



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1341

APPLICANT PC

RESPONDENT OR

SECOND RESPONDENT T Limited

The Tribunal orders:

T Limited is to pay PC \$650.00 on or before 29 April 2021.
The claim against OR is dismissed.

Reasons:

1. In November 2020 PC contacted OR at T Limited enquiring about hair extensions. An appointment was made and keratin bond hair extensions were added to PC's hair.
2. PC now complains that the extensions were not properly installed as 12 of the extensions came out within the first 2 months. The extensions have now been removed and PC claims \$1,999.00, which includes \$80.00 per hour for reinstallation and travel, and damages for a burn to her scalp, loss of hair and embarrassment. The cost of installation was \$650.00.
3. Although OR was named personally as a respondent, I am satisfied that the contract was with T Limited and the claim against OR cannot succeed.
4. The issues I must consider are:
 - a. Were the services carried out with reasonable care and skill as required by s 28 CGA?
 - b. If not, what remedy is appropriate?

Were the services carried out with reasonable care and skill as required by s 28 CGA?

5. Where services are supplied to a consumer, s 28 of the Consumer Guarantees Act 1993 states that there is a guarantee that the service will be carried out with reasonable care and skill.
6. The burden is on PC to show that the services by T Limited were not carried out with reasonable care and skill. PC made a number of points including that she had not been notified that the appointment would be 4 hours long; or that the extensions might not work well on short hair; that she had been burnt; that her hair had been twisted on installation and a number of extensions fell out and that some of the extensions were done by M, who is a trainee.

7. I am satisfied that taken together, some of the points raised by PC amount to a failure by T Limited to take reasonable care and skill. I say that for the following reasons.

Not been notified that the appointment would be 4 hours long or that extensions might not work well on short hair

8. I am satisfied that PC has shown there was a lack of reasonable care and skill in regard to these issues. PC originally approached T Limited over Facebook enquiring about hair extensions using the 6D machine, which only takes 20 minutes. She asked whether this machine would also work on layered hair and sent a picture of her hair. OR responded that she was not sure whether the machine would work, but that if it did not, keratin bonds would. PC asked if there were any cost or time implications if keratin bonds were used instead. T Limited said it would take "a little longer".
9. PC gave evidence that as she had recently had surgery, it was not feasible for her to sit for 4 hours at a time. I accept her evidence that if she had known the extensions might take 4 hours to apply, she never would have booked an appointment.
10. At the hearing OR said she agreed that 4 hours was not a "little bit longer" than 20 minutes, and that anything up to an hour was a more reasonable interpretation. However, she said that she thought that even if keratin bonds were to be installed, it would not take more than an hour as she assumed that they would only be doing the back of PC's hair, not the sides. This is because the sides were quite short.
11. However, PC said that she had not been told before making the appointment that OR considered that the sides might be too short for extensions. Before making the appointment PC asked on Facebook whether extensions would work because she had "short hair and one side is approx 6 or 7cm long". OR responded that "as long as the hair is 2 inches below the hair it's fine to do". At the hearing OR agreed that there was an error in this statement, and it should have read "2 inches below the ear". I agree with OR that if the message had said this, it would have warned PC that there might be problems placing extensions on the side of her head, as the photograph clearly showed some of PC's hair was not below the ears. However, because of the error in OR's Facebook message, this was not brought to PC's attention. Again, I accept PC's evidence that she would not have made an appointment if she had thought it would only be possible to install extensions on the back part of her hair.
12. OR said that once PC had arrived for the appointment they discussed whether or not keratin bonds would work on the shorter sides of PC's hair. OR said she informed PC that her hair was a bit short, but that they could try them, although some might drop. She also said she told PC that if they did install extensions over the whole of PC's head, it would take up to 4 hours. She said PC responded "I'm here now".
13. PC denies being told at the beginning of the appointment that extensions might not work well on the sides of her head where the hair was short, or that the appointment might last for 4 hours. However, I do not need to make a finding about this point, because I am satisfied that there was a breach of the standard of reasonable care and skill with regards to the pre-booking advice given to PC. While it is inevitable that mistakes will be made, and this would not automatically lead to a finding that reasonable care had not been taken, in this case the error in the Facebook message went directly to whether or not the service being offered would give PC the outcome she desired. In combination with the fact that PC was not told prior to making an appointment that it could take up to four times longer than might reasonably be expected by the Facebook messages, I am satisfied there was a lack of reasonable care taken in regards to the pre-appointment communication by OR.

That PC had been burnt during installation

14. I find that there was no breach of reasonable care and skill with regard to the claim by PC that she had been burnt during installation, or that a shield should have been used to avoid this happening.
15. While there was clearly some discomfort to the scalp suffered by PC during the installation of the keratin bonds, both OR and M stated that they assessed PC and could see no redness or evidence of a burn. PC did not provide any evidence that she had suffered an actual burn, rather than some discomfort, which while unpleasant, might be taken to be an unwanted and unfortunate side effect of using a hot tool on hair.
16. While PC provided a letter from a friend stating that when she received keratin bond extensions from a different salon, a shield was used to protect her head from accidental burning, this evidence falls short of establishing that this was an invariable industry-wide practice. Both OR and M said that a shield would be used for training, but not thereafter. OR stated that the tool used for bonding the keratin extensions was only as hot as a curling iron, and that a shield was not necessarily required.
17. The evidence does not establish that T Limited failed to comply with industry standards and I find there was no breach of reasonable care and skill with regard to this issue.

That PC's hair had been twisted on installation and a number of extensions fell out

18. PC claimed that when M was installing the bonds, she twisted her hair before applying the bond, and that not only did that mean that a number of extensions fell out, but also meant that when the extensions fell out, they ripped her natural hair out as well.
19. I find there was no breach of the guarantee to take reasonable care and skill on this basis. I say this, because M accepted that when she was first putting in the bonds, the hair on PC's head was short, and M was twisting it to allow her to get a better grip on it. While PC stated that this would contribute to bonds falling out, she provided no evidence to support this view, other than her observations from watching online videos or examples. I accept the opinions of OR and M that twisting the hair might mean it did not sit as nicely, and might make the bond more noticeable, but that it should not make a difference to the longevity of the installation.
20. PC also claimed that the number of bonds that fell out of her hair, being 12, was excessive. She provided evidence from two friends, one who had one bond fall out, and another who had "a couple" fall out. While I understand the point PC was making, in my view this evidence does not establish, on the balance of probabilities, that 12 bonds falling out was unusual or evidence of a lack of reasonable care and skill. OR made the point that different people's hair respond to bonds in different ways. I also take into account that PC's hair was short, which may make a difference to how well the bonds stay in.
21. OR also provided evidence from MJ, an International Hair Extension trainer. That letter stated that it is normal for 10-12 strands to fall out after installation of keratin bonds.
22. Given the evidence outlined above, PC has failed to show a breach of reasonable care and skill on this basis.

Extensions installed by M, who is a trainee

23. PC claimed that there was a lack of reasonable care and skill by T Limited in allowing M to install the keratin bonds. PC referred to M as a trainee, and said she was not advised that M was a trainee, or asked for her consent about M installing them.
24. I find that there has been no breach of the guarantee to take reasonable care and skill on this basis. I do not accept that M was a trainee. M appeared at the hearing as a witness for T Limited. She told me that she had undertaken keratin bonds training seven years ago and used the skill on some clients on Dunedin. However, she had not installed keratin bonds for six years, as she preferred to install tape extensions. In my view M was appropriately qualified to install keratin bonds, although I accept PC's point that the length of time since M had installed keratin bonds is a relevant consideration.

25. While I understand PC's concern about M involvement, I have found that the evidence did not support a finding that the bonds installed by M were incorrectly installed, or that an excessive number fell out. Consequently, her involvement was not a breach of reasonable care and skill.

If not, what remedy is appropriate?

26. Section 32 of the Consumers Guarantee Act 1993 requires a consumer approach the supplier first if the failure can be remedied. In this case, PC contacted T Limited, and the first five extensions that had fallen out were reinstalled by OR.

27. However, I have found that PC only established a breach of reasonable care and skill with regard to the initial stages of the arrangement, where T Limited failed to properly outline the time required for the service, and the possibility it would not work well. I am satisfied that this failure was not one that could be remedied by T Limited after the work had been undertaken, and therefore PC is entitled to cancel the contract under s 32(b) of the Consumers Guarantee Act 1993.

28. I accept PC's evidence that had she been told about the time required, or the risk of failure, she would not have chosen to have the keratin bonds installed. In these circumstances, I am satisfied that it is appropriate that she receives a full refund of the price of the service, namely \$650.00.

29. I find that the other damages claimed by PC, including those of loss of hair and embarrassment are not reasonably foreseeable as liable to result from the failure to explain the service adequately. In addition, the Tribunal does not have jurisdiction to make an award of general damages for stress or embarrassment. Consequently, I do not award any further damages under this head.

Referee: Souness - DTR

Date: 8 April 2021



Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.