

**SMALL CLAIMS COURT OF NOVA SCOTIA**

Citation: *Gerus v. Harty*, 2022 NSSM 32

**Date:** 20220601

**Docket:** SCCH 505631

**Registry:** Halifax

Between:

Iryna Gerus

*Claimant*

-and-

Alicia Harty

*Defendant*

**Adjudicator:** Eric K. Slone

**Heard:** May 10, 2022, via zoom in Halifax, Nova Scotia

**Appearances:** For the Claimant, self-represented

For the Defendant, self-represented

**BY THE COURT:**

[1] There are many different definitions of road rage, but they all capture the curious fact that people sometimes behave out of character and out of all proportion when cars are involved.

[2] One definition I came across is “*a motorist's uncontrolled anger that is usually provoked by another motorist's irritating act and is expressed in aggressive or violent behaviour.*” A minor variation would be where one of the participants is a pedestrian.

[3] One of the common triggers for road rage is horn honking. No one appreciates being honked at, even if it is justified. That is what started the sad and disturbing incident that gave rise to this lawsuit.

[4] The Claimant is a seemingly free-spirited woman who was walking along Barrington Street in Halifax on February 5, 2021, on her way to get some lunch. As she walked, she was using her iPhone to film a video that she planned to send to her mother back in Ukraine. As she crossed Blowers Street, she stopped or slowed down briefly, apparently vamping for the camera.

[5] The Defendant (who was having a difficult day) was driving her vehicle east down Blowers Street, and then stopped at the corner to allow pedestrian traffic to cross. She attempted to move forward but was temporarily blocked by the Claimant who was apparently engrossed with her videoing. The Defendant honked her horn, hoping to persuade the Claimant to finish crossing so she could proceed. She says she only gave two short beeps. However, this was enough to shake the Claimant out of her reverie. The Claimant got out of the intersection, feeling aggressed upon.

[6] The events should have ended here. It is not illegal to sound one’s horn, though it might be seen as impolite or aggressive to do so where there is no real danger or emergency. Being impatient is not usually a real emergency. Unfortunately, the Claimant decided to confront the person who had honked at her.

[7] The two versions of what happened next do not vary much. From them I distill the following.

[8] After the honking incident, the Defendant drove another block down Blowers and parked in front of the Mountain Equipment Coop store. The Claimant saw her park and walked down to confront her. She was still filming with her phone, which was now focussed on the Defendant.

[9] She reached the Defendant's car and began shouting, asking why the Defendant had honked at her. The Defendant remained in her car, at first, asking the Claimant to go away and leave her alone. The Claimant persisted.

[10] The Defendant could have just stayed in her car and ignored the Claimant. Or she could have driven away. But she took great exception to being videoed and passed up the opportunity to defuse the situation.

[11] Contrary to what some people may believe, it is not illegal to film someone without their consent. It may be experienced as a breach of privacy, and felt as highly impolite, but illegality only arises if the footage is used for some improper purpose, such as commercially.

[12] The Defendant decided to get out of her car and force the Claimant to delete the video that she had just taken. This led to a physical struggle for the phone. Eventually, the Defendant secured the phone and managed to force the Defendant to delete the video.

[13] It could have ended here, but it did not. For some unexplained reason, the Defendant held on to the Claimant's phone and started to get back into her car. Concerned that the Defendant was going to make away with her phone, the Claimant quickly squeezed into the driver's seat before the Defendant could do so. This led to a further physical struggle as the Defendant pulled the Claimant out of her vehicle. In the process, the Defendant tossed the Claimant's phone a few metres away.

[14] The majority of this claim concerns alleged damage to the phone.

[15] The Defendant then drove away. The Claimant got her licence plate number and called the police, who attended at the scene and began an investigation. In the end, no criminal charges were pursued.

[16] The Claimant describes the incident as one of the worst shocks that she has experienced in her life. I would not presume to deny the validity of the Claimant's

experience, but I must look objectively at what occurred and keep it in some perspective.

[17] It should not be overlooked that this event happened in a phase of the pandemic when people were being strongly advised to keep their distance from other people, particularly if they were unmasked. If nothing else, this should have deterred both parties from coming too close to each other. Unfortunately, it did not.

[18] I must consider where the actions of either party crossed the line from being rude or impolite to being illegal?

- a. The initial horn honking by the Defendant was not illegal, though it was experienced as rude and aggressive.
- b. The Claimant's pursuit of the Defendant, while filming, was not illegal, though it was experienced as a breach of privacy and overly aggressive.
- c. It was not illegal for the Claimant to shout at the Defendant, demanding an explanation.
- d. It was not illegal for the Defendant to shout back at the Claimant.
- e. It WAS illegal for the Defendant to initiate physical contact and grab the Claimant's phone. This behaviour amounts to the tort of assault.
- f. All of what happened thereafter can be seen as a consequence of the assault, including the throwing of the phone.

[19] Assault is actionable at law. Even the slightest act of uninvited touching legally amounts to an assault. And every assault is compensable in damages, even if such damages are only nominal.

### **Damages**

[20] The Claimant testified that her phone started misbehaving immediately after it was thrown to the ground. She says that it became less responsive, and that some apps failed to function properly. She claims that there was a scratch on the

Otterbox case. She says that the battery will not charge fully.

[21] The phone in question is an iPhone 11 Pro which the Claimant bought in late 2019, so it was still relatively new in early 2021. She has claimed its full value of \$1,620.00, as well as the cost of the case at \$56.30.

[22] The Claimant continues to use this phone. She has not taken it to the Apple Store or anywhere else to have it diagnosed and repaired, if need be. I do not fully buy her excuse that it would cost too much to do that, or that she does not go into malls. She has had more than 15 months since the incident to obtain some objective evidence of the damage, if any, to her phone. I can only assume that the phone works well enough to meet her needs; otherwise, she would have done something about having it investigated. The Claimant appears to be active on social media and would be extra motivated to have a fully functioning phone.

[23] It is an established legal principle that a Claimant has a legal duty to not only to prove their damages, but also to mitigate them. In this case, investigating a possible repair might have revealed that the damage was minor, or even illusory.

[24] I find that the Claimant has not proved that her phone was damaged by the Claimant.

[25] I will allow the cost of the phone case at \$56.30, even though the scratch was purely cosmetic.

[26] I am also prepared to award general damages of \$100.00, which is the court's monetary limit.

[27] As for costs, the Claimant incurred both the filing fee of \$99.70 and also a \$63.50 cost to register a judgment when she obtained an order by default, which the Defendant successfully overturned. Given that the Defendant missed the deadline and received an indulgence, I consider these costs fully recoverable.

[28] The Claimant will accordingly have judgment for a total of \$319.50.

**Eric K. Slone, Adjudicator**