

CITATION: Lawrence v. Sugar Daddys, 2017 ONSC 3741
COURT FILE NO.: CV-15-2847-00
DATE: 2017 06 15

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
WARREN LAWRENCE) Lianne Sharvit, for the Plaintiff
)
Plaintiff)
)
- and -)
)
2030810 ONTARIO LIMITED o/a)
SUGAR DADDYS, VICTOR L.)
MCCULLOUGH aka VICTOR) Self-Represented
MCCULLOUGH, JOHN DOE)
AGENCY and OMAR DINGWELL)
aka OMAR DINGWALL)
)
Defendants)
)
) **HEARD:** June 12, 2017

2017 ONSC 3741 (CanLII)

REASONS FOR JUDGMENT

M. J. DONOHUE, J.

INTRODUCTION

[1] This undefended trial proceeded to assess damages resulting from an assault which occurred on September 14, 2014.

[2] The Defendants were the numbered company operating as Sugar Daddys, Victor McCullough who is the owner of Sugar Daddys, an unnamed security

agency, John Doe Agency, as well as the bouncer, Omar Dingwell, also known as Omar Dingwall, who worked at Sugar Daddys.

[3] The named parties were served but noted in default when no Statements of Defence were forthcoming.

[4] They were also served with the trial brief for this undefended trial. The court paged the named parties but no one responded.

[5] The liability alleged is pursuant to the *Occupiers' Liability Act* s. 3, claiming that property owners owe a duty of care to make premises reasonably safe.

[6] Mr. Lawrence was a patron at the Sugar Daddys bar. He stepped outside for air on the early morning of September 14, 2014 around 2:00 a.m. He was not allowed back in as it was closing time. He remained near the door awaiting his companions who had the car keys.

[7] While waiting, a woman was forcibly removed from the bar by a bouncer. Mr. Lawrence went to assist her and the bouncer, Omar, grabbed his shirt and punched his face.

[8] These allegations of assault and negligence in the Statement of Claim are deemed to be admitted pursuant to Rule 19.06. The evidence described by the Plaintiff supports an unprovoked attack with significant force by an employee or agent of the Defendant's bar on their premises. On the facts as admitted by the

defaulting Defendants I find the Defendant Omar liable for assault and the Defendant owner vicariously liable for the action of their employee or agent.

[9] The trial proceeded further to assess the damages.

DAMAGES

[10] Mr. Lawrence sought an order for general damages for pain and suffering, a loss of income claim for three days missed, a loss of competitive advantage claim, special damages for past and future expenses, and subrogated OHIP claim for medical treatment, plus interest and costs.

General Damages for Pain and Suffering

[11] Mr. Lawrence testified and provided medical documentation of his treatment. Photographs taken within days of the incident as well as photographs taken this year were used to show the scarring just under his right eye below the bridge of his nose.

[12] I am satisfied that as the scar, which is slightly raised, has been present for two years and nine months, that it is permanent.

[13] The scar is on his face and although relatively small it is on the most visible part of his body. I consider that this is an unpleasant reminder of an assault on his person which he will see in the mirror for the rest of his life.

[14] He feels that the scar has lowered his self-esteem and makes him appear as someone who is a fighter or a trouble-maker. It affects his self-confidence.

[15] Mr. Lawrence required minimal medical treatment. Paramedics came to the scene and provided him with an ice pack for the swelling and gauze for the cut.

[16] It does not appear that he required, or obtained, stitches.

[17] Later on the next day he attended emergency at the hospital. He was x-rayed. His nasal bone was fractured and there was a slight deviation of the bony nasal septum.

[18] The emergency doctor referred him to Dr. Craig Stewart. I have no records from Dr. Stewart and have no information whether he is a nasal surgeon or ear nose and throat specialist. It appears he wrote a prescription for Mr. Lawrence for a septorhinoplasty, presumably to correct the slight deviation of the septum. Mr. Lawrence has chosen not to pursue the surgery.

[19] He then went to his family doctor, Dr. Gin, complaining of stuffiness in his nose since the incident. Dr. Gin ordered an x-ray which again confirmed an acute non-displaced fracture of the nasal bone.

[20] Mr. Lawrence has not sought or received any further medical treatment since October 2014.

[21] There was no evidence of requiring any medications. He used a skin cream for the scar but there was no evidence that this was required other than in the first month after the incident.

[22] His current complaint is sensitivity in his nose when he blows his nose and some difficulty with his breathing.

[23] He has not made any complaints to his family doctor since this injury as he has chosen not to pursue the septorhinoplasty. I consider that this speaks to his general recovery.

[24] It was suggested that he will have to have the future surgery. I have no medical evidence on this. In light of his managing without difficulty for close to three years I am not satisfied there is a reasonable possibility that he will seek or require this surgery.

[25] Mr. Lawrence was asked how else his life has been affected. He used to play pick-up soccer games and pick-up basketball in his neighbourhood. He avoids this now as he does not wish to re-injure his nose.

[26] I have no evidence that he is at any particular risk. His wish not to be hurt is a natural one but I do not consider this a significant component connected to his injury sustained in the assault.

Assessment of General Damages for Pain and Suffering

[27] Mr. Lawrence's counsel sought damages to compensate him for his past, present and future pain and suffering in the amount of \$15,000.00 - \$20,000.00.

[28] The court was provided with other Superior Court cases involving nasal fractures, which were in this range or higher. Those cases demonstrated more serious psychological damage and treatment than is present in this case.

[29] On the evidence before me the nasal fracture pain and suffering was painful for less than two months. The current complaints are extremely mild and do not interfere with his life.

[30] He has a permanent facial scar on an otherwise unscarred 34 year old face. It does not disfigure him to any degree in the court's view. I note that he has been in a relationship with someone for the last five months.

[31] Nevertheless I appreciate it is a daily reminder of an unpleasant experience.

[32] In consideration of his minimum treatment and disruption in his life with a small but lasting facial scar I find he is entitled to \$10,000.00 in general damages.

Loss of Income Claim

[33] Mr. Lawrence testified that he missed three days from work as confirmed by a doctor's note. At that time he was earning \$11.00/hour. At that time he had more hours at his airport job. He also worked other hours selling disability insurance. He claims ten hours a day for three days for a total of \$330.00.

[34] I find this a reasonable claim to be made in the circumstances and so order.

Loss of Competitive Advantage

[35] Mr. Lawrence gave evidence that he feels his facial scar negatively affects his work.

[36] He works as an airport customer service person. His hours have been reduced in recent years but he confirmed this was due to unrelated reasons. He really provided no basis of how the facial scar would negatively impact this work.

[37] His other part-time work is commission based sales of disability insurance policies.

[38] He started this work in 2010. His tax return shows gross commission work in 2010 of \$6,012.00. Information from the company shows commissions "advanced" but not necessarily "earned" for tax years 2011, 2012, 2013 and 2014. His gross commissions in his 2015 tax return were \$5,017.00.

[39] He explains that in sales, his presentation is everything. He had no examples of potential customers not dealing with him because of his scar. His focus was on how he feels and his confidence level, however, persuade me that this could affect his ability to seek out and accomplish sales.

[40] Such claims are challenging to consider. This one I would consider at the most modest end of such claims.

[41] His counsel urged me to order \$15,000.00. I find, however, that \$10,000.00 would be fair compensation for such a claim.

Special Damages

[42] Mr. Lawrence gave no evidence of any out of pocket expenses for the scar cream or his mileage to the hospital and doctors in Brampton.

[43] His counsel submits that I should order \$500.00 for past and future claims, considering the possible surgery.

[44] As I conclude that the surgery is not indicated the most I can consider is the mileage to hospital and doctors in the month following this incident.

[45] I consider \$100.00 to be fair compensation for this loss.

Subrogated OHIP Claim

[46] I accept that the filed claim of the Ministry, in conjunction with the medical records filed, support a claim of \$1,333.45.

Pre-Judgment Interest

[47] The Plaintiff is entitled to pre-judgment interest in accordance with the *Courts of Justice Act* section 128 from the date of the assault of September 14, 2014.

CONCLUSION

[48] I order the Defendants jointly and severally to pay the Plaintiff:

General Non-Punitive Damages	\$10,000.00
Loss of Income	330.00
Loss of Competitive Advantage	10,000.00
Special Damages	100.00
Subrogate OHIP claim	1,333.45

[49] I order pre-judgment interest in accordance with s. 128 of the *Courts of Justice Act* on all the above claims, except for the future loss of competitive advantage claim.

COSTS

[50] The Plaintiff's counsel seeks partial indemnity costs of \$13,591.56, inclusive of HST, plus disbursements of \$2,573.16 for a total of \$16,164.72.

[51] Although the claim is modest the Defendants, though served, made no attempt to resolve this outside of a court setting.

[52] I am concerned that the claim does not appear to exceed the Small Claims Court limits of \$25,000.00. I will therefore ask counsel to make written submissions on why the costs should be on the Superior Court scale rather than the Small Claims Court scale.

[53] Submissions may be one to two pages plus any case law and are to be sent to my attention at 7755 Hurontario Street, Brampton, by June 30, 2017.

M. J. Donohue, J.

Released: June 15, 2017

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WARREN LAWRENCE

Plaintiff

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