



Civil Resolution Tribunal

Date Issued: December 15, 2023

File: SC-2022-009273 and
SC-2023-002943

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lake v. Martin*, 2023 BCCRT 1105

B E T W E E N :

TRACIE ANNE LAKE and MICHAEL WILLIAM JAMES

APPLICANTS

A N D :

PAUL MARTIN

RESPONDENT

A N D :

TRACIE ANNE LAKE and MICHAEL WILLIAM JAMES

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. These 2 linked small claims disputes are about a physical altercation. 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 applicants and respondents by counterclaim, Tracie Anne Lake and Michael William James, say they were attacked by the respondent and applicant by counterclaim, Paul Martin. They claim \$10,525 in personal injury damages. While the small claims monetary limit at the Civil Resolution Tribunal (CRT) is \$5,000, Ms. Lake and Mr. James' claims may be sufficiently distinct such that they are separate claims each with a \$5,000 limit. However, given my findings below, nothing turns on this.
3. Mr. Martin says that he was attacked by the applicants and fought back in self-defence. He claims \$5,000 in personal injury damages.
4. All parties are 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.
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.

ISSUES

8. The issues in this dispute are:
 - a. Did Mr. Martin commit an assault or battery against Ms. Lake and Mr. James and, if so, are they entitled to damages?
 - b. Did Ms. Lake and Mr. James commit an assault or battery against Mr. Martin and, if so, is he entitled to damages?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Ms. Lake and Mr. James must prove their claims on a balance of probabilities, which means more likely than not. Mr. Martin must prove his counterclaim to the same standard. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. It is undisputed that Mr. Martin previously lived directly above Ms. Lake and Mr. James in the same building. All parties suffered injuries after a fight that took place on October 19, 2022. The parties disagree about what happened before and during the fight.
11. Ms. Lake and Mr. James say that excessive noise was coming from Mr. Martin's residence, so Ms. Lake went to ask Mr. Martin and his family to be quieter. They say Mr. Martin was intoxicated and aggressive when he answered the door. Mr. James ran to Mr. Martin's floor when he heard Mr. Martin shouting. They say they tried to take the elevator back to their residence, but Mr. Martin followed them and punched Mr. James 8-9 times. They say Ms. Lake tried to push Mr. Martin off Mr. James and Mr. Martin then punched Ms. Lake 3-4 times.

12. Ms. Lake and Mr. James went to the ER. Hospital records show that Mr. James suffered a fractured nose and bruises to his face. He says he missed two days of work because of his injuries and now takes anti-anxiety medication. Ms. Lake suffered an injury to her left shoulder and bruises to her head and face. She says she suffers from more migraine headaches since the altercation.
13. In her Dispute Response to Mr. Martin's claim, Ms. Lake says that Mr. Martin was charged with assault. In her reply submissions, she clarifies that a police officer told her Mr. Martin was charged with assault but admits that no charges were laid. Ms. Lake and Mr. James applied for a restraining order against Mr. Martin, however the Crown later stayed the restraining order.
14. Mr. Martin gives a different version of events. He says Ms. Lake knocked very loudly on his door and then swore and shouted at him about his children being too loud. He says he left his unit and closed the door behind him so his children would not hear the shouting. He says he tried to usher Ms. Lake down the hall toward the elevator, however Mr. James came from the elevator and shouted at him aggressively. He says Mr. James punched him in the head so he hit back in self-defence. He says Ms. Lake jumped on him so he put his arm up to push her away.
15. Mr. Martin provided photos which show a black eye and a bruise on his face. He says that he suffered embarrassment because of his black eye, missed half a day of work, and his young children suffered mental distress. He did not provide any documentary evidence which shows he suffered lasting injuries or any loss of income. Mr. Martin says he and his family moved to a new residence because of ongoing harassment and hostility from Ms. Lake and Mr. James.
16. Mr. Martin provided excerpts from the police report related to this incident. Mr. James and Mr. Martin both told the police officer who attended the scene that the other punched them unprovoked. The police officer noted that both parties suffered similar injuries and concluded that the fight was consensual.

17. Ms. Lake and Mr. Martin both provided videos and social media evidence in an attempt to cast the other in a negative light. The videos were recorded after the fight between the parties and the social media posts relate to topics not relevant to this dispute. So, I place no weight on this evidence.
18. I turn to the applicable law.
19. Assault and battery are distinct torts (legal wrongs). Assault is about threats of imminent harm, while battery is about physical contact. The parties frame their claims as an assault as the word is commonly used. However, both parties focus on the physical contact between them, so I find the law of battery applies.
20. 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, Lloyd's of London v. Scalera*, 2000 SCC 24). Once the harmful contact is proven, the burden shifts to the other party to establish that a legally recognized defence applies.
21. Consent is a defence to battery. If a fight is proven to be mutual or consensual, the parties cannot complain of injuries suffered in the course of the fight (see *Charland v. Cloverdale Minor Baseball Association and Wheeler*, 2013 BCSC 488 at paragraphs 88 to 90).
22. I turn to my analysis and conclusions.
23. On balance, I find that all of the parties participated in the fight. I find it most likely that the parties had a heated argument about noise from Mr. Martin's residence. I find that all parties engaged in this confrontation which escalated to a physical fight where both Mr. James and Mr. Martin threw punches and Ms. Lake pushed Mr. Martin. I place significant weight on the report by the police officer who attended the scene. I agree with the police officer's assessment that all of the parties suffered similar injuries which indicates that this was a mutual or consensual fight. This conclusion is supported by the photos in evidence which show that both Mr. James and Mr. Martin suffered facial injuries. So, I find that none of the parties are entitled to damages given their mutual participation in the fight and I dismiss both disputes.

24. 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. As none of the parties were successful, I dismiss their claims for reimbursement of CRT fees. None of the parties claimed any dispute-related expenses.

ORDERS

25. I dismiss Ms. Lake's and Mr. James' claim in SC-2022-009273.

26. I dismiss Mr. Martin's claim in SC-2023-002943.

Peter Mennie, Tribunal Member