



Civil Resolution Tribunal

Date Issued: September 29, 2020

File: SC-2020-004118

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chirdaris v. Paladin Security Group Ltd.*, 2020 BCCRT 1096

B E T W E E N :

BILLY CHIRDARIS

APPLICANT

A N D :

PALADIN SECURITY GROUP LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute over an alleged assault and battery. The applicant, Billy Chirdaris, says a security guard employed by the respondent, Paladin Security Group Ltd. (Paladin), assaulted him while attempting to escort him out of a hospital. In particular, Mr. Chirdaris says the guard grabbed his left arm aggressively and also threatened to throw him to the ground. Mr. Chirdaris claims \$2,000 in general

damages for mental and physical pain and suffering, \$2,000 in punitive damages, and \$500 in aggravated damages, for a total of \$4,500.

2. Paladin denies the alleged “arm grab” battery occurred. Paladin also says its guard simply advised Mr. Chirdaris to “curb his aggressive and inappropriate behaviour” or he would be removed according to hospital policy.
3. Mr. Chirdaris is self-represented. Paladin is represented by JD, an employee or principal.

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). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
6. 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, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

8. I note Mr. Chirdaris objects to late evidence submitted by Paladin. As noted above, the CRT's mandate includes flexibility and as Mr. Chirdaris had the opportunity to review and respond to that evidence, I find it should be admitted and I have considered it below.

ISSUE

9. The issue in this dispute is whether a Paladin guard unlawfully assaulted Mr. Chirdaris, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, as the applicant Mr. Chirdaris bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. On December 15, 2019, Mr. Chirdaris attended hospital following an ankle fracture. Mr. Chirdaris says that after his transfer from a stretcher to a wheelchair, his foot had poor support and he was in extreme pain. He says he tried to tell a nurse and a counter clerk about his need for a bed or chair to provide better support, but he says they did not acknowledge his request. I note the nurse or clerk are not named respondents nor is their employer, which I infer is the hospital. Here, I note Mr. Chirdaris had amended his claim to remove "Interior Health Authority Operating As Kelowna General Hospital" as a respondent.
12. Mr. Chirdaris says that after his "persistent asking" for help from the hospital staff, a Paladin security guard intervened and said that if Mr. Chirdaris did not stop trying to distract staff, he would be asked to leave. Mr. Chirdaris admits he then argued with the guard, and admits that after making the same request for help again he was asked to leave. None of this is disputed.
13. Mr. Chirdaris says a family member BC wheeled him to the door, but Mr. Chirdaris insisted it was his right to get treated. Mr. Chirdaris submitted a statement from BC

who wrote that Mr. Chirdaris had “started to cause a scene”, prompting BC to wheel him outside. BC wrote that Mr. Chirdaris “shook the door” as he was being wheeled out and that one of the Paladin guards said, “you are not welcome here and that you lost your privilege to be here”. BC wrote that an argument ensued and the guard called for backup. BC wrote about 5 guards showed up and further arguing ensued, and that one of the guards “grabbed” Mr. Chirdaris’ left arm. BC did not describe the grab as aggressive, but said that Mr. Chirdaris “protested” after which one guard said, “I’m gonna put you to the ground and the RCMP is going to remove you from the property if you don’t comply”. There is no suggestion that the Paladin guard ever did throw Mr. Chirdaris to the ground or made any physical contact beyond the alleged arm grab.

14. As referenced above, Mr. Chirdaris says the Paladin guard breached their duty, used excessive force, and was grossly negligent. Paladin denies a battery occurred. Paladin also says its guard’s warning to Mr. Chirdaris that it would have him removed from the hospital if he failed to stop his disruptive behaviour was not an assault.
15. First, I agree with Mr. Chirdaris that Paladin is vicariously responsible for its employees’ actions in the context of this dispute, which is not disputed.
16. Second, the law on assault and battery. They are two distinct torts, with assault being about threats of imminent harm and battery being about actual physical contact. I will address assault first. As set out in *Johal v. Mangat*, 2020 BCSC 1148, a decision submitted by Mr. Chirdaris, an assault is the intentional creation of the apprehension of imminent harmful or offensive contact.
17. People who engage in fights cannot complain of the injuries they suffer unless the force used is excessive or unnecessary (see for example *Petersen v. Stadnyk et al*, 2006 BCSC 806). While Mr. Chirdaris did not engage in a physical fight, BC’s and his own evidence shows he was increasingly disruptive on hospital property. The evidence shows hospital staff more than once called for Paladin security to deal with Mr. Chirdaris.

18. Here, the alleged assault is the Paladin guard telling Mr. Chirdaris if he did not calm down, he would be either “thrown” or “put” on the ground, depending on whether I accept Mr. Chirdaris’ or BC’s version of things. I do not accept that a Paladin guard threatened to “throw” Mr. Chirdaris to the ground, particularly given at the material time Mr. Chirdaris was in a wheelchair. That version is not supported by BC or by the hospital records and RCMP report in evidence. The RCMP report concluded, after reviewing the hospital’s video surveillance, that no threats had been made and that Paladin security had only told Mr. Chirdaris he would be removed from the chair to the ground to await police if he did not calm down. On balance, I find there was no verbal assault because I find Paladin did not intentionally create Mr. Chirdaris’ apprehension of imminent harmful or offensive contact. I say this because I accept Paladin was putting Mr. Chirdaris on notice of what would happen only if he did not stop his behaviour.
19. I turn to the tort of battery, which refers to any non-trivial direct physical contact. Once the contact is proven, the onus shifts to the respondent to establish the contact was neither intentional nor negligent. As noted, Paladin denies its guard grabbed Mr. Chirdaris’ arm, which conclusion I find is supported by the RCMP report in evidence that notes the RCMP constable saw no physical contact on the video footage. I find the contact is not proven. I place less weight on BC’s evidence where it contradicts with the RCMP report whose author had the benefit of reviewing the video surveillance, given BC is Mr. Chirdaris’ family member and so is not a neutral witness.
20. Further, on both Mr. Chirdaris’ and BC’s evidence, Mr. Chirdaris resisted removal, and his argumentative behaviour escalated and that he “shook the door” of the hospital while being escorted out. In context, even if a Paladin guard had “grabbed” Mr. Chirdaris’ arm, I would not find Paladin liable for the tort of battery because I find the grab as described was not negligent in the circumstances.

21. I turn back to the issue of the video tape reviewed by the RCMP. Mr. Chirdaris speculates that the video reviewed by the RCMP “could have been altered and manipulated” to not show the guard grabbing Mr. Chirdaris.
22. There is no video in evidence in this dispute and the evidence before me indicates it no longer exists. Mr. Chirdaris says Paladin destroyed the footage and so Paladin should be held liable for spoliation, which refers to legal consequences for the destruction of relevant evidence. I disagree. Based on the evidence before me the hospital or health authority owns and possesses the hospital security video, and so I find it is not under Paladin’s control. There is no evidence before me that Mr. Chirdaris took steps to ask anyone, including the hospital, to secure a copy of the video. As noted above, the hospital is not a party to this dispute. I find the absence of the security video does not assist Mr. Chirdaris and I am not prepared to speculate as he suggests that the RCMP officer had reviewed an altered video. I also place no weight on Mr. Chirdaris’ speculative assertion in his final reply submission that he “thinks” a company affiliated with Paladin runs the relevant video security systems.
23. In summary, I have found above that the torts of assault and battery are not proven. So, I do not need to consider Mr. Chirdaris’ claimed damages in any detail. However, even if I had found Paladin liable, I would not have awarded the damages as claimed.
24. First, Mr. Chirdaris failed to provide any medical evidence to support his claims, and I note his acknowledgement that his counsellor declined to provide supporting evidence. Parties are told to submit all relevant evidence and the CRT’s mandate includes the speedy and efficient resolution of disputes. In the absence of any medical evidence, I would not have granted the general damages for pain and suffering as claimed. I also note there is no evidence of any wage loss, and no medical records at all documenting any injury resulting from the alleged arm “grab”. Next, the case law is clear that punitive damages are reserved for harsh, vindictive, and oppressive behaviour and there is no evidence that a Paladin guard engaged in

such conduct in all of the circumstances. Similarly, there is nothing in the evidence that suggests Paladin's alleged behaviour would warrant aggravated damages, in the admitted circumstances. I would have dismissed the aggravated and punitive damages claims in any event.

25. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees and reasonable dispute-related expenses. Paladin was successful but did not claim CRT fees or dispute-related expenses. As Mr. Chirdaris was unsuccessful, I dismiss his claim for reimbursement of CRT fees and expenses.

ORDER

26. I order Mr. Chirdaris' claims and this dispute dismissed.

Shelley Lopez, Vice Chair