

Claim No: 437804

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Al Rawi v. Halifax (Regional Municipality), 2015 NSSM 41

BETWEEN:

BASSAM AL RAWI

Claimant

- and -

HALIFAX REGIONAL MUNICIPALITY

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on June 2, 2015

Decision rendered on June 11, 2015

APPEARANCES

For the Claimant

Bruce Hodgson, agent

For the Defendant

Ashley Dutcher, counsel

BY THE COURT:

[1] The Claimant is a student and part-time taxi driver. In the early morning of July 27, 2014, as the downtown bars were closing, he was driving his cab south on Argyle Street in Halifax, when he came upon a group of people engaged in something of a brawl, off to his left. The Claimant stopped his car because the fight was spilling over onto the street and into the crosswalk ahead of him. Within seconds of his stopping, several police officers and security guards rushed over from a nearby bar, looking to break up the fight.

[2] Constable Dwayne Hodgson of the Halifax police tackled an individual that he had identified as an aggressor (“the suspect”). The momentum of the tackle carried both Cst. Hodgson and the suspect into the Claimant’s stopped vehicle. The force of the impact was great enough to cause significant damage to the fender and bumper of the vehicle. Cst. Hodgson was personally injured by this impact. The extent of the suspect’s injuries, if any, is not known.

[3] The damage to the Claimant’s car cost him \$1,641.29 to repair. He also lost four days of work while the vehicle was in the shop, causing him a loss of what he estimates as \$150.00 per day. In this claim, he has sued Halifax Regional Municipality for his losses. He claims that Cst. Hodgson was negligent, in that he failed to pursue a course of action that might have avoided damaging his vehicle. He holds Halifax Regional Municipality responsible for the (alleged) negligence of its employee.

[4] The officers at the scene were initially sympathetic toward the Claimant and led him to believe that Halifax Regional Municipality would look after his

losses. It appears that they spoke too soon, as by the time the incident came to the attention of higher-ups, the position taken by Halifax Regional Municipality was that they would not accept responsibility.

Is there a cause of action?

[5] The hearing began with a motion by Halifax Regional Municipality to strike the claim as disclosing no cause of action. This motion was based, in part, on the fact that there was no express mention of negligence in the claim. Absent a claim of negligence, there would be no arguable cause of action for an occurrence such as this.

[6] As has many times been observed, written pleadings in Small Claims Court are often drafted by lay people with no legal training. They can be terse and unsophisticated documents. Adjudicators have a duty to look beyond the bare wording of the Claim or Defence to see whether there is a potential cause of action or defence. The Claimant, through his representative, assured the court that there was a claim of negligence being asserted, and as such I denied Halifax Regional Municipality's motion, ruling that there would have to be evidence heard to determine whether the facts supported a finding of negligence.

The law

[7] Counsel for Halifax Regional Municipality set out for the court the unique law in this area, where police officers (or, more accurately, in the language of the

Criminal Code of Canada, “peace officers”) in the course of carrying out their duties cause what I will refer to as “collateral damage.”

[8] Peace officers are different from other citizens when they are carrying out their duties, because of their mandate to protect the public and apprehend criminals. The *Criminal Code* has several sections which shield them from responsibility. Section 25 (1) states:

Every one who is required or authorized by law to do anything in the administration or enforcement of the law

(a) as a private person,

(b) as a peace officer or public officer,

(c) in aid of a peace officer or public officer, or

(d) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

[9] Section 27 (perhaps redundantly) provides that every one (not just peace officers) is “*justified in using as much force as is reasonably necessary ... to prevent the commission of an offence ...*” Section 495 permits a peace officer to “*arrest without warrant a person whom he finds committing a criminal offence.*”

[10] While cases like this are rare, this is hardly the first time that a police officer (or his employer) has been sued for the collateral damage caused during an arrest or other police operation. A much more serious instance made its way up to the Supreme Court of Canada in 1959, in the case of *Priestman v.*

Colangelo, Shynall and Smythson, [1959] SCR 615, 1959 CanLII 14 (SCC). The facts of that case are summarized in the headnote:

Two uniformed police officers in a patrol car pulled alongside a stolen car at an intersection and ordered the driver, one S, to pull over. Instead he turned to his right and drove west at a high rate of speed along a residential street. The police car followed in close pursuit and on three occasions attempted to pass it, but each time S cut it off, and on the third occasion the police car was forced over the curb. Then P, one of the officers, fired a warning shot in the air, but S increased his speed. As the cars were approaching a very busy intersection, P fired a shot aimed at the left rear tire of the stolen car. As he fired this shot, the police car struck a bump in the pavement. The bullet struck the rear window of the stolen car, ricocheted and struck S, rendering him unconscious. S's car went out of control, mounted the curb and hit fatally two student nurses standing on the sidewalk. The administrators of their respective estates sued P and S for damages, and S sued P for damages.

[11] The unfortunate bystanders who were killed during this deadly encounter were as innocent as could be imagined. Perhaps surprisingly to some, the court held that because the officers were engaged in the performance of their legal duty, absent a finding of negligence, they could not be held legally responsible. Justice Locke (at p.623-4) stated the applicable principles:

The performance of the duty imposed upon police officers to arrest offenders who have committed a crime and are fleeing to avoid arrest may, at times and of necessity, involve risk of injury to other members of the community. Such risk, in the absence of a negligent or unreasonable exercise of such duty, is imposed by the statute and any resulting damage is, in my opinion, *damnum sine injuria*. In the article in the last edition of Broom's Legal Maxims, p. 1, dealing with the maxim *salus populi suprema est lex* where the passage from the judgment of Buller J. in the *British Cast Plate* case is referred to, the learned author says:

This phrase is based on the implied agreement of every member of society that his own individual welfare shall, in cases of necessity, yield to that of the community; and that his property, liberty, and life

shall, under certain circumstances, be placed in jeopardy or even sacrificed for the public good.

Assuming a case where a police officer sees a pickpocket stealing from a person in a crowd upon the street and the pickpocket flees through the crowd in the hope of escaping arrest, if the officer in pursuit unintentionally collides with some one, is it to be seriously suggested that an action for trespass to the person would lie at the instance of the person struck? Yet, if the test applied in the cases which are relied upon is adopted without restriction, it could be said with reason that the police officer would probably know that, if he ran through a crowd of people in an attempt to arrest a thief, he might well collide with some members of the crowd who did not see him coming. To take another hypothetical case, assuming a police officer is pursuing a bank robber known to be armed and with the reputation of being one who will use a gun to avoid capture. The escaping criminal takes refuge in a private house. The officer, knowing that to enter the house through the front door would be to invite destruction, proceeds to the side of the house where through a window he sees the man and fires through the window intending to disable him. Would an action lie at the instance of the owner of the house against the officer for negligently damaging his property? If an escaping bank robber who has murdered a bank employee is fleeing down an uncrowded city street and fires a revolver at the police officers who are pursuing him, should one of the officers return the fire in an attempt to disable the criminal and, failing to hit the man, wound a pedestrian some distance down the street of whose presence he is unaware, is the officer to be found liable for damages or negligence?

The answer to a claim in any of these suppositious cases would be that the act was done in a reasonable attempt by the officer to perform the duty imposed upon him by *The Police Act* and the *Criminal Code*, which would be a complete defence, in my opinion. As contrasted with cases such as these, if an escaping criminal ran into a crowd of people and was obscured from the view of a pursuing police officer, it could not be suggested that it would be permissible for the latter to fire through the crowd in the hope of stopping the fleeing criminal.

[12] This case, and others that have applied it, leaves open the argument that the officer was negligent, which I would equate to an argument that excessive force was used. Even so, it is a well-known legal maxim that the law does not “measure with nicety” the force that someone may use in an exigent circumstance such as the making of an arrest or in an act of self-defence.

[13] In the more recent case of *Crompton v. Walton*, 2005 ABCA 81 the Alberta Court of Appeal applied a three-part test (drawn from s.25 (1) of the *Criminal Code*) for liability of police officers who cause harm in the performance of their duties. The officer is shielded from responsibility so long as each of the three criteria is met:

1. The police officer is required or authorized by law to perform an action in the administration or enforcement of the law.
2. The police officer acts on reasonable grounds in performing the action he or she is required or authorized by law to perform.
3. The police officer does not use unnecessary force.

[14] In the *Crompton* case the police were held liable for using excessive force in restraining an individual who was wrongly believed to be the person named in a warrant. The facts of that case leave little question that the officer ought to have shown much greater restraint, and that doing so would not have compromised his need to restrain the suspect.

The evidence here

[15] Cst. Hodgson testified that he reacted very quickly to the situation. What he saw was that the suspect had apparently knocked one person unconscious, and was preparing to stomp on the head of another individual who had fallen to the ground. Cst. Hodgson says he tackled the suspect before he could do any more damage. He testified that the momentum of the tackle took him and the suspect farther than he expected, with the unintended result that they hit the

Claimant's vehicle. He says that his overriding concern was to prevent the suspect from injuring or even killing the man lying on the ground.

[16] Cst. Hodgson testified that, as a police officer, he has many options when apprehending a suspect, including using pepper spray, a baton and his firearm. He did not really consider these options, as they would have taken extra time to deploy and might not have prevented injury to the individual on the ground.

[17] The Claimant was critical of Cst. Hodgson for not using a less forceful tactic. He suggests that he could have identified himself as a police officer, and possibly placed the suspect in a bear hug. The Claimant says that he did not see anyone lying on the ground, at risk, and as much as suggests that Cst. Hodgson may have embellished the facts to justify his action.

Findings and conclusion

[18] I am prepared to accept at face value the testimony of the officer, who says that there was an individual at risk of being seriously hurt if he did not stop the suspect. The Claimant cannot be expected to have had a clear, unobstructed view of what was happening in the midst of this fight. I find that there was an exigent circumstance that Cst. Hodgson was reacting to.

[19] I further find that the three-part test has been met. Cst. Hodgson was authorized by law to do as he did, he had reasonable grounds to believe that a criminal offence was being perpetrated, and he did not use unreasonable force. This is one of those instances where the officer's actions should not be measured with nicety.

[20] The Claimant's position that the officer could have done something less forceful is not supported by any evidence. The Claimant does not have any police training. Naturally he wishes that his car would not have been damaged, but he cannot really speak to the standards that would apply to a police officer attempting the break up a fight and avoid having someone seriously injured.

[21] Negligence is found to have occurred when someone is guilty of an act or omission that falls below the standard of a reasonable person in such circumstances. Determining a standard of reasonableness is not a precise science. Here, the standard would be that of a reasonable police officer faced with a split second decision about the best way to break up a fight, where someone risked being seriously injured. I have no trouble concluding that Cst. Hodgson's actions fell within that reasonable standard.

Other comments

[22] The Claimant is understandably confused as to how he, despite having done nothing wrong, can be without any legal recourse. Technically, as suggested by counsel for Halifax Regional Municipality, the Claimant could have pursued the suspect in a civil claim, although that may or may not be practical.

[23] The law can be strange (and seemingly unhelpful) at times, and this is one of those instances. The Claimant was simply in the wrong place, at the wrong time.

[24] Had I found liability, I would not have quibbled with any of the items of damages even though the wage loss could have been better supported. The Claimant testified that some days he works 12 to 14 hours, and it is quite plausible that he would have earned \$150.00 per day, or more.

[25] In the result, however, the claim must be dismissed.

Eric K. Slone, Adjudicator