

Date: 19970501
Docket: S019457
Registry: New Westminster

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROBERT PAUL LAWRENCE

PLAINTIFF

AND:

**JOHN B. PUB LTD., GLENN MARSHALL,
ROBERT MACDONALD, BRIAN COOMBER and
JOHN LEPINSKI**

DEFENDANTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE DE WEERDT

Counsel for the Plaintiff: Paul G. Kent-Snowsell, Esq.

Counsel for the Defendants: Joseph P. Cahan, Esq.

Place and Date of Hearing: New Westminster, B.C.
November 12 and 13, 1997 and
January 22 and 23, 1997

[1] Both legal liability and the quantum of damages to which the Plaintiff Robert Paul Lawrence may be entitled are at issue in this civil action in which he claims compensatory remedies on account of his injuries, pain and suffering, and other consequential loss arising from an incident in which he was forcibly ejected from a public tavern in Coquitlam owned by the Defendant John B. Pub Ltd., at about 9:30 p.m. on on March 11, 1994.

[2] The remaining Defendants, Glenn Marshall, Robert MacDonald, Brian Coomber and John Lepinski were all employees of John B. Pub Ltd. at the time who were, in one way or another, involved in the incident in question.

[3] The evidence before the Court is conflicting in reference to the events which occurred during the incident, calling for a careful assessment of the credibility of the witnesses on both sides of the case.

[4] Nevertheless, I have no hesitation or difficulty in finding that Mr. Lawrence received his injuries and suffered consequential loss from blows inflicted upon him by Mr. MacDonald during the incident, in addition to bruises incurred by Mr. Lawrence in his struggles while being forcibly ejected from the tavern. Mr. Macdonald admits to having punched Mr. Lawrence twice in the face before Mr. Lawrence was ejected. Mr. Lawrence's testimony is that he had been subjected to an

arm lock around his throat from behind, by which he was dragged outside the tavern through a fire exit door, whereupon he was punched in his left eye as he was being held before he was finally released. It is Mr. Lawrence's evidence that he was kicked while lying on the ground, receiving blows to his head and ribs. These blows outside the tavern are all denied by the Defendants involved.

[5] On the whole of the evidence, I find that Mr. Lawrence was involved in a confrontation with two other patrons of the tavern, over use of the pool tables at some time around 9:30 pm on March 11, 1994. The two patrons in question are Gordon Dolyzniuk and Len or Larry Golinski. The immediate result of this confrontation was that Mr. Lawrence was told to leave the tavern. This appears to have come from Robert MacDonald in his capacity as an employee of John B. Pub Ltd. Mr. Lawrence turned his back on the others and went to his table a short distance away where he informed his wife Wendy Lawrence and her companion Sandra Bruun that he was leaving as he had been told to do.

[6] By their demeanour in Court and testimony on the witness stand I am disinclined to give more than qualified acceptance to the evidence of Messrs Dolyzniuk and Golanski. I accept their evidence only to the extent that it is confirmed by the independent witness, Gina Hicks, who was seated at the time at a nearby table observing events as they unfolded. Ms. Hicks

was not previously acquainted with either Mr. or Mrs. Lawrence or Ms. Bruun. I am likewise disinclined to fully accept the evidence of Monty Logan, another bystander who was a long standing patron of the tavern well acquainted with its staff as well as Messrs Dolyniuk and Golanski. Unlike Ms. Hicks, Mr. Logan and his friends Mr. Dolyniuk and Golanski, gave what I infer was a partisan version of what occurred intended to exonerate them and the Defendants.

[7] Notwithstanding the testimonial allegations made by Messrs Dolyniuk and Golanski, I reject their evidence that Mr. Lawrence made the confrontation which he had with them a physical one in which he held Mr. Dolyniuk by the throat. I accept Mr. Lawrence's evidence that he was pushed by Mr. Dolyniuk and that he consequently only pushed back; there was nothing more than some pushing and shoving at this point. I reject Mr. Dolyniuk's testimony that Mr. Lawrence also punched him then in the head, causing him to fall down. Indeed, no other witness claims to have seen any such action by Mr. Lawrence except Mr. Logan, whose evidence is that this blow was struck by Mr. Lawrence only as he was on his way towards leaving the premises, Mr. Lawrence having first gone to his table to speak to Mrs. Lawrence and retrieve some possessions. Accordingly to Mr. Dolyniuk, Mr. Lawrence struck him several times. No other witness, even Mr. Logan, gave evidence to support that allegation, which I reject as being a deliberate falsehood.

[8] As far as Mr. Logan's evidence alleging that a blow was thrown by Mr. Lawrence to the back of Mr. Dolyniuk's head as Mr. Lawrence was heading out of the premises, I have not ignored Mr. Golanski's evidence to the same effect. I also note that Glenn Marshall, a Manager under Brian Coomber of the tavern at the time, saw no more than a swing or lunge made by Mr. Lawrence towards Mr. Dolyniuk as Mr. Lawrence was on his way to leave, Mr. Dolyniuk standing there with his arms folded. At the same time, Mr. MacDonald's testimony is that he saw no blow directed by Mr. Lawrence at Mr. Dolyniuk. Instead, it is Mr. MacDonald's evidence that Mr. Lawrence struck him on the chin, causing Mr. MacDonald to strike back by punching Mr. Lawrence twice in the face. Mr. Marshall claims not to have seen Mr. Lawrence strike Mr. MacDonald or Mr. MacDonald strike Mr. Lawrence at all.

[9] According to their testimony, neither John Lepinski (a principal shareholder and officer of John B. Pub Ltd.) nor Brian Coomber (the General Manager of the tavern) came on the scene until Mr. Lawrence was being forcibly removed from the premises by Mr. MacDonald and Mr. Marshall. At this point they were all on the floor near the fire exit, with a substantial crowd looking on, Mr. Lawrence resisting and thrashing about wildly. Mr. Lepinski's evidence is that they were able to calm things down, following which Mr. Lawrence was ejected through the fire exit but without being struck or kicked. However, he noticed blood on Mr. Lawrence's face and had someone bring a

cloth with which to wipe it off. Mr. Coomber had a more active role in helping to eject Mr. Lawrence, but he too denies that there were any blows or kicks inflicted in his presence upon Mr. Lawrence.

[10] I accept the evidence of Messrs Lepinski and Coomber in its main outlines and find that neither of them used any excessive force in the removal of Mr. Lawrence from the premises. Nor did either of them do anything to encourage or assist anyone else to do so.

[11] The action is therefore dismissed as against Mr. Lepinski and Mr. Coomber.

[12] In reaching this outcome I have concluded that steps were clearly required to remove Mr. Lawrence from the premises when further jostling took place between him and Mr. Dolyaniuk as Mr. Lawrence was voluntarily making his way out towards the fire exit. I have also concluded that whatever occurred prompted Mr. MacDonald to strike Mr. Lawrence twice in the face in what I infer to have been an unwarranted over-reaction to Mr. Lawrence's involvement in the jostling. This action by Mr. MacDonald is confirmed by the testimony of Ms. Hicks. Her testimony furthermore confirms that the blows inflicted by Mr. MacDonald at this point were unnecessarily violent. These blows were inflicted on the premises by an employee of John B. Pub Ltd., in purported exercise of that employer's right and

duty to remove Mr. Lawrence. I find that the infliction of these two blows constituted excessive force in all the circumstances and led to a scene in which Mr. Lawrence was evidently attempting to protect himself.

[13] The photographic exhibits filed with the other documentary items in Exhibit 1 at trial (the Plaintiff's book of documents) do not reflect any real substance to Mr. Lawrence's allegations of having been beaten and kicked in the face and ribs. These exhibits do show that he had a very badly swollen left eye following the incident. It is Mr. Lawrence's evidence that his eye was struck by one of the employees of the tavern but only after he was removed off the premises. I conclude that he is mistaken as to when and where this occurred, given the very confusing circumstances and the obvious indications that he was under great stress emotionally and physically during the incident. I find that his eye was injured by one of the two blows delivered to Mr. Lawrence's face while on the premises prior to his forcible removal.

[14] There is no evidence beyond that of Mr. Lawrence and Ms. Hicks to support his claim that he was beaten by the tavern staff who were engaged in his removal from the premises; nor is there any evidence other than that of Mr. Lawrence as to what, if anything, took place outside following his removal. I find that his evidence on these matters is highly subjective. Being essentially unconfirmed by objective circumstantial evidence, I

conclude that the testimony of Ms. Hicks is also insufficient to confirm that Mr. Lawrence was kicked, as he alleges, or that he was beaten either in the process of being ejected or after he had been removed outside the premises. Neither Mrs. Lawrence nor Ms. Bruun gave evidence which persuades me otherwise.

[15] The medical and dental evidence is not in dispute. Mr. Lawrence suffered a fracture to the left orbital bones of his face requiring surgery and the insertion of an implant. As a result he is left with a permanent partial disability making him more susceptible than before to risks of infection and has had to obtain new eyeglasses. In addition, Mr. Lawrence suffered a tooth fracture requiring dental attention. These and other consequences of the incident are, on the balance of probabilities, results of the blows struck by Mr. MacDonald acting in cooperation with Mr. Marshall prior to Mr. Lawrence's removal. I do not, however, find Mr. Marshall to be legally liable for the infliction of these blows or their consequences. He has not been shown, as Mr. MacDonald has, to have exercised undue force in the ejection of Mr. Lawrence.

[16] The action must therefore be dismissed also as against Mr. Marshall.

[17] The action succeeds, on the other hand, as against John B. Pub Ltd., pursuant to the **Occupiers Liability Act**, R.S.B.C. 1979, c.303 and, in particular, on account of the actions of its employee Mr. MacDonald. John B. Pub Ltd., on the evidence, was in addition negligent in failing to ensure that its staff was adequately trained in techniques of handling the ejection of belligerent or angry patrons from its premises. It was not enough to provide staff with written instructions stating that no more force was to be used than necessary in such instances.

[18] Mr. Lawrence lost six weeks of work as a drywaller at a time when he had such work to do. He underwent facial surgery and had a dental root canal operation. And he has a partial permanent disability with increased risk of infection. All these are consequences of the assault upon him by Mr. MacDonald and John B. Pub Ltd's negligence and breach of statutory duty, as well as its vicarious liability for Mr. MacDonald's acts, which give rise to the following damages:

1.	General damages:	\$25,000.00
2.	Punitive damages:	2,500.00
3.	Aggravated damages:	2,500.00
4.	Future income loss:	5,000.00
5.	Past wage loss:	4,320.00
6.	Special damages:	1,881.26
		<hr/>
	Total	\$41,201.26

[19] Mr. Lawrence shall have judgment in the sum of \$41,201.26 plus court order interest and costs against the Defendants

Robert MacDonald and John B. Pub Ltd. The action is dismissed with one set of costs against Mr. Lawrence in respect of the remaining Defendants.

"M.M. de Weerd, J."
M.M. de Weerd, J.