



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Everall v. The Hart Room Limited*, 2023 BCCRT 853

B E T W E E N :

WALTER EVERALL

APPLICANT

A N D :

THE HART ROOM LIMITED

RESPONDENT

A N D :

WALTER EVERALL

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. These 2 linked small claims disputes are about an incident at a bar. The 2 disputes are a claim and a counterclaim involving the same parties. So, I have issued a single decision for both disputes.
2. The applicant and respondent by counterclaim, Walter Everall, says a bartender attacked him while he was at a bar owned and operated by the respondent and applicant by counterclaim, The Hart Room Limited (HRL). Mr. Everall claims \$5,000 in damages for physical, mental and emotional damage he says resulted from the assault.
3. HRL does not dispute that there was an incident between Mr. Everall and its bartender and owner, George Hart, but denies responsibility for Mr. Everall's claimed damages. In its counterclaim, HRL says Mr. Everall refused to pay his bar tab and became aggressive with Mr. Hart. HRL says Mr. Everall assaulted Mr. Hart, and Mr. Hart was forced to defend himself. HRL collectively claims \$5,000 for Mr. Everall's unpaid "bar tab", lost sales during the incident, and loss of earnings due to alleged mental effects preventing Mr. Hart from bartending.
4. Mr. Everall is self-represented. HRL is represented by its owner, Mr. Hart.

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. In some respects, both parties in this dispute call into question the credibility, or truthfulness, of the other. The 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. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.
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.

ISSUES

9. The issues in this dispute are:
 - a. Did either Mr. Everall or Mr. Hart commit an assault or battery against the other?
 - b. Is Mr. Everall entitled to his claimed \$5,000 in damages for physical, mental and emotional damage resulting from the incident?
 - c. Is HRL entitled to the claimed \$5,000 for Mr. Everall's unpaid bar tab and HRL's alleged lost sales during the incident, and loss of earnings?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, Mr. Everall, as the applicant, must prove his claims on a balance of probabilities (meaning more likely than not). HRL bears the same burden for its counterclaims. I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.
11. The incident occurred between Mr. Everall and a bartender at HRL's bar on October 1, 2022. Based on HRL's submissions, I find the bartender at the time of the incident was HRL's owner, Mr. Hart. Therefore, I find Mr. Hart was acting as either HRL's agent or employee at the time of the incident. Although not argued specifically, I find HRL is vicariously responsible for Mr. Hart's actions as HRL's bartender in the context of Mr. Everall's claims. Mr. Hart is not a party to these disputes in his personal capacity.
12. Mr. Everall says he and his companion, RK, ordered one beer each and an appetizer. He says they finished their beers while waiting for their food, but it did not come. Mr. Everall says a bartender came to their table, and they discovered their food order had not been entered. Mr. Everall says he told the bartender he was leaving and not paying for the poor service. Mr. Everall says at some point the police were called, and he walked outside. He says the bartender blocked his companion from leaving, and Mr. Everall told the bartender to "leave her out of it". None of this is disputed.
13. The parties' version of events on the day of the incident otherwise differ, with each alleging the other party was the aggressor.
14. Mr. Everall says the bartender came outside and physically tried to stop him from leaving the area. He says the bartender grabbed his throat and punched his chest. Mr. Everall says his phone fell to the ground, and the bartender grabbed it and went back inside the bar. Mr. Everall says he followed the bartender into the bar to get his phone. Mr. Everall says the bartender continued to attack him, and every time he reached for his phone, the bartender would grab his throat. Mr. Everall says the

bartender punched him in the mouth and he fell to the floor. Mr. Everall says he did not attack the bartender.

15. For its part, HRL provided a statement from Mr. Hart. Mr. Hart said Mr. Everall tried to leave the bar without paying, after getting upset about the wait time for his food. Mr. Hart said he tried to settle things amicably by having the police come deal with Mr. Everall when he refused to pay. Mr. Hart said Mr. Everall “stormed out” when he asked the bar’s assistant general manager (AGM), AL, to call the police. Mr. Hart said Mr. Everall was intoxicated and aggressive and attacked him before the police arrived, and he had no choice but to defend himself. Mr. Hart said he stood in the doorway and told Mr. Everall’s companion that they could not leave without paying. Mr. Hart says Mr. Everall came running up from behind and screamed at Mr. Hart not to touch his companion, and pushed him with both hands. Mr. Hart said he then picked up Mr. Everall’s phone that had fallen to the ground, and told Mr. Everall he would give it back when Mr. Everall paid his bill. Mr. Hart said at that point, Mr. Everall attacked him, pushing him into the wall in the doorway. Mr. Hart said he retreated inside, but Mr. Everall followed him. Mr. Hart said Mr. Everall continued to come at him, and Mr. Hart felt he had to defend himself and his staff, including the AGM, AL, who Mr. Hart says was pregnant at the time. Mr. Hart said he pushed Mr. Everall with one hand and punched him with the other. Mr. Hart said it was the only way he felt Mr. Everall would stop attacking him.
16. HRL provided a video that shows part of the incident. I find the video evidence shows the following. Mr. Everall pushed Mr. Hart back into the bar’s entryway from outside. Mr. Hart moved away from Mr. Everall to return into the bar. Mr. Everall pursued Mr. Hart back into the bar, and pushed Mr. Hart as he was moving away from Mr. Everall. Mr. Hart pushed Mr. Everall away, and Mr. Everall continued to pursue Mr. Hart. Mr. Hart then pushed Mr. Everall away again and punched him in the face. Mr. Everall fell to the ground and the incident ended. Mr. Everall says the video should not be admitted because it does not show what happened outside beforehand. However, the video shows part of the incident and is relevant to the issues in this dispute, so I have reviewed and relied on it in coming to my decision.

17. Both parties provided witness statements in support of their respective version of events.
18. Mr. Everall provided a statement from his companion RK, who attended HRL's bar with him. I summarize their evidence as follows. They were waiting for their food, and decided to leave when the bartender, who I find was Mr. Hart, was rude. Mr. Everall left, but Mr. Hart blocked the door to prevent RK from leaving. Mr. Hart yelled at RK and Mr. Everall. Mr. Everall and Mr. Hart started fighting on the sidewalk in front of the bar, and Mr. Hart pushed Mr. Everall on the sidewalk repeatedly. Mr. Hart took Mr. Everall's phone and went back inside with it. Mr. Everall followed Mr. Hart. Mr. Hart pushed Mr. Everall, grabbed his neck, tried to choke him, and finally punched him in the face. RK called the police, and Mr. Hart did not return Mr. Everall's phone until the police returned it. RK also said Mr. Everall never touched Mr. Hart. However, I find this is directly contradicted by the video evidence that shows Mr. Everall pushing Mr. Hart repeatedly. Given this inconsistency, I place no weight on RK's statement where it is inconsistent with the video evidence, or otherwise unsupported by other evidence.
19. Mr. Everall also provided an unsigned statement for an anonymous person who said they were sitting outside HRL's bar when the incident occurred. I find this anonymous statement is unreliable, as I cannot determine its source, and therefore I put no weight on it.
20. HRL provided statements from AL, the bar's AGM, and BB, a regular customer at the bar. AL's statement is unsigned, but Mr. Everall did not dispute its authenticity. I accept AL is the author of this unsigned statement, and I find the customer referred to in the statement is Mr. Everall. AL's statement essentially confirmed Mr. Hart's version of events. In their statement, AL said as follows. Mr. Hart went to Mr. Everall's table, and Mr. Everall appeared visibly upset. Mr. Everall began leaving the bar without paying his bill, so Mr. Hart asked AL to call 911 and began speaking to RK. After calling 911, AL saw Mr. Everall attacking Mr. Hart in the doorway. Mr. Everall pushed Mr. Hart into the corner of the front bar area, and Mr. Hart hit Mr. Everall in

self-defence. The police arrived and took statements, and took video footage from Mr. Hart. All the bar's patrons left, and no new ones came in. Mr. Everall's conduct made AL feel uncomfortable and AL feared for their safety.

21. As with AL's statement above, BB's statement is unsigned, but again Mr. Everall did not dispute its authenticity. I accept BB is the author of this unsigned statement, and I find the customer referred to in the statement is Mr. Everall. BB said they were at the bar the date of the incident, and observed Mr. Everall ramming Mr. Hart into the doors. BB said Mr. Everall was "just relentlessly on him [Mr. Hart]", and then Mr. Hart hit Mr. Everall and it all stopped. BB said Mr. Everall started it, and BB has never seen Mr. Hart get physical with anyone else.
22. I find both AL and BB's statements are generally consistent with the video evidence. So, where there are inconsistencies between RK, AL and BB's statements, I prefer AL and BB's statements. I find the video evidence and AL and BB's witness statements show it is more likely than not that Mr. Everall instigated the incident with Mr. Hart. With that, I turn to the applicable law.

Assault and battery

23. Assault and battery are distinct torts (legal wrongs). Assault is about threats of imminent harm, while battery is about physical contact. Both parties frame their respective claims as being about assault as the word is commonly used. However, both parties also focus on the physical contact between them, so I find the law of battery applies.
24. Battery is a direct, intentional and physical interference with another person that is either harmful or offensive to a reasonable person. See *Non-Marine Underwriters, Lloyds of London v. Scalera*, 2004 SCC 24. The video evidence shows Mr. Hart intentionally and physically interfered with Mr. Everall by pushing him and punching him in the face. The video shows Mr. Everall fell to the ground, and photos show bruising on Mr. Everall's chest and a cut inside his lower lip, which I find likely resulted from Mr. Hart pushing and punching Mr. Everall. So, I find the contact was harmful.

25. Once the harmful contact is proven, the onus shifts to HRL to establish either that the contact was unintentional and not negligent or that a legally recognized defence applies. HRL admits Mr. Hart pushed and punched Mr. Everall, so the question is whether any defence applies.
26. Self-defence is a commonly known justification of battery. Defending a third party from harm is a lesser known but equally valid justification. See *Universe v. Fraser Health Authority*, 2020 BCSC 1398. To justify a battery as defensive conduct, a defendant must establish that the response was justified (by an attack or perceived attack) and that the response's force was not disproportionate to the justification. See *Mann v. Balaban*, 1969 CanLII 5 (SCC).
27. Here, I am satisfied that Mr. Hart reasonably apprehended an imminent risk of physical harm to himself and others in the bar. It is undisputed that Mr. Everall was attempting to leave the bar without paying. The video evidence does not show what occurred outside the bar, although I find it shows that Mr. Everall, RK, and Mr. Hart were all outside the bar for an unclear period of time. Based on the limited evidence, it is unclear who was the aggressor outside the bar. Given the video evidence, I find it likely that Mr. Hart, at the very least, stepped outside the bar to tell Mr. Everall to pay his bar tab. However, the video evidence shows Mr. Hart was pushed into the corner of the bar's entryway backwards by Mr. Everall. Mr. Everall says that he approached Mr. Hart to get his phone back. Although Mr. Everall denies touching Mr. Hart, the video evidence shows Mr. Everall pursued Mr. Hart as Mr. Hart returned back into the bar. AL and BB's witness statements also support a finding that Mr. Everall was the aggressor. As noted, I prefer their statements over RK's largely because RK said Mr. Everall never touched Mr. Hart, contrary to the video evidence that shows he clearly did so. I find Mr. Hart pushed and punched Mr. Everall in the midst of a physical confrontation where Mr. Everall was the aggressor.
28. Was Mr. Hart's contact with Mr. Everall disproportionate? I find that it was not. The video evidence shows that just before the punch, Mr. Everall continued to pursue and push Mr. Hart despite Mr. Hart's attempt to move away from him. At that point, Mr.

Everall had the option to stop pursuing Mr. Hart to avoid any further interaction, and chose not to do so. I accept that Mr. Hart pushed and punched Mr. Everall in self-defence. A person defending himself, or another, is not required to measure the required force with precision. See *Universe*.

29. In summary, I find Mr. Hart's contact with Mr. Everall was justified and proportionate, so Mr. Everall's battery claim fails. As a result, I do not need to consider Mr. Everall's claimed damages. I dismiss Mr. Everall's claims.

HRL's counterclaim

30. As noted, HRL collectively counterclaims \$5,000 for Mr. Everall's unpaid bar tab, lost sales during the time of the incident, and what I infer are Mr. Hart's loss of earnings from allegedly selling the bar after the incident. I will address each in turn.

31. First, Mr. Everall's bar tab. Mr. Everall does not dispute that he left HRL's bar without paying. However, HRL did not provide any breakdown of the amount owing, or any invoice for the beers and food Mr. Everall ordered. The food was undisputedly never served, and I find the amount owing for beer unproven. So, I dismiss this aspect of HRL's counterclaim.

32. Next, HRL alleges it lost sales during the incident, without providing a claimed amount or breakdown. HRL also did not provide details of the alleged timeframe for lost sales or documentary evidence to prove HRL's bar earned less during the incident than it would have otherwise. So, I also find this alleged loss speculative and unproven, and I find it unnecessary to address the legal basis, if any, for this claim. I dismiss this aspect of HRL's counterclaim.

33. Finally, the alleged loss of earnings. In the dispute notice for its counterclaim, HRL claimed lost earnings "due to the lasting affects mentally that prevent me from serving". Mr. Hart says he sold the bar due to anxiety a few weeks following attack, for much less than if he had waited longer for more offers.

34. As noted, Mr. Hart represents HRL in this dispute and I find this claim likely relates to Mr. Hart personally, rather than HRL. HRL is a corporation, an entity that does not suffer mental distress, and Mr. Hart has not filed a claim in his personal capacity. So, I find HRL is not legally entitled to recover for any of Mr. Hart's alleged losses in his personal capacity. In any event, there is no evidence before me, including no medical evidence, to prove Mr. Hart suffered from anxiety or mental distress as a result of the incident. It follows that I find it unproven that Mr. Hart had to sell the bar as a result.
35. Further, although HRL provided the first page of a contract of purchase and sale for business assets after the incident, the contract does not indicate who the buyer is, or whether the sale ever completed. HRL's BC company summary also shows HRL is still an active company in BC and Mr. Hart is still listed as one of its two directors. Finally, the documentary evidence does not show when or how much HRL's bar was allegedly sold for. Nor is there any evidence of the bar's market value. Overall, I find the allegation that the bar could have been sold for more later on unproven. Given all the above, I find HRL has not proved it is entitled to any compensation for any alleged lost earnings due to Mr. Hart's anxiety or mental distress and subsequent alleged sale of HRL's bar.

CRT fees and expenses

36. 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. As neither party was successful in their respective claims, I find neither is entitled to reimbursement of their paid CRT fees, and I dismiss Mr. Everall's claim for registered mail expenses. HRL did not claim any dispute-related expenses.

ORDER

37. I dismiss Mr. Everall's claims, HRL's counterclaims, and these disputes.

Leah Volkers, Tribunal Member