



Civil Resolution Tribunal

Date Issued: June 10, 2021

File: SC-2020-006950

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Griffiths v. Bahmutsky*, 2021 BCCRT 643

B E T W E E N :

MARIAN GRIFFITHS and MORGAN GRIFFITHS

APPLICANTS

A N D :

MICHAEL (MOSHE) BAHMUTSKY AND IRINA BAHMUTSKY

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This is a small claims dispute about alleged conduct between neighbours in a strata corporation.

2. The first applicant, Marian Griffiths, owns a strata lot in a strata corporation, The Owners, Strata Plan KAS 3860 (strata). The other applicant, Morgan Griffiths, is Ms. Griffiths' adult son, who lives with her in the strata lot.
3. The respondents, Michael (Moshe) Bahmutsky and Irina Bahmutsky, own a strata lot next door to Ms. Griffiths'.
4. The strata is not a party to this dispute, but is a party to a related dispute, ST-2020-003257, which I discuss below.
5. The Griffiths say that the Bahmutskys damaged their video cameras, ipads, speaker, trees, and plants. They also say Mr. Bahmutsky physically attacked Mr. Griffiths, "hacked" into the Griffiths' computers, internet and phones, and caused them mental anguish. The Griffiths request the following remedies in this dispute:
 - \$5,000 in damages.
 - An order that the Bahmutskys must stop harassing the Griffiths, killing their plants, and hacking their internet and phones.
 - An order that the Bahmutskys must return the Griffiths' hacked emails, restore their ipads, and take down their surveillance cameras.
6. The Bahmutskys deny the Griffiths' claims, and say this dispute should be dismissed.
7. The Griffiths' originally requested \$5,800 in damages, and filed their claims as counterclaims to the related strata property dispute, ST-2020-003257. However, For reasons explained in my decision on dispute ST-2020-003257, the Griffiths' claims do not fit within the Civil Resolution Tribunal's (CRT's) strata property jurisdiction. With the parties' consent, the Griffiths' claims were re-classified as this separate small claims dispute. The Griffiths' agreed to reduce their damages claim to \$5,000 in order to fit within the CRT's monetary limit for small claims disputes
8. All parties in this dispute are self-represented.

9. For the reasons set out below, I dismiss the Griffiths' claims and this dispute.

JURISDICTION AND PROCEDURE

10. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says 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.
11. 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. Both parties in this dispute question the credibility, or truthfulness, of the other. Credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances 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. Also, in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is in issue.
12. 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 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.

13. 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.

ISSUES

14. The issues in this dispute are:
 - a. Have the Griffiths proven their claims for property damage, mental anguish, or assault?
 - b. If so, what remedies are appropriate?

EVIDENCE AND ANALYSIS

15. In a civil claim like this one, the Griffiths, as applicants, bear the burden of proving their claims on a balance of probabilities (meaning “more likely than not”). I have only addressed the evidence and arguments to the extent necessary to explain my decision.
16. For the following reasons, I find the Griffiths have not proven their claims against the Bahmutskys.

Plants

17. The Griffiths say the Bahmutskys caused 2 trees and 2 shrubs to die. I find this claim is not proven by the evidence before me. There is no evidence showing where these plants were, or that they died. Also, there is no evidence showing that the Bahmutskys caused the plants to die, or how. I therefore dismiss the claim about plants.

Video Cameras

18. The Griffiths say Mr. Bahmutsky “took control” of their video surveillance cameras, and set off the cameras’ alarms. They also say he “lasered” their video cameras

numerous times, rendering them useless. They say he also rendered the cameras' speaker and controller useless.

19. I find the Griffiths have not proven these claims about their cameras and related equipment. They provided some photos showing green lights on their patio area, I find this evidence does not establish the source of the light, what it is, or that it damaged their equipment. The Griffiths also provided no evidence about their video cameras, to establish that they were destroyed, or what destroyed them. So, I dismiss this claim.

Harassment

20. The Griffiths say the Bahmutskys have harassed them. There is no recognized tort of harassment in British Columbia. In addition, I find the evidence before me does not support the conclusion that the Bahmutskys harassed either Mr. or Ms. Griffiths. There is extensive video footage in evidence, primarily from the Bahmutskys. I find this evidence shows that there was a high level of conflict on both sides of this dispute, at least some of which was instigated by Mr. Griffiths. For example, the video evidence shows that Mr. Griffiths at times made loud noises on the back patio area, played loud music, and insulted Mr. Bahmutsky.
21. Based on the evidence before me, I dismiss the Griffiths' claim for a remedy about harassment.

Computer Hacking

22. The Griffiths say that Mr. Bahmutsky hacked their iPads and caused them not to work, and stole emails from their devices. They also say Mr. Bahmutsky hacked their internet and phones, and took control of their surveillance cameras and related equipment.
23. I find the Griffiths have not proven these claims. First, they provided no evidence about their iPads, phones, or internet connection. Thus, there is no evidence before

me that their devices and internet did not work, and no evidence that any lack of function was caused by Mr. Bahmutsky.

24. The only evidence on these points the Griffiths provided was information showing that Mr. Bahmutsky received postsecondary training in computers in another country. Mr. Bahmutsky denies this, and denies the claims of hacking and tampering.
25. Even if I accept that Mr. Bahmutsky had computer training, I find this is not sufficient to prove that he hacked into or damaged the Griffiths' devices or internet. First, as noted above, there is no evidence confirming that the alleged damage or hacking occurred, or confirming any problems with the Griffiths' iPads, phones, or internet. Second, I find that the question of whether device or internet problems were caused by hacking or tampering is generally outside the knowledge and experience of an ordinary person: see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 119. Rather, I find that expert evidence would be required to establish these claims. There is no expert evidence before me, such as a report or invoice from a computer technician.
26. In summary, I find the Griffiths have not proven that the Bahmutskys stole any information from them, such as emails. The Griffiths have not provided details about what emails were allegedly stolen, when, or how. Also, the Griffiths did not provide evidence to support their monetary claim for \$5,000 in damages, such as receipts for equipment repairs or replacement.
27. For these reasons, I find the Griffiths have not proven their claim of device and internet hacking. I dismiss these claims.

Physical Assault

28. The Griffiths say that Mr. Bahmutsky physically attacked Mr. Griffiths, causing Mr. and Ms. Griffiths to suffer mental anguish.
29. I find the evidence before me does not establish that Mr. Bahmutsky attacked Mr. Griffiths. The evidence shows there was an incident between the 2 men on March

22, 2020. I place significant weight on the video surveillance footage of the incident provided by the Bahmutskys, as I find it gives the most objective account of what occurred. The footage shows Mr. Bahmutsky jogging in circles around the common property lawn in front of the parties' strata lots. At certain points in the video, Mr. Griffiths yells and swears at Mr. Bahmutsky, insults him numerous times, and pokes at him with a stick-like object. Mr. Griffiths also threatened to spit in Mr. Bahmutsky's face and mouth. I cannot tell from the video whether any spitting occurred.

30. The Griffiths provided a signed statement from a neighbour, BS, dated August 15, 2020. BS wrote that on March 22, 2020, he saw Mr. Bahmutsky hit Mr. Griffiths and knock him down.
31. I am not persuaded by BS's statement. First, it was written several months after the events in question, which leads me to put less weight on it. Second, and more importantly, I find it inconsistent with the video footage. There is a post covering part of the video shot, and at some points, the 2 men are not visible in the shot. However, at the point where Mr. Griffiths yells that Mr. Bahmutsky ran into him, Mr. Bahmutsky is jogging past the post, and is only out of the shot for a second. After that second, Mr. Griffiths instantly steps out from behind the post in an upright position, and strikes at Mr. Bahmutsky's back with a rake handle. I find that this video evidence does not support the conclusion that Mr. Bahmutsky hit Mr. Griffiths, or knocked him down. While it is possible that Mr. Bahmutsky physically contacted Mr. Griffiths as he ran by, I find this was not an assault. I also note that the video shows that Mr. Griffiths deliberately stepped into the narrow pathway on which Mr. Bahmutsky was jogging.
32. I find that overall, BS's evidence is not consistent with the video evidence, as described above. Also, the video clearly shows Mr. Griffiths, on more than one occasion within the span of a few minutes, verbally abusing Mr. Bahmutsky, repeatedly threatening him, and poking at him with a stick-like object (shorter than

the rake handle). At another point, Mr. Griffiths chased Mr. Bahmutsky, and kicked at his back. Later, he sprayed Mr. Bahmutsky with a water hose.

33. I do note that the video shows that instead of leaving the situation, Mr. Bahmutsky continued to jog in circles in Mr. Griffith's vicinity. He also appeared to taunt Mr. Griffiths at least once.
34. In any event, I find the evidence before me does not establish that Mr. Bahmutsky assaulted Mr. Griffiths. Also, it appears from the evidence, including Ms. Griffiths' written statement, that the alleged mental anguish claimed by the Griffiths arose at least in part from the RCMP's conduct. The RCMP were called during or after the incident, and Ms. Griffiths says an RCMP officer shot at Mr. Griffiths with a "dart" and injured him. I find Mr. Bahmutsky is not liable for any conduct by the RCMP.
35. For all of these reasons, I dismiss the Griffiths' claims for assault and mental anguish.
36. The Griffiths were unsuccessful in this dispute. In accordance with the CRTA and the CRT's rules, I find they are not entitled to reimbursement of CRT fees or dispute-related expenses.
37. I address the Bahmutskys' claim for reimbursement of fees and expenses in my related strata property decision.

ORDER

38. I dismiss the Griffiths' claims, and this dispute.

Kate Campbell, Vice Chair