



# Civil Resolution Tribunal

Date Issued: July 30, 2021

File: SC-2020-009355

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chu v. Zavarukhina*, 2021 BCCRT 840

BETWEEN:

CARMEN CHU

**APPLICANT**

AND:

ALEXANDRA ZAVARUKHINA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about a dog attack.
2. The applicant, Carmen Chu, owns a corgi named Sora. The respondent, Alexandra Zavarukhina, owns 2 huskies. Miss Chu says one of Ms. Zavarukhina's huskies

attacked Sora, causing Sora injury which required veterinary care. Miss Chu also says the incident caused her emotional damage and stress. Ms. Chu claims \$1,500 in damages for Sora's veterinary expenses, counselling expenses for herself, and undue stress.

3. Ms. Zavarukhina says Sora provoked the dog attack and that both parties are responsible for the incident because both dogs were off leash at the time. Ms. Zavarukhina disputes the extent of Sora's injuries and denies responsibility for Miss Chu's counselling costs.
4. Both parties are self-represented.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.

8. 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.
9. As a preliminary matter I note that the Dispute Notice was issued against “Sasha” Zavarukhina, based on Miss Chu’s application for dispute resolution. However, Ms. Zavarukhina identified herself as Alexandra Zavarukhina in her Dispute Response. Miss Chu has consented to amend the style of cause to reflect Ms. Zavarukhina’s correct name. So, I have amended the style of cause above to show Alexandra Zavarukhina as the respondent.

## **ISSUE**

10. The issue in this dispute is whether Ms. Zavarukhina is responsible for the dog attack and, if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this one, the applicant Miss Chu must prove her claims on a balance of probabilities. I have reviewed the submissions and weighed the evidence provided by both parties. I only refer to that evidence I find relevant to this dispute.
12. It is undisputed that both parties were in a local mountain park with their respective dogs on November 29, 2020. It is also undisputed that all dogs were off leash when the incident occurred.
13. Miss Chu says she was hiking on the trail with Sora when she saw a husky dog attack Sora from behind, pin him down and start biting Sora. Signed witness statements from Miss Chu’s sister (V) and V’s boyfriend (W) both say they saw Sora pinned down and being bitten by the husky, although did not see the initial attack. V says she heard both dogs barking before she saw Sora pinned down. It is undisputed that W, V and Miss Chu broke up the dog fight. It is also undisputed that Ms. Zavarukhina did not

see the dog attack. I accept that the dog attack occurred as Miss Chu described, with the husky attacking Sora, pinning him down and biting him.

14. It is also undisputed that the husky that attacked Sora was one of Ms. Zavarukhina's dogs. I accept this as true because Ms. Zavarukhina says she heard dogs barking ahead of her then called her dogs back to her. This is consistent with V and W's statements that the husky dogs left when they were called by someone.
15. It is further undisputed that, immediately after the dog attack, Miss Chu discovered that the base of Sora's left ear was bleeding. This is supported by photos submitted by Miss Chu and videos submitted by Ms. Zavarukhina, both of which were taken either immediately after, or shortly after, the incident.
16. In British Columbia there are three ways for an owner to be responsible for a dog's actions: a) the legal concept known as "scienter", b) negligence, and c) occupier's liability under the *Occupier's Liability Act*. As the incident did not occur on property owned or controlled by Ms. Zavarukhina, I find occupier's liability does not apply here.
17. Scienter is when a dog has previously shown a tendency to cause the type of harm that happened here and the dog's owner knew of that tendency (see *Janota-Bzowska v. Lewis*, 1997 CanLII 3258 (BCSC)). There is no indication that Ms. Zavarukhina's husky had previously attacked or shown aggression toward another dog. So, I find scienter also does not apply here.
18. I now turn to negligence. To succeed, Miss Chu must show that Ms. Zavarukhina owed a duty of care, failed to meet the expected standard of care, and that the failure caused the claimed damages that must have been reasonably foreseeable. In *Martin v. Lowe*, 1980 CanLII 546 (BCSC), the court said a dog owner has a duty to ensure their dog is sufficiently under control so that it will not escape to injure someone or damage their property. In that case, an unleashed dog knocked down a person on a sidewalk, causing injury. While the dog attack in this dispute occurred in a park rather than on a sidewalk, I find the same duty of care applies. I find Ms. Zavarukhina owed

Miss Chu a duty of care to reasonably control her dog and prevent attacks on other animals.

19. According to a screenshot from the park's website submitted by Ms. Zavarukhina, pets are required to be leashed at all times in the park. It is undisputed that neither Sora, nor the huskies, were leashed at the time of the attack. Ms. Zavarukhina says the dog interaction would not have occurred if both dogs had been leashed. I find that Ms. Zavarukhina failed to keep her dog leashed, as required in the park, and failed to keep her dog under control. I find Ms. Zavarukhina failed to meet the standard of care required of a dog owner.
20. Ms. Zavarukhina says that Miss Chu is partly responsible for the dog attack because Sora was not leashed either, as required. I disagree because there is no indication that Sora being on a leash would have prevented the husky from jumping on, and pinning Sora, from behind. I also disagree with Ms. Zavarukhina that Sora provoked the attack because Sora barked at the husky when passing Ms. Zavarukhina and her group earlier. On balance, I find Ms. Zavarukhina was negligent because she failed to keep her dog sufficiently under control and that failure resulted in Ms. Zavarukhina's dog attacking Sora.
21. As noted, it is undisputed, and I find, that Sora's ear was torn or bitten during the attack. It is also undisputed that Miss Chu took Sora to an animal hospital where the veterinarian stitched up Sora's ear. Although Ms. Zavarukhina disputes that Sora's wound needed stitches, I find it did, based on the November 29, 2020 animal hospital records that state wound repair was needed. I further find the 1.5 cm laceration noted on the hospital records are consistent with the wound shown in both Miss Chu's photos and Ms. Zavarukhina's videos of Sora's ear, shortly after the incident. On balance, I find Sora's ear injury was caused by Ms. Zavarukhina's negligence in failing to keep her husky dog under control. I further find the \$667.21 animal hospital charge to treat Sora's ear injury was reasonably foreseeable and so find Ms. Zavarukhina must reimburse Miss Chu that cost.

22. I now turn to Miss Chu's claim for counselling costs, emotional damage, and stress.
23. As discussed in the non-binding but persuasive decision *Eggberry v. Horn et al*, 2018 BCCRT 224, a claim for stress or emotional damage, must be supported by medical evidence to be successful. Here, Miss Chu relies on an April 29, 2021 letter from a registered clinical counsellor, Celeste Jieni.
24. Ms. Jieni says Miss Chu reported physical, psychological, and cognitive symptoms of Post-Traumatic Stress Disorder (PTSD) when she first saw Ms. Jieni on March 22, 2021. Miss Chu's symptoms were triggered by her dog being attacked on November 29, 2020 and worsened over time. Based on Ms. Jieni's letter, I find Miss Chu did experience mental distress from the November 29, 2020 incident and that she sought counselling to treat those symptoms. In her submissions, Miss Chu says she feared Sora could have been more gravely injured in the interaction. I find it reasonably foreseeable that a dog owner could become emotionally distressed and require counselling after witnessing their dog being attacked. There is no indication that Ms. Jieni counselled Miss Chu for anything other than the documented PTSD symptoms arising from witnessing Sora's attack. So, I find Ms. Zavarukhina must reimburse Miss Chu her counselling costs.
25. Based on Ms. Jieni's April 9 and April 23, 2021 counselling receipts, I find Miss Chu paid \$131.25 for each counselling session, for a total of \$262.50. Given the dates in Ms. Jieni's letter, I find Miss Chu attended at least one earlier counselling session with Ms. Jieni but find Miss Chu has not proven any further counselling expenses. So, I find Ms. Zavarukhina must reimburse Miss Chu \$262.50 for counselling costs.
26. I decline to award any damages to Miss Chu for future counselling costs, as she has not proven that she will incur such costs. Ms. Jieni's letter does not specify how many further counselling sessions Miss Chu may need to treat her emotional distress, or what the cost of those sessions may be. So, I find Miss Chu's reasonably foreseeable damages are limited to the counselling expenses she has already incurred.

27. The *Court Order Interest Act* (COIA) applies to the CRT. I find Miss Chu is entitled to pre-judgment interest on the veterinarian and counselling expenses from the invoice dates to the date of this decision. This totals \$2.35 in pre-judgment interest, broken down as follows:

- a. \$0.18 interest on \$131.25 counselling expenses from April 9, 2021 to the date of this decision,
- b. \$0.16 interest on \$131.25 counselling expenses from April 23, 2021 to the date of this decision, and
- c. \$2.01 interest on \$667.21 veterinarian expenses from November 29, 2020 to the date of this decision.

28. 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 Miss Chu is entitled to reimbursement of \$125 in CRT fees. She claimed no dispute-related expenses.

## **ORDERS**

29. Within 30 days of the date of this order, I order Ms. Zavarukhina to pay Miss Chu a total of \$1,057.06, broken down as follows:

- a. \$262.50 as reimbursement for counselling expenses,
- b. \$667.21 as reimbursement for veterinarian expenses,
- c. \$2.35 in pre-judgment interest under the COIA, and
- d. \$125 in CRT fees.

30. Miss Chu is entitled to post-judgment interest, as applicable.

31. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.
32. 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.

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Sherelle Goodwin, Tribunal Member