However, in submissions Cedar reduced its total claim amount by \$330 (\$110 per appointment) to account for these disputed treatment dates. So, I find those treatment dates are no longer at issue in this dispute.

22. Cedar's revised claim is for \$2,900 in treatment fees between November 15, 2017 and August 11, 2018.

23. In a signed January 10, 2022 statement in evidence, Ms. Lam said she could not recall precisely how many treatments she received, but she did not think she had as many treatments as are reflected in the list of treatment fees. Ms. Lam also said she could state with some certainty that she did not receive 2 different types of treatment on each of November 20, 2017, November 23, 2017, and January 12, 2018. She said she was fairly confident as she believed she would recall receiving more than 1 treatment per day. However, she also said it was possible she did receive more than 1 treatment per day, and simply does not recall.

24. Although Ms. Lam said she did not recall having 2 different types of treatments on November 20, 2017, November 23, 2017, and January 12, 2018, she also said it was possible she did so. The list of treatment fees and treatment notes show that she received both chiropractic and massage treatments on those dates. Ms. Lam did not explain why she would not have received both chiropractic and massage treatments on the same day. In the absence of a further explanation for why she would not have obtained these two different treatments on the same day, I accept the treatment fee list and treatment notes accurately reflect the treatments Ms. Lam received on November 20, 2017, November 23, 2017, and January 12, 2018.

25. Ms. Lam and Mr. Friedland also argue that Cedar's other claimed treatment fees and treatment notes are unreliable, and either inaccurate or fabricated. As the parties making the allegation, Ms. Lam and Mr. Friedland bear the burden of proving the treatment fee list is inaccurate or fabricated. I do not find Mr. Friedland and Ms. Lam's evidence on this issue persuasive because much of the evidence in support of this allegation involves an unrelated client of Mr. Friedland. Further, the evidence

provided lacks specificity. In particular, it does not identify further specific discrepancies in the treatment fees list.

26. I acknowledge that there are some inaccuracies in Cedar's treatment fees list and treatment notes, including the August 25, 2018 and September 8, 2018 treatments when Ms. Lam was undisputedly out of the country, and the March 2, 2018 treatment that does not correspond with any treatment notes. However, Cedar's revised claim did not include those treatment dates, and I do not find that the inaccuracies make the treatment fees list and treatment notes unreliable as a whole. I say this because Ms. Lam undisputedly received several treatments from Cedar. As noted, she did not identify any further specific dates that she says Cedar charged her for treatments she did not receive. Given this, I find the list of treatment fees and treatment notes persuasive evidence of the treatments Ms. Lam received from Cedar. Therefore, apart from the disputed August 25, 2018, September 8, 2018 and March 2, 2018 treatment dates that are no longer at issue in this dispute, I accept that the list of treatment fees and treatment notes accurately reflect the treatments Ms. Lam received.

27. On balance, I find Cedar has proved it is entitled to payment of the treatment fees claimed. Therefore, I find Ms. Lam must pay Cedar \$2,900 for its unpaid treatment fees.

CRT fees, expenses, and interest

28. The *Court Order Interest Act* applies to the CRT. Cedar is entitled to pre-judgment interest on the \$2,900 debt award for unpaid treatment fees. Cedar did not say when the treatment fees were due. However, in its application for dispute resolution, it says it became aware of its claim in June 2020, and its lawyer sent a demand letter requesting immediate payment on August 21, 2020. Therefore, I find the treatment fees were payable by August 21, 2020 at the latest, and I find Cedar is entitled pre-judgment interest from August 21, 2020 to the date of this decision, which I find is reasonable in the circumstances. This equals \$34.64.

29. 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. As Cedar was substantially successful in this dispute, I find it is entitled to reimbursement of \$175 in CRT fees. None of the parties claimed dispute related expenses, so I award none.

ORDERS

30. Within 30 days of the date of this order, I order Ms. Lam to pay Cedar a total of \$3,109.64, broken down as follows:

- a. \$2,900 in debt,
- b. \$34.64 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

31. Cedar is entitled to post-judgment interest, as applicable.

32. I dismiss Cedar's claims against Mr. Friedland.

33. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Leah Volkers, Tribunal Member