



# Civil Resolution Tribunal

Date Issued: July 23, 2024

File: SC-2023-005667

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bahmutsky v. Griffiths*, 2024 BCCRT 703

BETWEEN:

MICHAEL BAHMUTSKY and IRINA BAHMUTSKY

**APPLICANTS**

AND:

MORGAN GRIFFITHS

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Jeffrey Drozdiak

## INTRODUCTION

1. This dispute is part of an ongoing neighbour dispute.
2. The applicants, Michael Bahmutsky and Irina Bahmutsky, and the respondent, Morgan Griffiths, are next-door neighbours in a townhouse complex. The Bahmutskys

say Mr. Griffiths damaged their electric trike, and he later tried to hit them with his car. They claim a total of \$2,900 for mental harm and the trike's repair costs.

3. Mr. Griffiths says he accidentally pulled his car into the wrong parking spot. When he realized the mistake, Mr. Griffiths says he backed his car out. He denies that he tried to hit the Bahmutskys or that he damaged their trike.
4. The Bahmutskys and Mr. Griffiths 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). CRTA section 2 says 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. In some respects, the parties call into question the credibility, or truthfulness, of the other's evidence. Under the circumstances, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Downing v. Strata Plan VR2356*, 2023 BCCA 100, in which the court recognized that oral hearings are not always needed where credibility is in issue. Neither party requested an oral hearing. Mr. Griffiths also did not provide any evidence or submissions. So, bearing in mind the CRT's mandate is for proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

8. Where permitted by CRTA section 118, 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. Must Mr. Griffiths pay the Bahmutskys for the trike's repair costs?
  - b. Are the Bahmutskys entitled to damages for mental harm?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the Bahmutskys, as the applicants, must prove their 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. Mr. Griffiths had the opportunity to provide evidence and submissions but did not do so. I have therefore relied on Mr. Griffiths' statements in his Dispute Response filed at the start of this proceeding.
11. The Bahmutskys say they have known Mr. Griffiths for 6 years and he lives next door to them. This is the 3rd small claims dispute between the parties (see *Griffiths v. Bahmutsky*, 2021 BCCRT 643, and *Bahmutsky v. Griffiths*, 2022 BCCRT 184). I reviewed the earlier CRT decisions to better understand the Bahmutskys' reference to a "Mrs. Griffiths" in their submissions. However, I did not rely on these earlier CRT decisions when deciding this dispute.

### ***Preliminary Issues***

12. In the Bahmutskys' submissions, they ask for an order to revoke Mr. Griffiths' drivers' license. Under CRTA section 10, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. License suspensions and prohibitions are covered in part 2 of the *Motor Vehicle Act* (MVA). The MVA does not grant any

authority to the CRT to revoke a person's drivers' license. So, I find this request is outside the CRT's jurisdiction and I refuse to resolve it.

13. The Bahmutskys provided evidence about other things they say Mr. Griffiths did between January 11, 2023 and July 8, 2023. These alleged actions include uttering threats, driving erratically, breaking a window, and causing fireworks damage. The Bahmutskys did not request any specific remedy for these alleged actions. So, I will not discuss them in this decision.

### ***Must Mr. Griffiths Pay the Bahmutskys for the Trike's Repair Costs?***

14. The Bahmutskys say around 9:50 p.m. on March 18, 2023, Mr. Griffiths smashed their electric trike with his car. They claim \$900.73 for the costs to repair the trike. From his Dispute Response, Mr. Griffiths says he heard that someone damaged the Bahmutskys' trike, but he had nothing to do with it.
15. I find the Bahmutskys' claim is based in negligence. To prove Mr. Griffiths was negligent, the Bahmutskys must show Mr. Griffiths owed them a duty of care, Mr. Griffiths' actions breached the standard of care, the Bahmutskys suffered a loss, and Mr. Griffiths' breach caused the loss (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
16. As neighbours, I find Mr. Griffiths owed the Bahmutskys a duty of care. The main issue I must decide is whether Mr. Griffiths breached the standard of care.
17. The standard of care generally means, what would a reasonable person do in Mr. Griffiths' position. The standard of care for a driver includes driving their car with due care and attention (see *Helgason v. Rondeau*, 2023 BCCA 339 at para 23). A breach of the standard of care includes creating an unreasonable risk of harm (*Mustapha* at para 7). Therefore, to show Mr. Griffiths breached the standard of care, I find the Bahmutskys must prove that Mr. Griffiths drove his car into their trike.
18. The Bahmutskys provided video footage from the time of the incident. The video is shot from what I infer is a security camera at the Bahmutskys' front entrance. The

video's view field shows both parties' front yards, 2 flights of stairs leading up to the street, and partial views of both parties' carports above. The Bahmutskys also provided pictures showing the carports from street level. The Bahmutskys say their carport is #8029, and across from visitor parking, Mr. Griffith's carport is #8031. From this evidence, I find I have a full picture of the townhouses' layout.

19. From the video, I find:

- a. At 9:48:50 p.m. a woman walks down the stairs and enters Mr. Griffiths' unit. The Bahmutskys say the woman is Mrs. Griffiths, which from the earlier CRT decisions I infer is Mr. Griffiths' mother.
- b. A car's headlights are then visible, which show a car pulling out of the area around Carport #8031, driving over to Carport #8029, and driving into Carport #8029. There is an audible crashing sound, as the car hits something.
- c. The car's headlights then show the car pull out of Carport #8029 and drive back to the area around Carport #8031. A car's horn then goes off, which I infer is someone locking the car.
- d. As the car horn goes off, Mrs. Griffiths goes back up the stairs. A man then appears coming down the stairs. The Bahmutskys say the man is Mr. Griffiths.

20. To explain the audible crashing sound, the Bahmutskys provided a picture of the damaged trike. The picture shows the trike in the carport with a crumpled front wheel. I find the trike's damage is consistent with a car hitting it.

21. Overall, I find the video provides strong circumstantial evidence that Mr. Griffiths drove his car into the trike.

22. The Bahmutskys reported the incident to the police and provided the police investigation report. In the report, Constable NK concludes that there is not enough evidence to charge Mr. Griffiths with a criminal offence. I find Cst NK's conclusions

are not binding on me. The burden of proof for a criminal offence is “beyond a reasonable doubt.” This is a higher standard of proof than the civil standard’s “more likely than not.”

23. In the report, Cst NK interviewed another resident, TW, who can be seen walking down the stairs at the end of the video. TW says they saw Mr. Griffiths pull his car into the area around Carport #8031 but did not see any collision. TW says they did not see any other vehicles in the area. As Mr. Griffiths does not challenge this evidence, I accept TW’s statement to the police.
24. As noted, Mr. Griffiths chose not to provide any evidence. So, Mr. Griffiths does not dispute the video that appears to show him driving his car into the trike. Without any evidence to the contrary, I find it is more likely than not that Mr. Griffiths damaged the trike and breached the standard of care. So, I am satisfied that the Bahmutskys have proven Mr. Griffiths was negligent.
25. The Bahmutskys say they spent \$514.73 for parts to fix the trike. In support, the Bahmutskys provided receipts from Canadian Tire, Wizsheelz Inc., and Canada Post for the repair costs. Mr. Griffiths does not dispute these expenses. So, I accept the Bahmutskys’ evidence, and I find they are entitled to \$514.73.
26. The Bahmutskys also claim \$386 for Mr. Bahmutsky to assemble and adjust the trike’s parts. They argue that if a professional completed this work, it would be more expensive. The Bahmutskys did not provide any evidence to support their claim for \$386. So, I find the Bahmutskys have not proven they suffered a loss, and I dismiss this part of their claim.
27. Finally, the Bahmutskys say that Mr. Griffiths damaged the carport wall during the collision. In support, they provided a picture showing the damage. The Bahmutskys did not claim any compensation to fix the damage or provide any evidence to support a loss. So, I decline to order an amount for the damaged wall.

### ***Are the Bahmutskys Entitled to Damages for Mental Harm?***

28. The Bahmutskys say on April 27, 2023, Mr. Griffiths intentionally drove his car into their carport and tried to hit them. They say Mr. Bahmutsky scratched his leg while getting out of the way. In support, the Bahmutskys provided a picture showing Mr. Bahmutskys' scratched leg.
29. After the incident, the Bahmutskys say they contacted the RCMP. On May 24, 2023, the Crown charged Mr. Griffiths with 2 offences under the *Criminal Code*. Since the charges have not been proven in court, I find this evidence does not help the Bahmutskys in proving their claim.
30. In his Dispute Response, Mr. Griffiths denies he tried to hit the Bahmutskys with his car. Instead, Mr. Griffiths says he accidentally drove his car into the Bahmutskys' carport. When Mr. Griffiths realized his mistake, he says he reversed his car out of the carport. I note Mr. Griffiths does not say what caused him to make the mistake.
31. I find Mr. Griffiths' statement is not credible. The Bahmutskys say they have known Mr. Griffiths for 6 years. I infer this means the parties have been neighbours for 6 years. From the pictures, I find the carports are easily distinguishable to a longtime resident. Mr. Griffiths' carport has the visitor parking directly to the right. In comparison, the Bahmutskys' carport has the visitor parking directly to the left.
32. The Bahmutskys also provided a Recognizance After Allegation for Mr. Griffiths, also known as a section 810 peace bond. This document shows that from April 14, 2022 to April 14, 2023, Mr. Griffiths was not to communicate with Mr. Bahmutsky, or go near his property. In his Dispute Response, Mr. Griffiths admits he was aware of the peace bond at the time. Based on the evidence before me, I find Mr. Griffiths did not "mistakenly" drive into the Bahmutskys' carport.
33. I find a driver can also easily see if someone is in a carport before pulling in. The carport is open on 3 sides and is only big enough to fit 1 vehicle. So, I find Mr. Griffiths likely saw the Bahmutskys in the carport and then drove his vehicle into the carport.

34. The Bahmutskys claim \$2,000 for significant emotional harm caused by the car incident. The Bahmutskys say after the incident, they could not collect themselves for a few days. They say they felt dispirited. Even now, they claim they still do not feel safe. The Bahmutskys say they have no choice but to pay attention to every vehicle near them, which they find stressful.
35. I accept that the car incident was stressful to the Bahmutskys. However, I find they have not provided sufficient evidence to prove damages. A mental injury is not proven by simply being upset. The Bahmutskys must show they suffered a serious and prolonged issue that rises above the ordinary annoyances, anxieties and fears that come with living in civil society (see *Saadati v. Moorhead*, 2017 SCC 28 at para 37).
36. In *Lau v. Royal Bank of Canada*, 2017 BCCA 253, the court found there must be some evidentiary basis for awarding damages for mental distress. In *Eggberry v. Horn et al*, 2018 BCCRT 224, and other CRT decisions, tribunal members have found there should be medical evidence to support a claim for mental distress. Although the CRT decisions are not binding on me, I agree that the Bahmutskys needed to provide some medical evidence to prove their claim.
37. Since the Bahmutskys did not provide any medical evidence to prove they suffered a mental injury, I find the Bahmutskys have not proven they suffered one, So, I dismiss the Bahmutskys' \$2,000 claim for mental harm.

### **Conclusion**

38. In conclusion, I find Mr. Griffiths damaged the Bahmutskys' trike. So, I order Mr. Griffiths to pay \$514.73 to the Bahmutskys for repair costs.
39. The Bahmutskys argue they are entitled to contractual interest of 10%. In support, they provided their strata's bylaws. Paragraph 33(c) of the bylaws allow the strata to charge interest on late strata fees or special levies. As this bylaw does not apply to a dispute between strata owners, I find the bylaw is not relevant to this dispute.



40. Instead, I find the *Court Order Interest Act* applies here. The Bahmutskys are entitled to pre-judgment interest on the \$514.73 damages award from March 18, 2023, the date the trike was damaged, to the date of this decision. This equals \$34.39.
41. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I find the Bahmutskys were successful in proving a loss. So, the Bahmutskys are entitled to be reimbursed \$100 for CRT fees.
42. The Bahmutskys claim dispute-related expenses of \$65.21 for 2 attempts to serve Mr. Griffiths with the Dispute Notice, and \$3.60 for photocopying. The Bahmutskys provided receipts for their service attempts with Canada Post and Purolator. I find these expenses were reasonable, so the Bahmutskys are entitled to be reimbursed \$65.21 in dispute-related expenses. Since the CRT is an online tribunal, it does not typically award reimbursement for photocopying expenses. So, I decline to award any reimbursement for photocopying.

## **ORDERS**

43. Within 15 days of the date of this order, I order Mr. Griffiths to pay the Bahmutskys a total of \$714.33, broken down as follows:
  - a. \$514.73 in damages,
  - b. \$34.39 in pre-judgment interest under the *Court Order Interest Act*,
  - c. \$100 for CRT fees, and
  - d. \$65.21 for dispute-related expenses.
44. The Bahmutskys are entitled to post-judgment interest, as applicable.
45. I dismiss the Bahmutskys' remaining claims.

46. This is a validated decision and order. 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. 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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Jeffrey Drozdiak, Tribunal Member