



Civil Resolution Tribunal

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File: SC-2023-009209

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shen v. Polo*, 2025 BCCRT 561

B E T W E E N :

YING SHEN

APPLICANT

A N D :

JEFFREY DALE POLO and ELAN POLO

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Peter Nyhuus

INTRODUCTION

1. This dispute is about a dog bite.
2. The applicant, Ying (Linda) Shen, says she was bitten by a dog, a Mini Australian Shepherd named Juliet. Juliet is owned by the respondent, Miss Elan Polo. The other respondent, Mr. Jeffrey Dale Polo, was holding Juliet's leash when she

allegedly bit Miss Shen. Mr. Polo is Miss Polo's father and was caring for Juliet while Miss Polo was out of the country.

3. Miss Shen says the dog bite has resulted in lost wages, medical and legal expenses, and pain and suffering. She claims \$4,862.62 in damages.
4. Both respondents deny that the dog bit or attacked Miss Shen and that she sustained any injuries.
5. Miss Shen represents herself but received legal services from an articulated student prior to filing this dispute. Miss Polo and Mr. Polo each represent themselves and provided largely identical submissions.
6. For the following reasons, I dismiss Miss Shen's claims.

JURISDICTION AND PROCEDURE

7. 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). 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.
8. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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 without an oral hearing. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is in issue. Neither party requested an oral hearing. So, bearing in mind the CRT's mandate for

proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

9. 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.
10. 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.

Defamation and harassment

11. I note that the respondents claim in their submissions that since the alleged dog bite incident, Miss Shen has defamed and harassed them. They did not file a counterclaim against Miss Shen, so I find these claims are not before me.
12. Even if they had properly brought these claims, I would refuse to resolve them. Defamation is a common law tort (legal wrong). The two forms of defamation are slander (spoken) and libel (written). CRTA section 119 says the CRT does not have jurisdiction to resolve claims about slander or libel. Further, I note that there is no recognized tort of harassment in BC.¹

ISSUE

13. The issue in this dispute is whether the respondents are responsible for Miss Shen's injuries, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, Miss Shen, as the applicant, must prove her claims on a balance of probabilities. This means "more likely than not". I have read

¹ See *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473 at paragraph 61.

all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to explain my decision.

Background

15. I begin with the undisputed facts. Miss Shen and Mr. Polo live in the same building. The alleged dog bite happened in the building's elevator waiting area on the ground floor.
16. At 9:43 pm on December 24, 2022, Miss Shen was taking the elevator down to the lobby to wish the building's concierge a Merry Christmas. At the same time, Mr. Polo had just returned from a walk with Juliet and was waiting for the elevator to return to his unit.
17. Miss Shen provided security footage of the elevator lobby, which shows the incident. I now describe what the video shows.
18. Mr. Polo and Juliet wait outside the elevator in a narrow hallway. Mr. Polo holds Juliet with a short leash. When the elevator reaches the ground floor, Juliet is seated between Mr. Polo's feet. The door slides open, and Miss Shen emerges from the elevator, holding a small white bag in her left hand. As she walks out, she moves the bag into her right hand. Once she has cleared the elevator door, Mr. Polo, who is to Miss Shen's left, shuffle steps into the elevator.
19. Juliet, however, does not step forward with him. Instead, Juliet looks up at Miss Shen, then jumps at her. Mr. Polo pulls the dog into the elevator behind him.
20. The video's angle is not perfect as Miss Shen's body is between the camera and the dog. However, it appears the dog's mouth briefly contacts Miss Shen's left hand. This is clear in part from Miss Shen's reaction. She immediately pulls her hand away, then inspects it. She points to a spot on the back of her hand, between her thumb and index finger.
21. Miss Shen steps towards the elevator and shows her hand to Mr. Polo. They talk for about 35 seconds while he stands in the elevator's doorway, preventing the door

from closing. Mr. Polo keeps the dog behind him while they talk. As the video does not have audio, I will discuss below what they said to each other. After about 10 seconds, a third person, the concierge, walks over to see what is happening. The conversation reaches some form of conclusion and Miss Shen and the concierge walk towards the lobby. The elevator door shuts.

22. Based on the video and contrary to the respondent's denial of the dog bite, I find that Juliet bit Miss Shen. I disagree with the respondents' characterization that Miss Shen became startled at the site of Juliet. I find that Miss Shen did nothing to provoke the dog into biting her.
23. Miss Shen says that when she showed her hand to Mr. Polo, he offered a brief apology and stated that the dog is usually well-behaved. Miss Shen asked him if she needed to get any shots. She says Mr. Polo said "not to worry". She says Mr. Polo did not give her his contact information.
24. Mr. Polo's account of the conversation is largely the same. He says that he wanted to bring the dog to his unit as he felt the dog's presence was upsetting to Miss Shen. He says he came back downstairs afterwards to check on Miss Shen, but that she was gone.
25. Miss Shen says that after the dog bite, she experienced intense and growing pain. She says that even though Mr. Polo told her not to worry, she did not want to risk infection. So, she took an Uber to St. Paul's Hospital emergency room later that night. She provided the hospital's notes which confirm she received treatment for a "superficial abrasion" and a tetanus shot.
26. Miss Shen provided a picture which shows a small open wound on the back of her hand, between her thumb and index finger. I find the cut's location is consistent with the video footage. I find that Juliet injured her.
27. On December 27, 2022, Miss Shen filed an incident report with the City of Vancouver. A bylaw enforcement officer investigated the incident. The officer discovered that Juliet was not licenced in accordance with the City's Animal Control

Bylaw. After the investigation, the officer decided Juliet was not an aggressive dog under the Animal Control Bylaw and issued Mr. Polo a warning notice requiring him to licence the dog by January 21, 2023, and to ensure that the dog does not bite or attack again. Miss Polo later licenced the dog in compliance with the order.

Are the respondents responsible for Miss Shen's injuries?

28. I now turn to the law on liability for dog bites. In British Columbia, there are 3 ways for a pet owner to be liable for the action of their pet: a) occupier's liability, b) the legal concept known as "scienter", and c) negligence.
29. I assume that the elevator waiting area is common property of the building's strata. The strata is not a party to this dispute. So, I find that occupier's liability does not apply here. So, I will consider the law of scienter and negligence.
30. I note that I focus my analysis on Mr. Polo's liability. While Miss Polo is Juliet's owner, she was out of the country at the time of the bite and did not have control over her. The court has found that dog's keepers are not excluded from liability in scienter or negligence.² I find that Mr. Polo, as the person controlling Juliet at the time of the dog bite, was Juliet's keeper and responsible for Juliet.

Scienter

31. In simple terms, the essence of the doctrine of scienter is that "every dog is entitled to one bite."³ This doctrine presumes that domesticated animals such as dogs are harmless. To succeed against a dog owner on a claim in scienter, Miss Shen must prove the following elements:

- a. Mr. Polo must be the dog's owner (or keeper).
- b. Juliet must have shown a "propensity" (tendency or inclination) to cause the type of harm it caused to Miss Shen.

² See *McLean v. Thompsons*, 2009 BCPC 0415 at paragraphs 37 to 39.

³ See *Evans v. Berry*, 2024 BCCA 103 at paragraph 27 (*Evans BC CA*) affirming *Evans v. Anderson*, 2023 BCSC 143 (*Evans BC SC*).

c. Mr. Polo knew of this propensity.⁴

32. To establish propensity, Miss Shen does not have to prove that Juliet previously caused the type of harm she suffered. In other words, it is not a requirement that Juliet must have bitten someone else before. It is enough if there is evidence that Juliet's behaviour demonstrated a trait, inclination, or propensity to bite.⁵
33. The respondents say that Juliet did not have a history of being aggressive. They say that the dog was startled and acted out of character. The difficulty for Miss Shen is that there is no evidence contradicting the respondents' characterization of Juliet.
34. Miss Shen argues that the one bite rule assumes that the dog is properly licenced and that its history can be verified. She says the rule should not apply because Juliet was not licenced, making it "impossible" to confirm whether Juliet has bitten before. I disagree with this reasoning.
35. First, if the City of Vancouver had previously received a complaint about Juliet, I find it likely that an investigating bylaw officer would have noticed that Juliet was unlicensed and ordered Miss Polo to licence her, in the same way the bylaw officer did after this incident. I find the fact that Juliet was unlicensed likely means that the City had **not** received a complaint about her previously. So, I find the fact that Juliet was unlicensed does not help Miss Shen prove Juliet's inclination to bite. Neither does it harm her case, as previous incidents may have gone unreported to the City.
36. Second, I find there are other ways Miss Shen could try to prove Juliet's inclination to bite, such as a statement from a witness about Juliet's prior behaviour. Miss Shen did not provide any such statements.
37. Miss Shen wrote in her complaint to the City of Vancouver that the concierge "said something like this dog was not friendly like other dogs in our building." I do not find this hearsay evidence to be reliable or convincing, so I give it no weight. Even if I were to accept the statement, an opinion about the dog's friendliness is not specific

⁴ See *Salaj Kovacevic v. Katz*, 2024 BCPC 129 at paragraph 16 (*Katz*).

⁵ *Evans* BC CA.

enough to help Miss Shen. To prove scienter, she would need a witness' account of prior behaviour showing Juliet's inclination to bite.

38. In summary, I find Miss Shen's claim in scienter must fail because she has not proven that Juliet has shown a propensity to bite.

Negligence

39. I turn to negligence. To succeed in proving negligence, Miss Shen must show that Mr. Polo owed a duty of care, failed to meet the expected standard of care, and that the failure caused damages that were reasonably foreseeable.⁶
40. A dog owner has a duty to ensure their dog is sufficiently under control so that it will not escape to injure someone.⁷ Here, I find that Mr. Polo owed Miss Shen a duty of care to control Juliet when crossing paths with her near the elevator. So, whether Miss Shen has a compensable claim in negligence depends on whether Mr. Polo took reasonable care as the dog's keeper to prevent Juliet from injuring her.
41. For the following reasons, I find that Mr. Polo took reasonable care to prevent Juliet from injuring Miss Shen.
42. I find that Mr. Polo had a reasonable grip on Juliet given the location. The video shows he was holding Juliet close to his body by a short leash when the elevator door opened. However, given the narrow hallway, he had to move somewhat awkwardly into the elevator before Miss Shen could walk past him. The video shows Mr. Polo attempting to keep the leash tight, however his arm is in a weak position behind his back when Juliet lunges.
43. Since the evidence has not displaced the common law's presumption that Juliet is harmless, I find that Mr. Polo did not have reason to expect that Juliet would lunge at Miss Shen in the way that she did. So, I find there was no reason for him to manage Juliet more strictly to reduce the risk that she would bite Miss Shen.

⁶ *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.

⁷ *Martin v. Lowe*, 1980 CanLII 546 (BC SC).

44. I note that Mr. Polo's actions were not perfect. With hindsight, he should have led Juliet into the elevator ahead of him and kept himself in between Juliet and Miss Shen. However, perfection is not the standard of care.⁸ In the circumstances, I find Mr. Polo did not breach the standard of care and was not negligent.
45. In summary, I find that neither respondent is liable for Miss Shen's injuries. Having found this, I do not consider Miss Shen's claim to damages.
46. I know that the outcome of this case will be disappointing to Miss Shen. Contrary to the respondents' claim that Juliet did not bite her, I find that she did. Miss Shen suffered an injury, pain and suffering, and missed time from work as a result of the bite. She spent Christmas Eve in the emergency room and missed holiday festivities with her loved ones.
47. While I sympathize with Miss Shen, I am bound to apply the law as it stands. In the eyes of the law, what happened on December 24, 2022, was essentially an accident that no one is to blame for. As such, Miss Shen's loss and damages are not compensable.
48. Under CRTA section 49 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 Miss Shen was unsuccessful, I dismiss her claim for CRT fees and dispute-related expenses. The respondents did not pay any CRT fees or claim dispute-related expenses, so I do not order any reimbursement.

⁸ *Evans* BC SC at paragraph 120.

ORDERS

49. I dismiss Miss Shen's claims.

Peter Nyhuus, Tribunal Member