

CANADA / JUDGMENT

Springett v. Shanklin

2001 BCSC 853

COURT

Supreme Court of British Columbia

DECIDED

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Registry: New Westminster

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SHAUN SPRINGETT

PLAINTIFF

AND:

ROY ANTHONY SHANKLIN

DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE WARREN

Counsel for the Plaintiff: L.W. Coulter

Counsel for the Defendant: R.A. Kasting

Date and Place of Hearing: April 18 and 19, 2001

New Westminster, BC

Introduction

- [1] In this action the plaintiff seeks general and punitive or exemplary damages and asks for the recovery of some special damages for replacement clothing and medications and costs, because of the injuries he suffered when he was struck in the face by a beer mug wielded by the defendant during an altercation in a pub on August 25th 1998.

- [2] The result of the blow was that the defendant was seriously cut over the left eye, forehead and left cheekbone. He required approximately 25 stitches to close the wounds. Some fragments of glass remain in his face and at least one has come out since the assault.
- [3] The events leading up to moments immediately before the plaintiff was injured are rather straightforward in spite of the different versions provided by the plaintiff and the defendant. The plaintiff and the defendant knew each other and in fact were members of the same billiards club - The Jokers - a club started by the plaintiff some time before the events of August 25, 1998.
- [4] I find that while the plaintiff and the defendant knew each other and were teammates, they did not particularly like each other's company. They were courteous, at least until the end of season party, which was held at the defendant's home in June 1998. The plaintiff and some other members of the club did not attend and the defendant testified that he felt the plaintiff had "absconded with his fiduciary responsibility". This was a reference to the fact that the plaintiff was the treasurer for the club and was apparently expected to pay for the food and drink for the party. There is no evidence at all to indicate that the plaintiff in fact "absconded" with any of the club's money. It is clear that when the plaintiff did not appear, the defendant was upset or annoyed. Whether or not this was the catalyst for his decision to form a new pool club with members which did not include the plaintiff, is immaterial. What is material is that a number of members decided to form a new club and the plaintiff was upset when he learned of it and he telephoned the defendant to inquire of his actions. There were words exchanged and I conclude the words were not cordial. The conversation ended when the defendant hung up on the plaintiff. They met the next time by accident a week or so later on August 25, 1998, at the Rendezvous Pub, where the plaintiff was visiting with some soccer players whom he hoped to lure into joining another soccer club.
- [5] The evidence called by the plaintiff would lead me to conclude that the plaintiff was not impaired at the time of the encounter, notwithstanding the testimony of Thomas Reeke, who said the party [which included the plaintiff] had had a fair amount to drink. I prefer the evidence of Mr. Howes and Mr. Michaud as to the quantity of beers consumed by the plaintiff and his companions before the fight.
- [6] While there are some discrepancies between the versions given by the plaintiff and the defendant, I conclude that there were some hard feelings between the two. These feelings were not improved when the defendant, in effect, challenged the plaintiff to a pool game. I accept the evidence of the plaintiff that he did not want to have anything to do with the defendant that night but he played anyway. He was less than pleased when the defendant started to win and he walked away from the table, apparently a most discourteous act in the game of pool. It is common ground that when he left the table the defendant gave the finger to the back of the retreating plaintiff and told him to "fuck off" or "fuck you". Neither the words nor the gesture were noted by the plaintiff. They were noted by the plaintiff's friends who told him shortly after.

- [7] After the defendant finished the game, he returned to his seat. He was facing away from most of the patrons in the pub and was taken by surprise when the plaintiff returned to the area and struck him on the back of the head. There is a dispute as to the level of force but it was sufficient to cause the defendant's head to jerk forward. Whether this was from the force of the blow, as the defendant says, or from surprise, as the plaintiff would have me believe, is not clear. Whether or not the defendant fell to his knees is also in dispute, but what then happened is the basis for his defence in this action.
- [8] The defendant testified that he was hit with sufficient force that he saw stars and was knocked onto his knees. He looked under his arm and saw two pairs of shoes behind him so he prepared to defend himself against an assault by three people: the plaintiff and two of his friends. As a result, the defendant said he grabbed his glass and turning, stepped forward and swung the glass to throw the contents at the plaintiff who ducked right into the glass. The defendant testified he had no intention of hurting the plaintiff, only of "taking him out" so he could deal with the other two individuals. He explained that when he picked up a stool and struck another patron it was in self-defence.
- [9] The plaintiff testified that when he hit the defendant it was a cuff and he asked the defendant what the hell he was doing when he gave him the finger. The plaintiff said that the defendant looked at him for a moment and then with one motion took his beer glass and hit him in the face with it. The plaintiff said that as he saw the defendant approach he put up his hands to fend him off. Following the hit in the face he was taken away, a cloth was put on his face and he retired to the other side of the pub to await the arrival of the ambulance.
- [10] The evidence of two other witnesses called by the plaintiff leads me to prefer the evidence and submissions of the plaintiff. Murray Howes testified that as he left the washroom after the game he saw the plaintiff walking toward the defendant. The plaintiff asked if Howes had seen the defendant give "the finger" to the plaintiff and when he said that he had, the plaintiff walked to the defendant and "cuffed" him in the back of the head. He testified that he then saw the defendant turn around surprised, and then "slammed" or "jammed" his beer glass into the plaintiff's face. He said the plaintiff had stood back from the defendant after he cuffed him and his hands were at his sides. He did not hit the defendant after he was struck in the face.
- [11] Troy Michaud was present during the game between the plaintiff and the defendant and it was he who told the plaintiff that the defendant had "fingered" him. He did not see the actual blow struck and only helped the plaintiff retire from the scene.
- [12] The defendant relied upon the transcript of the evidence of one Thomas Reeke given at the criminal trial, presumably to support his evidence of the rowdiness of the plaintiff and his friends and their level of intoxication. However, it is important from the plaintiff's perspective because it supports the evidence of Howes that the plaintiff approached the defendant alone, there was no "dog pile" after the assault and the defendant swung the beer glass with one motion after he recognized the plaintiff.

- [13] The evidence of Howes and Michaud is important because it substantiates the evidence of the plaintiff that he had not been drinking to excess and the version of Howes is consistent with that of the plaintiff that it was the plaintiff who started the physical actions. In my view, the evidence of Howes is reliable and I prefer it over that of the defendant. The evidence of Reeke supports that of the plaintiff and contradicts that of the defendant. Thus, I find that after the plaintiff hit the defendant on the back of the head, the defendant turned and deliberately struck the plaintiff in the face with his beer glass. This was not some negligent act flowing from the original plan of throwing beer in the plaintiff's face when the defendant was confronted by a number of people. Accordingly, I find that the defendant acted deliberately and consciously when he hit the plaintiff.
- [14] In these circumstances the plaintiff argues he is entitled to aggravated damages. The plaintiff was severely injured and required 25 stitches to repair the initial injury. He is badly scarred and was suffering from his eye injury as late as six months after the assault. His enjoyment of life has been affected in that he was not able to play soccer or other sports during the 1998 and 1999 season; he lost some holiday time with his daughter which, as an access parent, he had scheduled; he has had some glass removed later; he suffered from headaches; he was humiliated in front of his family and co-workers; and there is permanent scarring.
- [15] In *Verigin v. Regnier*, [1996] B.C.J. No. 2130 (Q.L.) McEwan J. concluded that, in similar circumstances to those at bar, the circumstances of the injury in the presence of customers and friends were aggravating and he awarded \$18,000 in non-pecuniary damages which included aggravated damages. He declined to award exemplary or punitive damages, the primary purpose of which is to deter the assailant and others. McEwan J. held that he could see no reason why the plaintiff needs to be punished in order to be deterred from future resort to violence. What he did to the defendant was, on all the evidence, quite out of character for him. Moreover, I do not think that others will be encouraged to imitate the plaintiff's actions such that any sort of public deterrence is necessary."
- [16] In *Norberg v. Wynrib*, [1992] 2 S.C.R. 226, La Forest J. held that aggravated damages may be awarded if the battery has occurred in humiliating or undignified circumstances but they are not in addition to general damages.

Rather, general damages are assessed 'taking into account any aggravating features of the case and to that extent increasing the amount awarded.

Aggravated damages are distinct from punitive damages which are awarded to punish and make an example of the defendant in order to deter others from committing the same tort.

- [17] The defendant submits that the injuries the plaintiff suffered were in part a result of the plaintiff provoking the defendant. Mr. Kasting argues that there is no evidence that the defendant acted out of malice. Rather, the evidence is consistent with the defendant using reasonable force to repel actual violence. The defendant is not required to measure the force

he used with nicety and a deliberate calibration of the precise force needed in one's defence is not expected in the face of violence or the threat of immediate violence: see P.H. Osborne, *The Law of Torts* (Toronto) at page 245. As for the injuries the plaintiff suffered, they are of a type which are more frequently dealt with at the Provincial Court level. Although the plaintiff has scars, he is not a fashion model and the simple fact is that the scars he bears were suffered in a bar fight which he started. Any damages awarded are to be based upon who the plaintiff is and what he looked like before he was injured.

- [18] In *Dier v. Martin*, [1999] B.C.J. No. 1723 (Q.L.), (July 21, 1999 Vancouver Registry) Hood, J. awarded damages of \$18,000 to a plaintiff who was injured in a "road rage" assault. The plaintiff was off work for 65 days, had a permanent injury that required a surgically implanted titanium plate and continued to suffer discomfort, although his double vision, headaches and pain had largely resolved after one year.
- [19] In reply, the plaintiff submits that provocation only goes to reduce the amount of the award; but in any event it can only explain a momentary loss of control on the part of the defendant. Here there was evidence that the defendant assessed the situation and then struck at the plaintiff.

Decision

- [20] In my view, the plaintiff has not made out a case for punitive damages, although the facts of this case do persuade me that the award should include an element of aggravated damages. Taking into consideration the injuries suffered by the plaintiff, his role in the events of that night and what I conclude was a deliberate act on the part of the defendant to strike the plaintiff with his glass in retaliation for the cuff to his head, I set general damages at \$20,000. The plaintiff is entitled to recover his special damages to replace the clothing ruined by his blood and for the cost of pain medication. I set those at \$250. The plaintiff is entitled to his costs, although counsel are at liberty to speak to that issue if required.

"T.P. Warren, J."

The Honourable Mr. Justice T.P. Warren

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