



Civil Resolution Tribunal

Date Issued: August 20, 2024

File: SC-2023-004218

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ward-Hall v. Pham (dba Apple Beauty Salon)*, 2024 BCCRT 797

B E T W E E N :

PATRICIA ANNE WARD-HALL

APPLICANT

A N D :

MAI TUYET THI PHAM (Doing Business As APPLE BEAUTY SALON)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. This is a dispute about a permanent eyeliner procedure. The applicant, Patricia Anne Ward-Hall, received permanent eyeliner from the respondent, Mai Tuyet Thi Pham (doing business as Apple Beauty Salon). Mrs. Ward-Hall says Mrs. Pham negligently performed the eyeliner procedure which caused chemical burns to Mrs. Ward-Hall's

eyes. Mrs. Ward-Hall seeks \$5,000 for damages, reimbursement for eyeliner treatment, and for physiotherapy.

2. Mrs. Pham says she performed the eyeliner treatment in accordance with industry standards. Mrs. Pham says that Mrs. Ward-Hall caused their own injuries by rubbing their eyes after the procedure.
3. Both parties are self-represented.

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 *Civil Resolution Tribunal Act* (CRTA) section 118. 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.
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 and I find that an oral hearing is not necessary.
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 court.
7. Where permitted by CRTA section 118, 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 Mrs. Pham was negligent in performing the permanent eyeliner procedure and, if so, whether Mrs. Ward-Hall is entitled to their claimed damages.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mrs. Ward-Hall must prove their claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. Mrs. Ward-Hall went to Mrs. Pham's salon on December 21, 2022. Mrs. Ward-Hall and Mrs. Pham have different accounts of the procedure. Mrs. Ward-Hall says that when they sat up from the procedure all the ink bled into their eyes and immediately burned both of their eyes with chemical burns. Mrs. Ward-Hall says they spent seven or eight hours in the salon waiting for the reaction to subside. Mrs. Ward-Hall says they went to the Peace Arch Hospital and was diagnosed with chemical keratitis.
11. Mrs. Ward-Hall says they suffered vertigo from stress and PTSD from the experience.
12. Mrs. Ward-Hall provided copies of a medical record from the Peace Arch Hospital and from the ophthalmologist they saw on December 22, 2022. The ophthalmologist diagnosed chemical keratitis. Mrs. Ward-Hall did not provide any medical records that diagnosed them with vertigo or PTSD after the procedure on December 21, 2022.
13. Mrs. Pham says that she informed Mrs. Ward-Hall of the risks prior to the procedure. These risks included mild redness and swelling for a few days. Mrs. Pham did not provide a copy of any release or waiver to notify Mr. Ward-Hall of the risks of the procedure. Mrs. Ward-Hall did not dispute that Mrs. Pham provided verbal information about the risks of the procedure. So, I find that Mrs. Pham communicated these risks to Mrs. Ward-Hall verbally and not in writing.

14. Mrs. Pham says that during the procedure Mrs. Ward-Hall was checked up multiple times and Mrs. Ward-Hall's eyelids were cleaned with single use cotton pads soaked in distilled water to avoid ink bleeding into their eyes.
15. Mrs. Pham says that the pigment is only applied to the outer skin of the eyelid and that the needle never touched Mrs. Ward-Hall's inner eyelid or eyeball.
16. Mrs. Pham also said that Mrs. Ward-Hall repeatedly rubbed their eyes. Mrs. Pham advised Mrs. Ward-Hall not to rub their eyes as this would make the normal redness and irritation worse.
17. Mrs. Ward-Hall's claim is in negligence. To establish negligence Mrs. Ward-Hall must prove that Mrs. Pham owed them a duty of care, she breached the required standard of care, and that the breach caused Mrs. Ward-Hall to suffer damages (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
18. I find that by providing permanent eyeliner services to Mrs. Ward-Hall, Mrs. Pham owed them a duty of care. At issue is the standard of care. Since permanent eyeliner is a technical procedure outside ordinary knowledge, I find expert opinion evidence is necessary to establish Mrs. Pham's required standard of care (see *Bergen v. Guliker*, 2015 BCCA 283).
19. Mrs. Ward-Hall did not provide any expert evidence to explain how Mrs. Pham failed to meet the standard of care for a permanent eyeliner procedure. Mrs. Ward-Hall only provided evidence of the injury to her eyes and the ophthalmologist's diagnosis. Mrs. Ward-Hall also said that Mrs. Pham was operating under an expired license. Mrs. Ward-Hall did not specify how the allegedly expired license contributed to an improper application procedure. So, I find that the status of Mrs. Pham's license is not relevant to whether she adequately performed the eyeliner procedure.
20. Mrs. Ward-Hall provided evidence of her injury, but the injury does not prove that Mrs. Pham's work was negligent. The ophthalmologist's report does not say if the chemical burn was caused by an improper application procedure or by Mrs. Ward-Hall rubbing their eyes.

21. I find that Mrs. Ward-Hall has not established that Mrs. Pham breached the required standard of care, and so Mrs. Ward-Hall has not shown that Mrs. Pham was negligent. For these reasons I dismiss Mrs. Ward-Hall's claim and this dispute.
22. As a result, I do not need to discuss Mrs. Ward-Hall's claim for damages in any detail. However, I note Mrs. Ward-Hall did not provide any evidence supporting their \$2,500 claim to have Mrs. Pham's allegedly negligent work redone, so I would have dismissed this aspect of their claim in any event.
23. 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. As Mrs. Ward-Hall was unsuccessful, I dismiss their claim for CRT fees. Neither party claimed dispute related expenses.

ORDER

24. I dismiss Mrs. Ward-Hall's claim and this dispute.

Mark Henderson, Tribunal Member