



Civil Resolution Tribunal

Date Issued: February 25, 2019

File: SC-2018-005479

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Micallef v. Tecson*, 2019 BCCRT 218

B E T W E E N :

Hunter Micallef

APPLICANT

A N D :

Katreena Tecson

RESPONDENT

A N D :

Hunter Micallef

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute about an altercation between the applicant and respondent by counterclaim, Hunter Micallef, and the respondent and counterclaim applicant, Katreena Tecson. The altercation occurred at a concert in Vancouver. The parties each claim compensation for injuries they suffered. They each say that the other was the aggressor.
2. Mr. Micallef claims \$2,039 for dental costs, lost work and emotional stress. Ms. Tecson claims \$1,458.95 for pain and suffering.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. 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 the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC

282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

6. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Did Ms. Tecson punch Mr. Micallef in the face or did Mr. Micallef run into Ms. Tecson?
 - b. Did Mr. Micallef bruise Ms. Tecson's leg?
 - c. Is either party entitled to compensation for injuries suffered at the concert?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, each applicant must prove their case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.

10. The following facts are not in dispute. Mr. Micallef and Ms. Tecson both attended a hip hop concert at a club in Vancouver on May 22, 2018. Both of them went with friends, but they did not know each other prior to the concert. Towards the end of the concert, both parties were on the dance floor. Mr. Micallef began jumping and dancing near Ms. Tecson, which she did not appreciate.
11. It is also not in dispute that Ms. Tecson's fist or hand contacted Mr. Micallef's mouth. The key question in this dispute is: did Ms. Tecson punch Mr. Micallef in the face, as he alleges, or did Mr. Micallef run into Ms. Tecson's hand, which she had raised to protect herself from his wild dancing, as she alleges?

Mr. Micallef's Account

12. Mr. Micallef says that when the artist began his last song, he and his friend moved to the front of the crowd. He says they began jumping and dancing in a non-aggressive way. He says Ms. Tecson was glaring at him and then unexpectedly punched him in the face. He says that she tried to punch him a second time but missed. He says he struck his arm out in self defence, but did not make contact with Ms. Tecson.
13. Mr. Micallef provided a statement from 3 witnesses who attended the concert with him: M.W., J.S. and A.G.
14. M.W. did not actually witness the incident, but states that she observed Ms. Tecson outside the venue after the concert. She says that Ms. Tecson was acting drunk and chaotic. M.W. says that Ms. Tecson's boyfriend had to restrain her.
15. A.G. says that Mr. Micallef was not drinking because he was the designated driver. She says that there was "rowdy" dancing, as one would expect at a rap concert. She says that she witnessed Ms. Tecson punch Mr. Micallef in the face twice.
16. J.S. says that towards the end of the concert, he and the applicant went on the dance floor and began "jumping around". He says that they were not being aggressive or confrontational. He says that Ms. Tecson was annoyed with their

dancing and “sucker punched” Mr. Micallef in the face. J.S. says that Ms. Tecson tried to throw a second punch, which Mr. Micallef dodged. Mr. Micallef spat on the floor near Ms. Tecson. Then, Ms. Tecson’s boyfriend “tackled” Mr. Micallef and security intervened.

17. Mr. Micallef emailed the club on May 24 seeking security footage of the incident. The club manager asked Mr. Micallef to provide details of the incident. Mr. Micallef said that during the last song, the crowd was getting excited and a “non-violent mosh” started in the dance floor. Mr. Micallef says that Ms. Tecson pushed him and then sucker punched him in the teeth.
18. In an email to Mr. Micallef, the club confirmed that it did not retain video surveillance of the incident.

Ms. Tecson’s Account

19. Ms. Tecson says that during the last song of the performance, Mr. Micallef began disrupting the crowd with aggressive dancing. She says that Mr. Micallef shoved and interfered with other people on the dance floor. She says that he collided with her multiple times. She told him to stop, but he kept going. She says that she extended her arm as a defensive technique and he collided with it. She says that after the contact, he spat at her. She does not think that the collision was strong enough to chip a tooth, and in any event, says that it was self defence. She says that she would have preferred to just move away from Mr. Micallef but the crowd prevented her from leaving.
20. Ms. Tecson’s boyfriend, D.V., and 2 friends, J.P. and J.R., also provided statements.
21. D.V. says that during the concert, the people on the dance floor were holding phones and drinks. He says that Mr. Micallef began moshing with no regard for anyone around him. He says that Ms. Tecson asked him to stop but he refused. He says that he jumped against her and bumped into other concertgoers. He says that

Ms. Tecson extended her arm to prevent Mr. Micallef from jumping on her again. He says that Mr. Micallef spat at Ms. Tecson and tried to punch her. He says that he tried to confront Mr. Micallef but he got away. Outside the nightclub, he says that Mt. Micallef and Ms. Tecson yelled obscenities at each other, and that he approached Mr. Micallef to confront him. He says there was no physical confrontation between him and Mr. Micallef.

22. J.P. did not see the incident where Ms. Tecson's fist contacted Mr. Micallef's face, but says that she saw Mr. Micallef take a swing at Ms. Tecson. She says that Mr. Micallef had tried to start a mosh pit on the dance floor by jumping and shoving those around him.
23. J.R. says that during the concert the crowd became more animated. She says it was because Mr. Micallef was trying to start a mosh pit that no one else wanted. Like J.P., she did not see the incident but says that she saw Mr. Micallef try to punch Ms. Tecson.

Whose account is more credible and reliable?

24. Faced with conflicting evidence from the parties and witnesses, it is impossible to know with certainty what happened on the dance floor on the night in question. I must assess the credibility of the parties and witnesses and the reliability of their evidence. Credibility is about whether a person is being fully truthful in their evidence. Reliability is about whether a person's evidence is accurate, regardless of their intentions. For the reasons that follow, I find that Ms. Tecson's account is more credible and reliable.
25. There are a number of matters that can impact on the credibility of one account over another. In this dispute, most of them do not apply. Both parties were clear and firm in their evidence. Both of their stories were internally consistent and consistent with their past statements and with their witness's statements. At the same time, the parties' statements and their witness's statements were not so consistent to suggest that they colluded to provide similar evidence.

26. I find that both parties are, for the most part, attempting to be truthful. Both parties tried to obtain the security footage from the venue. If either of them were fabricating evidence, I find that they would not have sought out such objective evidence. Unfortunately, the venue did not retain any video footage of the incident.
27. I rely on 2 aspects of the parties' evidence to determine that Ms. Tecson's account is more credible and reliable
28. First, while I do not find that Mr. Micallef has attempted to be untruthful in his account of what he believes happened, I find that Mr. Micallef tried to downplay the effect of his dancing on the rest of the crowd. There is a photograph of the concert and it shows that the dance floor was crowded. Mr. Micallef says that he only joined the front of the dance floor for the last song, which I find would have required him to stake out space on a dance floor that was already full. "Moshing" is a form of dancing at concerts that generally involves the participants jumping, shoving and bumping into each other. In this context, it is difficult to understand how a person could non-aggressively or non-violently begin moshing. I find that even a good-natured attempt to start moshing on a crowded dance floor would have caused contact between Mr. Micallef and other dancers, whether they wanted it or not. Therefore, I find that Mr. Micallef either downplayed, or failed to understand, that his dancing was disruptive.
29. In contrast, Ms. Tecson made concessions that were contrary to her interests, which is an indication that she was being forthright in her evidence. She does not deny the fact that her fist contacted Mr. Micallef's face. She also readily admits to yelling obscenities at him outside the club after the show when their groups confronted each other. This admission does not paint Ms. Tecson in a favourable light but she does not hide from it.
30. Second, and more importantly, it is a well-established legal principle that in assessing credibility, a court or tribunal must assess a story based on whether it is in harmony with what a practical and informed person would consider to be reasonably likely. In other words, I must consider which story is more consistent

with common human experience, based on the place and time the incident occurred.

31. In this regard, I consider Ms. Tecson's account to be the most likely description of what happened. Mr. Micallef says that he was jumping around and dancing on a crowded dance floor, but his story about how he came to be hit in the face suggests that it happened slowly and deliberately. I find this unlikely in the context of a crowded and energetic dance floor. In contrast, I find that Ms. Tecson's reaction to being knocked by Mr. Micallef was reasonable and plausible.
32. Furthermore, in the time leading up to the incident, Mr. Micallef and J.S. were jumping around while Ms. Tecson and her friends were relatively stationary. I find that their ability to observe what happened was better than Mr. Micallef and J.S. Accordingly, I find their accounts more reliable.
33. Taking all of that into account, I find that the most likely series of events is as follows. Mr. Micallef and J.S. began moshing near Ms. Tecson and her friends. Mr. Micallef bumped into Ms. Tecson, which she did not appreciate. To prevent being bumped further, she reached her arm out and Mr. Micallef ran into it while continuing to jump around. Mr. Micallef was stunned by the contact and assumed that Ms. Tecson had punched him intentionally when he saw her outstretched hand. Mr. Micallef's friends assumed the same thing. He spat because he had been struck in the face, but did not spit on or at Ms. Tecson.
34. To be clear, I do not find that Mr. Micallef or any of the witnesses who supported him are being intentionally untruthful in his evidence. Rather, I find that they made a faulty assumption about Ms. Tecson's behaviour. I find that Ms. Tecson's defensive posture and the fact that her hand contacted Mr. Micallef's face could easily be seen by witnesses as a deliberate punch.
35. Because I find that Mr. Micallef made contact with Ms. Tecson, and not the other way around, I dismiss his claims for compensation for his injuries. Given this conclusion, I do not need to discuss the merits of his claims.

36. As for Ms. Tecson's counterclaim, she says that she suffered bruising on her leg because Mr. Micallef bumped her on the dance floor. As discussed above, I find that Mr. Micallef likely bumped Ms. Tecson as alleged. I accept Ms. Tecson's evidence that she suffered a bruise.
37. When a person intentionally touches another person, they commit the tort called battery unless they can make out a defence, such as consent. While being on a crowded dance floor requires a person to implicitly consent to a certain amount of inevitable physical contact, I find that Ms. Tecson did not consent to being bumped hard enough to cause a bruise on her leg.
38. Ms. Tecson claims \$1,458.95, most of which is lost income from her part-time job and other out-of-pocket losses. The physical injury on Ms. Tecson was insignificant. There is no evidence that it stopped her from doing anything or caused any lasting harm or discomfort. Most of her submissions in her counterclaim relate to the emotional impact of this dispute and feeling wrongfully accused, not the incident itself. For example, she provided a Facebook screenshot that she says proves her decreased productivity, but it is from November 2018. She also claims the cost of work tools that she was unable to use, but these purchases are from August and September 2018.
39. While being involved in a civil dispute is often stressful and time consuming, it generally does not form a basis for compensation. I find that Ms. Tecson failed to prove any losses as a result of her bruised leg.
40. Ms. Tecson also claims an unspecified amount for pain and suffering. There is no medical evidence in support of this claim. For the reasons discussed above, I am not satisfied that Ms. Tecson suffered an emotional injury as a result of the battery.
41. When a battery occurs but the person does not suffer any physical or emotional injury, the person may only be entitled to "nominal damages". Nominal damages are a symbolic award of money to acknowledge that the defendant infringed a legal right even though they did not cause any damage. For example, in *Han v. Cho*,

2009 BCSC 458, the defendant became frustrated and slapped the plaintiff in the face. The Court acknowledged that the slap did occur, which was a battery, but found that the slap did not cause and emotional or physical harm. The Court awarded \$10 in nominal damages.

42. I find that an award of nominal damages is appropriate in this case. I find that the bruise is more akin to a slap on the face than a compensable personal injury. I award Ms. Tecson \$25 in nominal damages.
43. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Even though I awarded Ms. Tecson nominal damages, I find that she was partially successful in her counterclaim. I find Ms. Tecson is entitled to reimbursement of \$62.50, which is half of her tribunal fees of \$125. She did not claim any dispute-related expenses. Mr. Micallef was not successful in his claim, so I dismiss his claim for tribunal fees.

ORDERS

44. Within 14 days of the date of this order, I order Mr. Micallef to pay Ms. Tecson a total of \$87.50, broken down as follows:
 - a. \$25 as nominal damages for battery, and
 - b. \$62.50 in tribunal fees.
45. Mr. Micallef's claims are dismissed.
46. Ms. Tecson's remaining claims are dismissed.
47. The applicant is entitled to post-judgment interest, as applicable.
48. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection

under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

49. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Eric Regehr, Tribunal Member