



# Civil Resolution Tribunal

Date Issued: February 22, 2022

File: SC-2021-004835

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bahmutsky v. Griffiths*, 2022 BCCRT 184

B E T W E E N :

MICHAEL BAHMUTSKY and IRINA BAHMUTSKY

**APPLICANTS**

A N D :

MARIAN GRIFFITHS and MORGAN GRIFFITHS

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. The applicants, Michael Bahmutsky and Irina Bahmutsky, and the respondent Marian Griffiths are neighbouring owners in a townhouse complex. The respondent Morgan Griffiths is Ms. Griffiths' adult son and lives in her townhouse.

2. The Bahmutskys allege Mr. Griffiths physically and verbally “abused” Mr. Bahmutsky on March 22, 2020 (March incident). They also allege that Mr. and Ms. Griffiths made unreasonable noise and flashlight light at night, disturbed their renovations, damaged their basement wall, and “vandalized” their balcony plants and a strata common property (CP) flowerbed. They claim \$5,000 in total damages. They also seek an order that Mr. and Ms. Griffiths stop the “physical and verbal abuse, disturbance (verbal, loud music, flash light), unreasonable noise, racial slur, vandalizing our property”.
3. The Griffithses deny the Bahmutskys’ claims and say the issues have already been decided in 2 previous Civil Resolution Tribunal (CRT) disputes: a strata property dispute ST-2020-003257 (*Bahmutsky-ST*) and a small claims dispute SC-2020-006950 (*Griffiths-SC*).
4. Mr. Bahmutsky represents the Bahmutskys and the Griffithses were each self-represented.

## **JURISDICTION AND PROCEDURE**

5. 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). 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.

### ***Preliminary Decision***

9. On October 8, 2021, a CRT member issued an unpublished preliminary decision about whether the CRT should refuse to resolve this dispute. She concluded that the claims about the March 22, 2020 incident were not already decided in *Bahmutsky-ST* or *Griffiths-SC* and allowed the dispute to proceed. I note she made no findings or orders about the nuisance, renovation disturbance, property damage or vandalism claims.
10. The CRT member's preliminary decision is not binding on me and I must come to my own conclusion as I am assigned to resolve this dispute. As set out below, I have resolved the Bahmutskys' claims over the March incident and the alleged balcony vandalism and refused to resolve the rest.

### ***Injunctive Relief***

11. As mentioned, the Bahmutskys seek an order that the Griffithses stop certain behaviours. An order requiring a person to stop doing something is called an "injunction" or in the context of assault or battery, it is a protective or restraining order. The CRT does not have authority to grant general injunctive relief or to issue restraining orders under its small claims jurisdiction and so, I decline to make this requested order.
12. Although it is not listed as a claimed remedy in the Dispute Notice, the Bahmutskys ask the CRT to allow them to continue to have security cameras installed for safety

reasons. The CRT has no authority under its small claims jurisdiction to grant an order declaring that the Bahmutskys can keep their cameras installed. To the extent they are seeking an order that the strata corporation allow them to keep the cameras, I cannot make an order against the non-party strata. So, I decline to grant any remedy about the security cameras.

## **ISSUES**

13. The issues in this dispute are:

- a. Should I resolve the Bahmutskys' claims?
- b. If so, to what extent, if at all, are the Griffithses liable for the claimed damages?

## **BACKGROUND AND ANALYSIS**

14. In a civil proceeding like this one, as the applicants the Bahmutskys must prove their claims on a balance of probabilities (which means "more likely than not"). I refer only to the evidence and argument that I find relevant to provide context for my decision. I note the Griffithses filed a Dispute Response but chose not to provide any argument or evidence in response to the Bahmutskys' claims, despite being given an opportunity to do so.

### ***Should I resolve the Bahmutskys' claims?***

15. A legal principle called *res judicata* prevents parties from bringing multiple legal proceedings about the same issues. If a claim was already resolved through another legally binding process, the CRT may refuse to resolve it under section 11(1)(a)(ii). Under CRTA 11(1)(b) the CRT may also refuse to resolve a claim if it considers it to be an abuse of process.

16. The CRT decisions for *Bahmutsky-ST* and *Griffiths-SC* were companion decisions published the same day, June 10, 2021.

17. In *Bahmutsky-ST*, the Bahmutskys filed a strata property dispute against Ms. Griffiths and the strata corporation under CRTA section 121. The Bahmutskys alleged various strata bylaw breaches, including the bylaw prohibiting nuisance and interference with the use and enjoyment of common property and their strata lot (townhouse). Mr. Griffiths was not a respondent in *Bahmutsky-ST* but many of the Bahmutskys' allegations were directed at him and the March incident was part of their claim. They alleged Mr. Griffiths smoked on common property, interfered with their renovations, damaged a flowerbed, made racist slurs against them, and verbally and physically abused them. They requested \$5,000 in damages and an order that Mr. Griffiths not live or visit Ms. Griffiths' strata lot. I find the Bahmutskys make these same allegations in the dispute that is before me.
18. Ms. Griffiths filed a Dispute Response in *Bahmutsky-ST*, along with a counterclaim for damages for an alleged physical "attack", mental anguish and "hacking" of their electronic devices. The alleged attack is about the March incident at issue here. Because Ms. Griffiths' counterclaim did not fall under the CRT's strata property jurisdiction, the CRT re-classified it as a separate small claims dispute, which is *Griffiths-SC*. For some reason, the tort claim parts of *Bahmutsky-ST* were not similarly re-classified as a small claim dispute.
19. In the counterclaim that became *Griffiths-SC*, Ms. and Mr. Griffiths were the applicants and the Bahmutskys were the respondents. In their response to *Griffiths-SC*, the Bahmutskys denied the claims and alleged Mr. Griffiths had verbally and physically attacked them in March 2020. However, the Bahmutskys did not file a counterclaim for damages from the alleged verbal and physical abuse from the March incident. As mentioned, the Bahmutskys damages claim over alleged verbal and physical abuse from the March incident was part of *Bahmutsky-ST*
20. In *Bahmutsky-ST*, a Vice Chair refused to resolve the Bahmutskys' alleged verbal and physical abuse claim because she found it was a tort claim and could not be resolved under the CRT's strata property jurisdiction. So, I find the Bahmutskys' damages claim from the March incident was not resolved in *Bahmutsky-ST*.

21. The Vice Chair did make findings on the Bahmutskys' claims about the alleged flowerbed vandalism, wall damage, nuisance and interference with their renovation work, and dismissed those claims. I find these were the same claims that the Bahmutskys advance here.
22. In this dispute, the Bahmutskys argue that the Vice Chair's conclusions were wrong and asks that I come to a different conclusion. I have no authority to review another CRT member's decision and I find it would be an abuse of process to allow the Bahmutskys to relitigate the same issues. On that basis, I refuse to resolve the Bahmutskys' damages claims for the alleged flowerbed vandalism, alleged wall damage, nuisance and renovation disturbance, under CRTA section 11(1)(b).
23. Next, I consider whether the Bahmutskys' damages claim arising from the March incident that was the subject of *Griffiths-SC* is barred because of *res judicata* or more precisely, cause of action estoppel. As set out in *Cliffs Over Maple Bay (Re)*, 2011 BCCA 180, the test for cause of action estoppel has 4 required parts:
  - a. There must be a final decision of a court (or tribunal) of competent jurisdiction in the prior action,
  - b. The parties to the subsequent litigation must have been parties to or in privity with the parties to the prior action,
  - c. The cause of action and the prior action must not be separate and distinct, and
  - d. The basis of the cause of action and the subsequent action was argued or could have been argued in the prior action if the parties have exercised reasonable diligence.
24. As stated in *Dhillon v. Dhillon*, 2006 BCCA 524 at paragraph 31, courts have broad discretion to determine whether estoppel applies and the test is one of justice and fairness. I find the same test principles applies to the CRT's discretion.
25. In *Griffiths-SC*, the parties were the same as they are here and the dispute was a final decision involving the same March incident. The Vice Chair concluded that Mr.

Griffiths had attacked Mr. Bahmutsky and dismissed the Griffithses' claim. Since the Bahmutskys only participated as respondents to the Griffithses' claims, I find their damages claim was not resolved.

26. The question is whether the Bahmutskys' damages claim over the "physical and verbal abuse" could have been argued as part of *Griffiths-SC* if they had exercised reasonable diligence.
27. As discussed, *Bahmutsky-ST* proceeded through the CRT process at the same time as *Griffiths-SC* and the CRT only reclassified the Griffithses' claim over the March incident as a small claims dispute. So, I find the Bahmutskys most likely thought their own claim over the March incident would be resolved in *Bahmutsky-ST*. Because the *Bahmutsky-ST* and *Griffiths-SC* decisions were issued the same day, the Bahmutskys could not have known that the CRT Vice Chair would refuse to resolve the tort parts of their claims in *Bahmutsky-ST* until the decision was issued. As lay litigants, I find the Bahmutskys had not likely understood that a counterclaim was necessary in *Griffiths-SC* to advance a damages claim over the March incident. Due to the somewhat complex process and re-classification, I find they had no fair opportunity to argue their claim over the March incident even with reasonable diligence. So, I find the fourth part of the cause of action estoppel test is not met. I find the Bahmutskys are not stopped from bringing a claim for damages from the March incident. Considering the procedural irregularities, I find it is not an abuse of process to decide this part of their claim. So, in this decision, I resolve the Bahmutskys' damages claim about the alleged physical and verbal abuse over the March incident.
28. The last issue in this dispute is about alleged balcony plant vandalism. I find this claim is new and distinct from the claims raised in the other disputes and not previously resolved. As I also find it falls within the CRT's small claims jurisdiction, I resolve it here.
29. I turn then to discuss the Bahmutskys' claims.

## ***To what extent are the Griffithses liable for the claimed damages?***

### *March 2020 Incident*

30. The focus of the Bahmutskys' "physical and verbal abuse" claim is the March incident. Although they do not use these words, I find their claim is for common law assault and battery. To the extent the Bahmutskys are also alleging general harassment or "bullying", there is no such recognized tort in BC: *Total Credit Recovery v. Roach*, 2007 BCSC 530. So, my analysis is focused on the torts of assault and battery.
31. Assault occurs when one person, by way of an intended gesture or action, suggests imminent contact and intentionally causes apprehension or fear of contact in another person. A battery occurs when one person does make intentional physical contact with that other person. Proof of injury is not required to prove that a battery occurred, but the battery must be non-trivial, offensive, and a violation to the person who was battered. In both assault and battery, the person who feared the contact or was contacted had not consented to the contact: *Non-Marine Underwriters, Lloyds of London v. Scalera*, 2000 SCC 24.
32. In *Griffiths-SC*, the Vice Chair's findings of facts over the March incident are summarized in paragraphs 29 to 31 and I agree with the Vice Chair's analysis of those facts. However, in the proceeding before me there is some additional evidence in the form of a witness statement from a neighbour about spitting that was not before the Vice Chair and it is not clear whether she had all the same video footage submitted here. As I am resolving this dispute on the merits, I provide my own summary and findings on the evidence before me.
33. The incident occurred on March 22, 2020 while Mr. Bahmutsky was jogging on the common property lawn in front of the parties' attached townhouses. It is captured by the Bahmutskys' surveillance video. While a post obscures the 2 men at certain times, the majority of the incident is clearly captured in the video footage. Mr. Bahmutsky is seen jogging in circles from his patio, down and along the pond and back up along the lawn towards his patio. Mr. Griffiths is seen walking from his patio onto the lawn and stopping behind the post in line with Mr. Bahmutsky's running path. After Mr.



Bahmutsky emerges from behind the post, Mr. Griffiths yells that Mr. Bahmutsky ran into him. The video shows then Mr. Griffiths going after Mr. Bahmutsky and poking his body with a stick-like instrument. The video's audio captures Mr. Griffiths repeatedly yelling obscenities and ethnic and other slurs at Mr. Bahmutsky. Mr. Bahmutsky does not retaliate. He continues his jogging laps of the common property lawn.

34. At different points in the video, Mr. Griffiths is heard threatening Mr. Bahmutsky. Mr. Griffiths yells that Mr. Bahmutsky will get it in the "teeth this time", he is going to "smash" Mr. Bahmutsky's face and "they don't care if I knock you out". Mr. Griffiths also threatens Mr. Bahmutsky that he is going to spit in his face and mouth. While the video does not capture the spitting incident, the spitting sound can be heard on the audio and a witness statement corroborates that Mr. Griffiths spat on Mr. Bahmutsky. So, I find Mr. Griffiths spat on Mr. Bahmutsky. After spitting on him, Mr. Griffiths chases Mr. Bahmutsky down and kicks him in his back. Mr. Griffiths later soaks Mr. Bahmutsky with a water hose until Mr. Bahmutsky retreats into this covered patio.
35. I find on the video evidence that Mr. Griffiths threatened Mr. Bahmutsky with imminent harm and intentionally and physically interfered with Mr. Bahmutsky by poking him, spitting on him, and kicking him in the back. I find Mr. Griffiths' interference with Mr. Bahmutsky's body was non-consensual, non-trivial, offensive, and a violation of his person. I find assault and battery are presumptively made out and the onus shifts to Mr. Griffiths to establish any defence: *Andrews v Shelemey*, 2021 BCSC 2221 (*Andrews*).
36. As mentioned, the Griffithses made a blanket denial in the Dispute Response of all the Mr. Bahmutskys' claims but did not provide any submissions or explanation for Mr. Griffiths' actions shown in the video footage. Even if Mr. Bahmutsky bumped into Mr. Griffiths when he jogged past the post, which is not proven, I find it did not justify Mr. Griffiths' disproportionate reaction both threatening and attacking Mr. Bahmutsky. I find Mr. Griffiths has not established a legally recognized defence. I find Mr. Griffiths is liable for assault and battery against Mr. Bahmutsky.

37. There is no evidence that Ms. Griffiths engaged in conduct that would amount to assault or battery against Mr. or Ms. Bahmutsky. I also find Ms. Griffiths was not involved in the March incident. So, I dismiss the Bahmutskys' "physical and verbal abuse" claim against Ms. Griffiths.
38. I turn next to discuss Mr. Griffiths' liability for damages.
39. In a personal injury claim, non-pecuniary damages are awarded to compensate an applicant for pain, suffering, loss of enjoyment of life and loss of amenities. The compensation awarded should be fair to all parties, and fairness is measured against awards made in comparable cases. Each case depends on its own unique facts and the effect of the injuries on a plaintiff's particular circumstances must be taken into consideration: *Andrews* at paragraph 50.
40. Aggravated damages are compensatory damages intended to take into account intangible injuries such as distress and humiliation that may have been caused by a respondent's behaviour: *Vorvis v. Insurance Corporation of British Columbia*, 1989 CanLII 93 (SCC), [1989] 1 S.C.R. 1085 at 1099.
41. Punitive damages are also sometimes awarded in assault and battery cases. They are not awarded to compensate a victim but to deter the wrongdoer's conduct. They are only awarded where the wrongdoer's conduct is so outrageous or egregious that the court wants to condemn it. Its purpose is to deter others in society from behaving in a similar manner: see *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130, at para.196 (*Hill*).
42. I briefly reviewed past published court decisions on damages for assault and battery. Most decisions involve more significant injury, which is not present here. At the lower end, in *San Filippo v. Furness*, 2020 BCPC 164 (*San Filippo*), the BC Provincial Court awarded \$7,500 for non-pecuniary damages from an assault and battery. The battery was described as 1 minute long and "violent" physical attack. The claimant suffered pain, swelling, a concussion, and some minor scratches and contusions that resolved and spent time in emergency. The court did not award anything extra for aggravated

damages because “intangible loss of dignity and hurt feelings” was included in the \$7,500 award.

43. As a result of Mr. Griffiths’ assault and battery, Mr. Bahmutsky describes ongoing feelings of fear and humiliation. He also describes being physically “abused” and bullied but does not describe any specific physical injury and submitted no medical evidence. So, I find his physical injury was likely very minor. However, I am satisfied Mr. Bahmutsky experienced distress, fear, humiliation as a result of Mr. Griffiths’ intentional actions and that it lasted beyond the incident as they live next door to each other. In particular, I find it would have been scary and demeaning for a person to be threatened and physically attacked by a neighbour who was shouting hateful, ethnic slurs. It would also be humiliating to be spat on and hosed down in view of one’s neighbours in the strata complex. Without any comparable cases for guidance, I find \$500 is an appropriate sum for Mr. Bahmutsky’s non-pecuniary damages. As this sum also includes compensation for non-tangible injuries to dignity, I have not awarded anything extra for aggravated damages.
44. In *San Filippo*, the Provincial court noted that the wrongdoer’s violent conduct was “over-the-top and must be condemned” and awarded \$2,500 for punitive damages. The battery here was not physically violent like in *San Filippo* but I find Mr. Griffiths’ conduct was over-the-top in other ways. Mr. Griffiths not only physically threatened and attacked his neighbour in this strata complex but he did so while yelling hate filled words at Mr. Bahmutsky and about his ethnicity. The attacks lasted for about 10 minutes and in view of neighbours. I find it was also reprehensible that Mr. Griffiths spat bodily fluids at Mr. Bahmutsky’s body as this happened during a pandemic from COVID-19. Mr. Griffiths had mentioned the pandemic in the video, so I find he was aware of it. I find Mr. Griffiths’ conduct was egregious and must be condemned.
45. I am mindful that punitive damages must not be more than needed to condemn or deter the conduct. I have no evidence about Mr. Griffiths’ financial situation because he did not participate in this proceeding. On a judgment basis, I award \$1,000 in

punitive damages, which I find meets the objectives set out in *Hill* without being an excessive or disproportionate windfall for Mr. Bahmutsky.

46. In summary, I find Mr. Griffiths must pay Mr. Bahmutsky \$500 for compensatory damages and \$1,000 in punitive damages.
47. I note Ms. Bahmutsky was not seen in the video and does not say she witnessed the March incident. I find she has not proven that she suffered any injury herself as a result of the March incident or otherwise from the Griffithses. So, I dismiss her own claim for damages.

### Balcony Plants

48. The Bahmutskys make a general allegation that “unit 8031” trespassed onto their balcony and damaged their plants. Unit 8031 is Ms. Griffiths’ strata lot unit number. As mentioned, the Griffithses deny the claim but provided no submissions.
49. The Bahmutskys do not describe the trespass incident and there is no witness statement about it. As evidence, they only provided 2 photographs of their balcony plants. One plant is toppled out of its pot with some dirt near it but the plants do not appear broken or damaged.
50. I find the Bahmutskys have not established on a balance of probabilities that Mr. or Ms. Griffiths entered their balcony without permission (trespass) or damaged their plants. So, I find the Bahmutskys have not proven this claim and I dismiss it.

## **INTEREST, CRT FEES AND EXPENSES**

51. The Bahmutskys say they are entitled to 10% annual interest on the damages award because it the maximum amount stipulated in the *Strata Property Act* (SPA) for late payment of strata fees or special levies.
52. I find the maximum interest in the SPA does not apply to a damages award in tort. Instead, I find the *Court Order Interest Act* (COIA) applies and Mr. Bahmutsky is

entitled to pre-judgment interest on the \$1,500 damages award from March 22, 2020 to the date of this decision. The interest equals \$19.23.

53. 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. Only the Bahmutskys paid CRT fees for this dispute. As the Bahmutskys were partially successful in their claim against Mr. Griffiths, I find Mr. Griffiths must reimburse half their paid CRT fees for a total of \$87.50. As the successful party, I find that Ms. Griffiths does not owe the Bahmutskys any payment. None of the parties claimed dispute-related expenses.

## **ORDERS**

54. Within 30 days of this order, Mr. Griffiths must pay Mr. Bahmutsky a total of \$1,606.73, broken down as follows:

- a. \$1,500 in damages,
- b. \$19.23 in pre-judgment interest under the COIA, and
- c. \$87.50 in CRT fees.

55. Mr. Bahmutsky is entitled to post-judgment interest under the COIA as applicable.

56. I refuse to resolve the Bahmutskys' claims over the flowerbed vandalism, alleged wall damage, noise nuisance and renovation disturbance.

57. I dismiss the Bahmutskys' remaining claims.

58. 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.

59. 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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Trisha Apland, Tribunal Member