



Civil Resolution Tribunal

Date Issued: July 18, 2024

File: SC-2023-007836

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bahmutsky v. Petkau*, 2024 BCCRT 694

BETWEEN:

IRINA BAHMUTSKY

APPLICANT

AND:

LACEY PETKAU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Maria Montgomery

INTRODUCTION

1. This is a dispute between neighbours about emotional harm.
2. The applicant, Irina Bahmutsky, says she suffered emotional harm due to the respondent's conduct. Mrs. Bahmutsky claims \$500 in damages.

3. Lacey Petkauⁱ, the respondent, says they did not perform the alleged conduct and so did not cause Mrs. Bahmutsky emotional harm.
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 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. 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.
8. Mrs. Bahmutsky provided evidence after her evidence deadline. Lacey Petkau did not object to this late evidence and had the opportunity to respond to it. Lacey Petkau does not say they were prejudiced by the late evidence and I find that they were not. For these reasons and bearing in mind the CRT's mandate to be flexible, I accept the late evidence.

ISSUE

9. The issue in this dispute is whether Mrs. Bahmutsky is entitled to damages for mental distress.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mrs. Bahmutsky, as the applicant, must prove her claims on a balance of probabilities, meaning more likely than not. 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.
11. The parties are neighbours in a townhouse complex. Based on the parties' submissions, relations have not been friendly for many years. Both parties provided evidence about the others' conduct, their own conduct, and the conduct of family members including as it relates to compliance with strata bylaws and the *Criminal Code*. As these details are not relevant to this dispute, I did not rely on them in making my decision.
12. Mrs. Bahmutsky claims \$500 for emotional harm due to an incident on June 30, 2023. She says that Lacey Petkau exposed their buttocks when in full view of Mrs. Bahmutsky's kitchen window with the intent of upsetting Mrs. Bahmutsky and her spouse. I infer that Mrs. Bahmutsky is claiming intentional infliction of mental distress.
13. Lacey Petkau explains that the figure in the video could not be them as they were working at the time. Lacey Petkau says that Mrs. Bahmutsky has not explained or proved that she suffered any harm.
14. To succeed in this claim, Mrs. Bahmutsky must prove that Lacy Petkau engaged in wrongful conduct and that conduct caused something more serious and prolonged than the usual annoyances, anxieties and fears that arise in society (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at paragraph 9).

15. As evidence, Mrs. Bahmutsky provided a video file that shows a figure bending over and pulling down their pants. However, due to the video's significantly poor quality, I am not able to identify the individual or confirm exposure of any body part. So, I find that Mrs. Bahmutsky has not met her burden in proving that Lacey Petkau performed the alleged conduct.
16. Even if the evidence established that Lacey Petkau attempted to inflict mental distress, I would still dismiss Mrs. Bahmutsky's claim because she has failed to prove damages. The BC Court of Appeal has held there must be some evidentiary basis for awarding damages for mental distress (*Lau v. Royal Bank of Canada*, 2017 BCCA 253). As discussed in the non-binding but persuasive decisions in *Eggberry v. Horn et al*, 2018 BCCRT 224 and *Hjorth v. Desroches*, 2021 BCCRT 1296, to be successful in a claim for mental distress there must be medical evidence supporting the mental distress. I agree with the reasoning in *Eggberry* and *Hjorth* and apply it here. As Mrs. Bahmutsky has not provided any medical evidence of the emotional impact of the incident, I find there is not enough evidence for me to conclude that she experienced mental distress.
17. For the above reasons, I find that Mrs. Bahmutsky is not entitled to damages for mental distress and I dismiss her claim.
18. 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. Mrs. Bahmutsky was unsuccessful, so I dismiss her claims for tribunal fees and dispute-related expenses. Lacey Petkau did not pay any CRT fees or claim any dispute related expenses.

ORDER

19. I dismiss Mrs. Bahmutsky's claim and this dispute.

Maria Montgomery, Tribunal Member

ⁱ The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout the process, including in published decisions. Lacey Petkau did not provide their title or pronouns so I will refer to them by their full name and with gender neutral pronouns throughout this decision, intending no disrespect.