

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Butterman v. Richmond (City)*,
2013 BCSC 423

Date: 20130313
Docket: S090357
Registry: Vancouver

Between:

Silvia Butterman

Plaintiff

And

**City of Richmond,
Ramandeep Kooner and Aryeh Meir**

Defendants

- and -

Docket: S107417
Registry: Vancouver

Between:

Silvia Butterman

Plaintiff

And

Richmond Animal Protection Society

Defendant

Before: The Honourable Mr. Justice Bernard

Reasons for Judgment

Counsel for the Plaintiff Silvia Butterman
in both actions:

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in Action No. S090357:

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Place and Date of Hearing:

New Westminster, B.C.
October 12, 2012

Place and Date of Judgment:

Vancouver, B.C.
March 13, 2013

A. Overview

[1] On November 23, 2008, Silvia Butterman's dog was set upon by two dogs owned by Aryeh Meir. The incident occurred as Ms Butterman walked her small dog along a sidewalk in a residential neighbourhood of Richmond, BC ("the City"). When Ms Butterman intervened to protect her small dog from Mr. Meir's two large dogs she was injured.

[2] Prior to the Butterman incident, the City had designated Mr. Meir's dogs as "dangerous dogs"; a classification which obliged Mr. Meir to keep his dogs leashed, muzzled, and under his care and control while in public places, and securely confined at all times, either indoors or in an enclosure, while on any premises owned or controlled by the owner. In the incident in question, Mr. Meir's unleashed and unmuzzled dogs escaped from his fenced yard. It is common ground that they were not confined as required by the designation.

[3] The dangerous dog designations were a consequence of two prior attacks by Mr. Meir's dogs upon other small dogs, in June and July of 2008. A third similar incident involving Louise German's small dog occurred on October 5, 2008 (the "German incident"). On November 5, 2008, Ms German reported the incident to the Richmond Animal Protection Society ("RAPS"). Significantly, the German incident was the subject of an outstanding investigation by RAPS at the time of the Butterman incident. It is the alleged mishandling of the German incident which is the foundation of Ms Butterman's claim that the City and RAPS were negligent by failing to enforce, in an effective and timely manner, the City's bylaws regarding the management and control of dangerous dogs.

[4] RAPS is a charitable organization which was, at the time, under contract with the City to provide certain animal control bylaw enforcement services in Richmond.

[5] The essence of Ms Butterman's position is that the City and RAPS were negligent by: (a) failing to exchange pertinent history regarding the dogs; and, (b) failing to take reasonable steps to locate Mr. Meir and his dogs after receiving the complaint of the German incident on November 5, 2008. Ms Butterman says that but

for these failures, the attack upon her dog and, thus, her injuries, would not have occurred.

[6] Ms Butterman seeks a declaration that the City and RAPS are liable for damages, to be assessed at a later date.

[7] It is common ground: (a) that on or about October 20, 2008 Mr. Meir and his dogs changed residence without leaving a forwarding address; and, (b) that Mr. Meir's new residence did not become known to RAPS and the City until after the Butterman incident was reported.

[8] Upon the City receiving the Butterman complaint and learning the whereabouts of Mr. Meir, on December 4, 2008 the City obtained a warrant to seize the dogs. On January 8, 2009, the dogs were euthanized.

[9] It is agreed that at all relevant times, RAPS was under contract (the "Contract") with the City to provide animal control services, including the enforcement of some city bylaws, including Bylaws 7932, 7138 and 7321.

[10] On July 8, 2010, Ms Butterman obtained default judgment against the defendant Aryeh Meir, after he failed to attend to his examination for discovery. The defendant Ramandeep Kooner is the owner of the residence Mr. Meir was renting at the time of the attack. He did not file an appearance in this action, and the claim against him remains outstanding.

[11] The parties agree that the evidence is not contentious and that the issue of liability is suitable for resolution by summary trial and ought to be resolved accordingly.

B. Evidentiary Synopsis

[12] In 2007 Aryeh Meir adopted two bull mastiff dogs from RAPS. He and his dogs resided at rental unit #207 of a strata-titled residential complex at 3851 Francis Road, Richmond, BC, until approximately October 20, 2008.

[13] In June and July of 2008, two residents of the Francis Road complex complained to the City about incidents of aggression by Mr. Meir's dogs.

[14] In the June incident, one of Mr. Meir's dogs jumped up on a man as he held his small dog in his arms. There were no puncture wounds to the man or his dog in this incident; however, the man sustained a scratch to his skin.

[15] In the July incident, Mr. Meir's dogs attacked another man and his dog, as the man held his dog in his arms. This attack resulted in cuts, scrapes and a bite mark to the man's dog. In addition, the man's shirt was torn and he reported numerous abrasions.

[16] Based upon the foregoing complaints, and Mr. Meir's lack of response to them, Mr. Dal Benning, a bylaw enforcement officer for the City, designated the dogs as dangerous and informed Mr. Meir of this decision by letter, mailed on August 28, 2008, to the Francis Street address. The letter set forth the requirements of the designation. There has been no suggestion that Mr. Meir did not receive this letter.

[17] The next known incident involving Mr. Meir's dogs occurred on October 5, 2008, near the intersection of Francis and No. 1 Roads, in Richmond. In this incident Mr. Meir's bull mastiffs attacked Louise German's shih tzu as she walked her dog along a sidewalk. During the incident, one of the bull mastiffs grasped the shih tzu with its mouth and "shook it like a toy". Ms German and her father struggled with the bull mastiffs and managed to rescue the shih tzu without injury to themselves. The shih tzu sustained a bleeding bite mark on its back from the attack; however, stitches were not required.

[18] Ms German did not report the attack on her dog until November 5, 2008, by which date Mr. Meir had moved from his Francis Road address without leaving a forwarding address.

[19] Ms German's report was by way of an email to RAPS. A RAPS file was immediately opened and the matter was assigned to a RAPS animal control officer, Shane Burnham, for investigation. Mr. Burnham took the following immediate action:

(a) he spoke to Ms German and was informed (i) that the man walking the bull mastiffs had identified himself as John McRoberts, and had given his telephone number as 275-1428, and (ii) that the dogs' tags bore numbers 7486 and 6581, and telephone number 275-7165; (b) he entered the information received into RAPS' computer system and by so doing learned that the dogs' owner was Aryeh Meir; and, (c) he telephoned Mr. Meir and left a message requesting that Mr. Meir return his call.

[20] In relation to the nature and urgency of the matter, Mr. Burnham assessed it as follows:

Given the length of time between the incident in question and the filing of the complaint, in addition to the fact that the complaint involved a dog-on-dog fight, with relatively minor injuries, I did not consider this complaint to be urgent, nor did I believe there was any immediate threat to human safety.

[21] On November 6, 2008, Mr. Burnham continued his investigation, as follows: (a) he left a second telephone message with Mr. Meir because he had not yet heard from him; (b) he spoke to Ms German, at her residence, to confirm her report; (c) he attended to the address of Mr. Meir's former residence on Francis Road (obtained from RAPS' adoption records) where the building manager informed him that Mr. Meir had moved in October 2008 without leaving a forwarding address; (d) he left another telephone message for Mr. Meir at a number provided to him by the building manager; and, (e) he placed a call to the City to determine what information it had about Mr. Meir and his dogs, but was unable to speak to the clerk at that time.

[22] On November 7, 2008, Mr. Burnham placed another telephone call to the City, but "got no answer". He also left another telephone message for Mr. Meir.

[23] By November 12, 2008, Mr. Burnham had not heard from Mr. Meir. He placed another call to the City; this time he connected with Norman Kotze, a clerk in the bylaw department. He informed Mr. Kotze of Ms German's complaint and of his inability to locate Mr. Meir due to his recent change in residences. Mr. Burnham said that Mr. Kotze advised him that there had been other complaints about Mr. Meir's dogs; that the City did not have a new address for Mr. Meir; and, that the RCMP was

also looking for Mr. Meir. Mr. Burnham said he was not informed that the dogs had been designated as dangerous.

[24] After November 12, 2008, Mr. Burnham took no further steps to locate Mr. Meir. In this regard he said:

As of November 12, 2008, I had no information upon which to track down Mr. Meir and, therefore, I was unable to speak with him to investigate further until either the RCMP or the City were able to locate a new address.

I was not told by the City at any time that Mr. Meir's dogs had been designated as "dangerous" dogs. However, regardless of whether the dogs were declared "dangerous" or not, at that point my general investigative procedure is the same and until an updated address was provided for locating Mr. Meir, I had no further power upon which to move the investigation forward.

On December 4, 2008, I was advised by the City that they had a new address for Mr. Meir. I was asked to attend with the City and RCMP at Mr. Meir's residence in order to assist the City in apprehending Mr. Meir's dogs. I understood that the City and RCMP had been able to locate Mr. Meir because of a further dog bite incident. ...

[25] On November 23, 2008, Ms Butterman reported the same-day attack to the City. As stated above, the attack occurred when Mr. Meir's dogs escaped from the fenced yard of his residence as Ms Butterman walked her dog along an adjacent sidewalk. It was the report of Ms Butterman which brought Mr. Meir's new residential address to the attention of the City. An investigation immediately ensued.

[26] It was not until after the Butterman complaint had been made that the German incident came to the attention of Mr. Benning at the City. In this regard, Mr. Benning said:

If I had been advised of the October 5, 2008 incident prior to the Plaintiff's incident, I would have instructed the RAPS to pass the information they had on to me, and I would have interviewed witnesses. I did not have the new address where Mr. Meir lived, so I would not be able to interview him unless he returned my phone call. If I came to the conclusion that the complainant's story was true, and if I believed the Dogs may seriously injure or kill a person or domestic animal, I would have decided to seize the Dogs, but I would have first had to locate Mr. Meir. At that time, the City's file only had Mr. Meir's old address...

In this case, where the new address for Mr. Meir was unknown and he was not returning phone calls, I would have notified the RAPS and the City's

Animal Control to be on the lookout for Mr. Meir and these Dogs and to advise when they had been located.

[27] Under the terms of its contract with the City, RAPS was obliged to perform the following services:

- (a) to patrol for animal control and enforcement of related bylaws;
- (b) to pick up and seize injured, stray, or dangerous domestic animals;
- (c) to enforce, including issue tickets for, violations of Animal Control Regulation Bylaw No. 7932, Dog Licensing Bylaw No. 7138, and Municipal Ticket Information Authorization Bylaw No. 7321.

C. Synopsis of the Plaintiff's Position

[28] The plaintiff submits that the City and RAPS were engaged in a joint enterprise to enforce the City's animal control bylaw, yet they operated as "two solitudes". The plaintiff says that Mr. Burnham's and Mr. Kotze's failure to fully apprise one another of the dogs' history and the details of the German incident were negligent failures. The plaintiff argues that if they had shared information then it would have been apparent to both that they had a "ticking time bomb" on their hands.

[29] The plaintiff characterizes the dangerous dog designation, in particular, as "explosive information" which created a joint responsibility to take quick action to extinguish this "ticking time bomb". The plaintiff says that information-sharing would have triggered investigative steps different and more fruitful than those taken by Mr. Burnham; ones which were likely to have resulted in establishing Mr. Meir's whereabouts and seizing his dogs prior to the Butterman incident.

D. Synopsis of the Defendants' Positions

[30] The City acknowledges that it has a duty to enforce the bylaw in question, and RAPS acknowledges that it has a contractual obligation to actively enforce the bylaw. Their collective position is that their obligations were properly discharged

because the City and RAPS acted reasonably in all the circumstances. In this regard, the City says it quickly responded to the June and July 2008 complaints, classified Mr. Meir's dogs as dangerous, and informed Mr. Meir of his obligations following such a designation. The City notes that if Mr. Meir had met his obligations then the Butterman incident would not have occurred. In relation to the German complaint, the City and RAPS says the response was immediate and the investigative steps to locate Mr. Meir were reasonable.

[31] In relation to the manner of investigation of the German incident, the City and RAPS submit that it is of no consequence that there was incomplete information-sharing between Mr. Burnham and Mr. Kotze because at the time of the report, Mr. Meir's whereabouts were not known to either the City or RAPS and, thus, nothing more could be done. As for whether the City or RAPS would have likely located Mr. Meir in the short period between the German incident, reported on November 5th, and the November 23rd Butterman incident if they had taken further steps, they submit that the plaintiff has failed to show that there were such fruitful avenues open to the City or RAPS.

[32] The City and RAPS further submit that even if Mr. Meir's whereabouts had been ascertained prior to the Butterman incident, it is highly improbable that the dogs would have been seized because the dogs' histories, including the German incident, were not sufficiently serious to have justified such.

[33] RAPS submits that its contract with the City obliges RAPS to engage in active enforcement of the bylaws and the issuance of tickets. It notes that the Contract does not specify how investigations related to enforcement are to be conducted; however, it says that the investigative steps taken by Mr. Burnham constituted active enforcement, and that when Mr. Burnham could not locate Mr. Meir, there were no other reasonable steps for Mr. Burnham to take. Alternatively, RAPS' position is that if the contractual requirements fell below the applicable standard of care, then any residual liability would lie with the City.

[34] RAPS adopts the City's submission regarding causation. It argues that nothing Mr. Burnham did or did not do, or knew or did not know, during the investigation of the German incident would have changed the outcome because Mr. Meir and his dogs were located only as a result of the Butterman report.

E. Discussion

[35] It is well-settled that to prove a claim of negligence, a plaintiff must show: (a) that the defendant owed the plaintiff a duty of care; (b) that the defendant's conduct breached the applicable standard of care; (c) that the plaintiff sustained damages, and, (d) that the damage was caused, in fact and in law, by the defendant's breach: see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, [2008] 2 S.C.R. 114, at para. 3.

[36] In the case at bar, it is not a matter of controversy: (a) that the City and RAPS owed Ms Butterman a duty of care in relation to the enforcement of Richmond's animal control bylaw; (b) that the applicable standard of care is that which would be expected of an ordinary, reasonable and prudent body in the same circumstances (see *Foley v. Shamess*, 2008 ONCA 588); and, (c) that where an independent contractor (i.e., RAPS) complies with the standard imposed by the terms of its contract with the government (i.e., the City), even if this standard is below the applicable common law standard, no liability can result to the contractor (see *Holbrook v. Argo Road Maintenance Inc.*, 1996 CanLII 3600 (B.C.S.C) at paras. 34 and 35).

[37] Similarly, it is not in issue that the manner of enforcement of the bylaw in question is a matter of policy within the discretion of the City. There has been neither a suggestion that there is an express statutory duty obliging the City to enforce the bylaw nor any argument that such is implicit. In the absence of such a positive duty, the jurisprudence establishes that the City is afforded broad discretion to determine how it will enforce its own bylaws, and that the manner of enforcement is not to be left to the whims or dictates of the citizenry (see *Foley v. Shamess*, *supra*, at para. 29).

[38] Where enforcement of a bylaw is discretionary, as it is here, the City is obliged to: (a) act in good faith in relation to its decisions as to how the bylaw will be enforced; and, (b) act with reasonable care in any steps it takes to enforce the bylaw (see *Foley v. Shames*, *supra*, at para. 29; *Froese v. Hik*, [1993] B.C.J. No. 731 (B.C.S.C.)). As Huddart J. (as she then was) succinctly stated in *Froese*, *supra*:

... Municipalities do not insure or guarantee everything included in applications filed to obtain permits under regulatory schemes. They do not even insure or guarantee compliance with by-laws, unless the by-law or the enactment authorizing that by-law creates a statutory duty to enforce some or all of its provisions. Municipalities in the position of Matsqui owe a duty of good faith decision-making to the public as a whole and a duty to take reasonable care in the implementation of a regulatory scheme to those in sufficient proximity to merit that duty. The precise nature and extent of that duty is determined on a case by case basis, taking into account the nature and purpose of the authorizing legislation, the nature and purpose of the subordinate legislation, and the relationship between the municipality and the person asserting its obligation of care. It may be that such a duty does not extend to encompass purely economic loss (and there may be other policy reasons limiting the scope of the duty of care). These are the principles I extract from *Kamloops*, *supra* and *Manolakos*, *supra*.

[39] Notwithstanding the plaintiff's complaint that the City and RAPS acted as two solitudes, there has been no suggestion that the City acted without good faith in its decision-making as to how, generally, it would enforce the bylaw in question; thus, the remaining live issue is whether the City and/or RAPS failed to act with reasonable care in relation to the steps they took to enforce the bylaw, upon receipt of the German complaint.

[40] On this question, the essence of the plaintiff's position is that the City and RAPS did not act with reasonable care when they failed to share certain information about Mr. Meir's dogs. Having regard to the aforementioned standard of care, "reasonable care" is that which would be expected of the ordinary, reasonable and prudent body, in the same circumstances.

[41] A useful starting point is an examination of the nature of the German complaint. The evidence establishes that it was in relation to a brief dog-on-dog attack, in which Ms German's small dog received a minor and transitory injury. Although the event was, undoubtedly, a traumatic event for both Ms German and her

dog, there were no serious injuries and no humans were either attacked or injured by the aggressor dogs in the incident. It is also, arguably, of some weight in assessing the seriousness of the incident that an entire month elapsed before Ms German reported the incident.

[42] Not surprisingly, it has not been suggested that the investigative steps taken based solely upon the German complaint were unreasonable; rather, the plaintiff's submission is that it is the histories of the dogs – in particular, the dangerous dog designations – which informs the question of reasonableness and establishes that the steps taken were not reasonable, in all the circumstances.

[43] In this regard, the evidence of Mr. Burnham and Mr. Benning is essentially the same: that is, an awareness of the histories of these dogs (including the details of the German complaint) would not have altered the course of the investigation for either RAPS or the City. The plaintiff clearly challenges these assertions by characterizing the unshared information as “explosive” and revealing “a ticking time bomb”.

[44] The reasonableness of Messrs. Burnham and Benning's assertions must be assessed by examining the nature of the unshared information within the context of the German complaint. If the plaintiff's characterization of it is fair and reasonable, then the evidence of Messrs. Burnham and Benning is troubling; however, for the reasons which follow I am not persuaded that it is.

[45] The evidence establishes that the known history of Mr. Meir's dogs consisted of two similar attacks upon small dogs, each without serious injury to the dogs or to humans. It is solely this history which resulted in the dangerous dog designations. While I am satisfied that it would be evident to anyone aware of this history and of the details of the German complaint, that Mr. Meir's dogs had a collective propensity to attack small dogs, I am not persuaded that this information can fairly be characterized as “explosive” such that if it had been known it can reasonably be said that it should, and likely would, have changed the course of the investigation. In the absence of a history of attacks upon humans or attacks upon animals causing

serious injury to them, I am unable to agree that the terms “explosive” and “ticking time bomb” are reasonable and accurate characterizations of the unshared information.

[46] The reality was that the complaint of Ms German was in relation to a relatively minor dog-on-dog attack; that a significant period of time had elapsed between the attack and the lodging of that complaint; that the history of the impugned dogs consisted of two relatively minor similar incidents; and, that in response to the two prior attacks, the City had classified the dogs as dangerous and notified Mr. Meir of his obligations under the bylaw.

[47] Even if it could reasonably be said that the history of the dogs would have been germane to the investigation, the evidence establishes that no measures could be taken against Mr. Meir and his dogs until they were located, and their whereabouts were unknown, and remained so, until the Butterman incident.

[48] The plaintiff submits that reasonable steps, in all the circumstances, were not taken to find Mr. Meir and his dogs; that had the defendants employed the resources available to them, this investigation would likely have revealed Mr. Meir’s new address. The difficulty with the foregoing argument is that it is speculative and without evidentiary support. There is no evidence that the various information sources suggested by the plaintiff (e.g., Canada Post, ICBC, and the RCMP) held Mr. Meir’s new address, let alone that such information would have been accessible by either the City or RAPS; instead, there is evidence of an RCMP inquiry to the City suggesting that the RCMP, with all its investigative tools and resources, was also unaware of Mr. Meir’s whereabouts.

[49] Having regard to the foregoing, I am satisfied that the steps taken by Mr. Burnham to locate Mr. Meir were reasonable, in all the circumstances. Mr. Burnham acted quickly upon receipt of the German complaint and he explored all reasonable avenues in his efforts to locate Mr. Meir, including the City’s records. Even if there were other potential avenues available to him, I am satisfied that neither the nature of the complaint nor an awareness of the dogs’ history would have

made it reasonable for him to take them. Such would have amounted to extraordinary steps not warranted in all the circumstances. Similarly, I am not persuaded that the City would have investigated the matter differently.

[50] Even if Mr. Meir and his dogs were found within the 18-day period between the German report and the Butterman incident, I am not persuaded that the Butterman incident would have been averted. Aside from the very limited time frame, s. 49(2) of the *Community Charter* only permits seizure in specific circumstances which, unquestionably, did not exist here. This provision requires that an animal control officer may seize a dog only if the officer believes, on reasonable grounds, that the dog: (a) has killed or seriously injured a person; (b) has killed or seriously injured a domestic animal, while in a public place or while on private property, other than property owned or occupied by the person responsible for the dog; or, (c) is likely to kill or seriously injure a person. Virtually the same grounds must exist before a Justice may issue a warrant to seize a dog.

F. Conclusions

[51] The City and RAPS acted reasonably in response to the German complaint. The investigative steps taken were those which could be expected of an ordinary, reasonable and prudent body, having due regard to the nature of the German complaint and the dogs' histories. The evidence does not establish that different investigative steps would have been taken by an ordinary, prudent, and reasonable bylaw enforcement officer fully informed of the dogs' histories and of the details of the German complaint.

[52] Even if, however, the failures of the City and RAPS to share information were a breach of the applicable standard of care, the plaintiff's case would fail for lack of proof of the requisite causal link between the negligence and the Butterman incident. The evidence does not prove, on a balance of probabilities, that different investigative steps would have resulted in finding Mr. Meir and his dogs prior to the Butterman incident; moreover, it is abundantly clear that even if such occurred, there was an insufficient basis to support the seizure of the dogs. In the absence of a

seizure, I am not satisfied, on a balance of probabilities, that the Butterman attack would have been averted.

G. Disposition

[53] The plaintiff's claims against the City and RAPS are dismissed. The parties have liberty to make written submissions regarding costs, if necessary.

“The Honourable Mr. Justice Bernard”