



Civil Resolution Tribunal

Date Issued: May 12, 2021

File: SC-2020-007924

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aiple v. Bains*, 2021 BCCRT 502

BETWEEN:

CARL AIPLE

APPLICANT

AND:

GURIQBAL BAINS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about dog bites. The applicant, Carl Aiple, says he was bitten by a dog, Rexx, owned by respondent, Guriqbal Bains on 2 occasions in March 2020. Mr. Aiple works as a mail delivery person for Canada Post and he says he was bitten by Guriqbal Bains' dog while delivering mail. Mr. Aiple claims \$5,000 in personal injury damages.

2. Guriqbal Bains says they are not responsible for Mr. Aiple's injuries and say that Rexx is not aggressive and Mr. Aiple provoked the dog.
3. Mr. Aiple is self-represented. Guriqbal Bains is represented by a family member.

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). 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.
5. 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. 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.
6. 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.
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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

Withdrawal

8. By making a CRT application for dispute resolution, I find that Mr. Aiple has abandoned any claim for monetary compensation in excess of the CRT's \$5,000 monetary limit for small claims disputes. I have considered whether Mr. Aiple has withdrawn this agreement by stating in his application for dispute resolution that, if a settlement offer was not accepted, he would withdraw this dispute and make 2 court claims instead. I find this statement was not a withdrawal request since it was conditional and Mr. Aiple did not subsequently make an unconditional request to withdraw the dispute. So, I find that Mr. Aiple has not requested a withdrawal of this dispute or withdrawn his agreement to abandon any amount that exceeds the CRT's \$5,000 monetary limit for small claims.

Late evidence

9. I note that Mr. Aiple submitted evidence late. I find that Guriqbal Bains was not prejudiced by the late evidence because they had an opportunity to respond. So, I have allowed Mr. Aiple's evidence and I have considered it in my decision.

Workers Compensation Act (WCA)

10. I have considered whether the CRT has the jurisdiction to resolve this dispute since Mr. Aiple's alleged injuries occurred while he was delivering mail as part of his employment. I gave both parties an opportunity to provide submissions about this issue, which I have reviewed and considered in my decision.
11. Section 127(1)(a) of the WCA says that the WCA's compensation scheme takes the place of any legal or contractual right or claim by a worker, against an employer or worker, about a personal injury that arises out of and in the course of employment. Section 128 of the WCA says that if a worker has an injury claim against an individual who is not the applicant's employer, the applicant can make a claim to WorkSafeBC or bring a civil action. I find that Mr. Aiple, as a worker in the course of his employment, had the right under WCA section 128 to decide which alternative legal route to pursue

and, I find that the CRT has jurisdiction to resolve this dispute since Mr. Aiple elected to make a civil claim against Guriqbal Bains.

ISSUES

12. The issues in this dispute are:

- a. Does Guriqbal Bains owe Mr. Aiple damages for his injuries under the doctrine of scienter because Guriqbal Bains knew that that Rexx allegedly had dangerous tendencies?
- b. Does Guriqbal Bains owe Mr. Aiple damages for his injuries because they allegedly were negligently in failing to control Rexx?
- c. Did Mr. Aiple cause or contribute to the attacks by allegedly provoking Rexx?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant, Mr. Aiple, must prove his claim on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

14. Mr. Aiple says, and Guriqbal Bains does not dispute, the following:

- Rexx bit Mr. Aiple's left arm on March 10, 2020 while Mr. Aiple was walking near Guriqbal Bains' residence.
- Rexx bit Mr. Aiple's left hand while Mr. Aiple was walking near Guriqbal Bains' residence on March 23, 2020.
- During both incidents, Guriqbal Bains lost control of Rexx's leash and Rexx escaped.

15. Since the above allegations are not disputed, I accept them as accurate.

16. Mr. Aiple argues that Guriqbal Bains admitted liability by offering to settle this dispute. However, I find that the settlement offer was an attempt to resolve a disputed claim rather than an admission of liability. So, I have not considered the settlement offer in this decision.
17. In BC, there is no legislation presuming dogs are dangerous. Since the repeal of the *Animals Act* in 1981 there is no legislation in BC reversing the onus so as to require Guriqbal Bains to prove their dog was not dangerous. As noted above, Mr. Aiple bears the burden of proof.
18. In BC, a pet owner can be liable for the action of their pet by occupier's liability, the legal principal of 'scienter', and negligence. Occupier's liability is where damage happens on property controlled by the occupier, which is not applicable in this dispute as both incidents occurred outside of Guriqbal Bains' property. I will consider whether Mr. Aiple proved liability based on scienter or negligence for the March 10, 2020 and March 23, 2020 incidents separately.

March 10, 2020 incident

19. To prove scienter, Mr. Aiple must show that at the time of the attack:
 - a. Rexx was Guriqbal Bains' dog,
 - b. Rexx had shown an inclination or tendency to cause the type of harm that happened, and
 - c. Guriqbal Bains' knew of that tendency (see *Xu v. Chen & Yates*, 2008 BCPC 0234, citing *Janota-Bzowska v. Lewis* [1997] B.C.J. No. 2053 (BCCA)).
20. Rexx was undisputedly Guriqbal Bains' dog. However, I find there is insufficient evidence that Rexx had an aggressive history or that Guriqbal Bains knew of such a history. Mr. Aiple says that Guriqbal Bains' representative told a bylaw inspector that Rexx did not like Mr. Aiple. However, Mr. Aiple's summary of the bylaw inspector's conversations with Guriqbal Bains' representative is double hearsay since he is repeating a conversation that was described to him. While hearsay evidence is

admissible in CRT proceedings, I find this double hearsay statement is unreliable since Mr. Aiple did not hear the conversation directly and so I give this evidence no weight. Further, even if this statement was considered, I would not find a statement that Rexx did not like Mr. Aiple sufficient to prove that Rexx had dangerous tendencies anyway. I find scienter is not proven for the March 10, 2020 attack.

21. Turning to negligence, I find that Guriqbal Bains had a duty of care to people near Rexx such as Mr. Aiple. In *Xu*, the court held that the standard requires owners to reasonably control their dogs to prevent injuries. The standard is not perfection.
22. It is undisputed Rexx was leashed but somehow escaped from Guriqbal Bains' control and bit Mr. Aiple's left arm. However, there is no explanation of how Rexx escaped or what measures Guriqbal Bains took to restrain Rexx. In the absence of evidence of how Rexx escaped their control, I find that Mr. Aiple has not proved that Guriqbal Bains breached the standard of care.
23. For the above reasons, I find that Guriqbal Bains is not responsible for Mr. Aiple's March 10, 2020 dog bite injuries.

March 23, 2020 incident

24. Guriqbal Bains provided multiple witness statements saying that Rexx is not aggressive and they provided videos and photographs showing friendly interactions with Rexx. Guriqbal Bains also provided a behaviour evaluation of Rexx that says that Rexx does not appear to be dangerous.
25. However, I find that nothing turns on this evidence about Rexx's nature because the March 10, 2020 incident, that Guriqbal Bains knew about, is sufficient to establish scienter. Since Guriqbal Bains knew of Rexx' dangerous nature based on Rexx's prior biting attack, they are strictly liable for the dog bite injuries (*McLean v. Thompsons*, 2009 BCPC 415 (CanLII).) So, I find that Guriqbal Bains is liable for Mr. Aiple's injuries from the March 23, 2020 biting incident under scienter.

26. Where scienter is made out, courts may still rely on negligence principles, particularly where the injured person or dog owner was partially at fault (see e.g., *Xu*). Turning to negligence, I find Guriqbal Bains had a duty, knowing that Rexx had recently attacked Mr. Aiple on March 10, 2020, to restrain Rexx. However, it is undisputed that Rexx was leashed when the incident occurred and there is no evidence before me showing how Rexx escaped Guriqbal Bains' control. So, I find that Mr. Aiple has not proved that Guriqbal Bains was negligent.
27. Guriqbal Bains argues that Mr. Aiple was responsible for his own injuries because he provoked Rexx by unnecessarily approaching it. Mr. Aiple denies provoking Rexx and says he was just walking along his mail route. Essentially, I find that Guriqbal Bains argues that Mr. Aiple was contributorily negligent by instigating the attack. Guriqbal Bains says that Mr. Aiple provoked Rexx the dog. In the absence of further evidence of provocation, I am not satisfied that Mr. Aiple contributed to this incident by approaching Rexx. So, I find that Guriqbal Bains has failed to prove that Mr. Aiple was partially responsible for his injuries by provoking Rexx.
28. So, I find that Guriqbal Bains is liable for damages for Mr. Aiple's personal injuries suffered during the March 23, 2020 attack under scienter.

Damages

29. Mr. Aiple has the burden of proving his damages. He has not described the extent of his injuries or whether his injuries resolved but he has provided photographs which appear to show a puncture hand injury.
30. Mr. Aiple also provided a March 23, 2020 emergency room report. I find that the medical report qualifies as a business record prepared in the ordinary course and I accept that the report accurately documents the physician's observations at the time. Further, I find that the report meets the criteria for an expert report under CRT rule 8.3 because I find that the physician has sufficient education, training and expertise to prepare medical opinions.

31. The medical report says Mr. Aiple suffered a bite injury to his left hand on March 23. The medical report does not note pain complaints or recommend further treatment other than dressing the injuries. Given the nature of the injuries and the photographs, I infer that Mr. Aiple has suffered pain from his injury. However, I do not infer that this pain was intensive since pain complaints were not documented. Based on the medical report and the photographs, I accept that Rexx's bite attack injured Mr. Aiple's hand.
32. In the decision of *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, the Supreme Court of Canada says "minor and transient upsets do not constitute personal injury, and hence do not amount to damage." Based on the size of the puncture wound shown in the photographs, I find that Mr. Aiple's hand injury was not transient.
33. As set out in *Kilian v. Valentin*, 2012 BCSC 1434, non-pecuniary damages compensate for pain, suffering, disability, and loss of enjoyment of life. In *Stapley v. Hejslet*, 2006 BCCA 34, the Court of Appeal set out the factors to be considered for calculating a non-pecuniary award:
 - Applicant's age,
 - Nature of the injury,
 - Severity and duration of pain,
 - Disability,
 - Emotional suffering,
 - Loss or impairment of life,
 - Impairment of family, marital and social relationships,
 - Impairment of physical and mental abilities, and,
 - Applicant's stoicism (a factor that should not penalize the applicant).
34. In this matter, I have considered that the photographs show a significant puncture wound. However, I have also considered that Mr. Aiple has not reported any pain and there is no evidence before me that Mr. Aiple's injuries caused him to miss work or

that his injuries caused a significant impact on his function or activities. There is also no evidence before me that the injury has caused scarring or lasting injury.

35. I have also considered previous non-pecuniary damage awards for dog bite injuries with similar non-extensive injuries. In *Sam v. Minister of Public Safety & Solicitor General*, 2005 BCSC 331 (CanLII), the plaintiff was awarded non-pecuniary damages of \$2,000 for a minor dog bite injury to the groin and abdomen. In that case, the applicant had lacerations that did not need suturing and their wound fully healed in 6 weeks without difficulty, leaving scars. In *Strynatka v. Forbes*, 2002 BCPC 481 (CanLII), a child was bit in the face leaving faint scarring and was awarded \$2,500 in non-pecuniary damages. In *Kerby (Guardian of) v. Visco*, 1994 CanLII 553 (BCSC), the court awarded \$2,000 non-pecuniary damages for face laceration injuries and a small abdomen scar from a dog attack.
36. On balance, in consideration of the above factors, and previous non-pecuniary damage awards, I find that Mr. Aiple has proved that he is entitled to an award of \$2,000 for non-pecuniary damages in this dispute.
37. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Aiple is entitled to pre-judgment interest on the damages from March 23, 2020, the date of his injury, to the date of this decision. This equals \$18.43.
38. 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. I find Mr. Aiple is entitled to reimbursement of \$175 in CRT fees. Mr. Aiple did not claim reimbursement of dispute-related expenses.

ORDERS

39. Within 30 days of the date of this order, I order Guriqbal Bains to pay Mr. Aiple a total of \$2,193.43, broken down as follows:
 - a. \$2,000 as non-pecuniary damages for dog bite injuries,

- b. \$18.43 in pre-judgment COIA interest, and
- c. \$175 in CRT fees.

40. Mr. Aiple is entitled to post-judgment interest, as applicable.

41. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

42. 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. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Richard McAndrew, Tribunal Member