

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Hunter v. Gomez, 2025 NSSM 50

Date: 20250821

Claim: 542133

Registry: Halifax

Between:

Andrew Boyd Hunter

Claimant

and

William-Henri Sellier Gomez

Defendant

Adjudicator: Augustus M. Richardson, KC

Heard (by Zoom): August 15, 2025

Decision: August 21, 2025

Counsel: Claimant: Andrew Boyd Hunter, self-represented
Defendant: Patrick Eagan, counsel

By the Court:

[1] This is a claim for the recovery of veterinarian costs and expenses arising from the injury caused by the defendant to the claimant's cat, named Oscar, on January 25, 2025. The defendant admits that Oscar was injured by him. He says he was acting to defend his child and young dog from Oscar's threatening behaviour when he tried to move the cat away. The claimant says that Oscar's alleged conduct was unlikely, or that in any event the defendant over-reacted and had no grounds to act as he did.

[2] Having heard the evidence and reviewed the documents submitted I have determined that the claim must be dismissed.

The Hearing and the Evidence

[3] The hearing proceeded before me by Zoom on August 15, 2025. On behalf of the claimant, I heard the testimony of Tristan Zinck and Janice Mills, both officers with Halifax's Community Safety Department. They had interviewed the defendant at different times about the incident. They testified as to the statements of the defendant that they had recorded.

[4] On behalf of the defendant I heard the testimony of the defendant and of his wife, both of whom were witnesses to the incident on January 25, 2025.

[5] As well, at the commencement of the hearing the defendants admitted as fact the following:

- a. Oscar was injured as a result of the incident on January 25, 2025;
- b. That injury was the result of contact between Oscar and the defendant;
- c. The injuries (primarily to Oscar's right eye resulting in its removal) were those set out in the veterinarian's documents filed with the claim; and
- d. The cost of that veterinarian's treatment was \$2,557.23.

[6] The only witnesses to the incident were the defendant and his wife. An hour or two after the incident the defendant reported it to the Halifax Community Safety Department by way of an email statement. Officers Zinck and Mills also made notes of discussions they had had with the defendant several days after the incident.

[7] I also note that I denied the claimant's request to call several witnesses who would testify as to what he said was Oscar's calm, peaceful and gentle manner, and as to how he was very good around children. I denied the request because such evidence of character was irrelevant. The fact that someone or something has been peaceful in the past is not evidence relevant to whether they were peaceful at the time of the incident. The fact that Oscar may have been of such good character in the past does not negate the possibility that he could have acted in an aggressive manner on the day in question.

[8] For the same reason I granted the claimant's objection to attempts by the defendant and his wife to testify as to their past experience with Oscar in partial explanation for their response to him on the day of the incident. Notwithstanding these two directions, the claimant made a number of attempts to introduce evidence of Oscar's apparent good character via his cross-examination of the defendant and his wife. I cautioned him that if he kept opening the door to such evidence it might come in. He persisted and as a result some of that did come into evidence during the testimony of the defendant's wife. I did not place any weight on it given my previous directions.

The Findings of Fact Based on the Evidence

[9] The morning of January 25, 2025 the defendant, his wife, their toddler and their young dog had gone to the playground at Caudle Park Elementary School. There is a community path that runs from the playground to Chandler Drive. The path runs between two houses. That part of the path that approaches Chandler Drive is fenced on either side with a chain link fence. The fence on either side means that persons or animals on that part of the path would be hemmed in.

[10] Returning to the defendant, as he and his wife, toddler and dog were returning from the playground they realised that his wife had left her gloves behind. The defendant ran back with his leased dog along the path to retrieve them. His wife and child continued on their way.

[11] Mrs Gomez testified that Oscar approached them on the path. Mrs Gomez was well along on her pregnancy at the time. She had concerns about Oscar based on a previous experience. She placed herself between Oscar and her child, but the cat kept trying to go around her. At this point the defendant showed up.

[12] The defendant testified that he had seen his wife trying to shield their young child from the cat. He came up and placed himself between Oscar and his wife and child. He testified that Oscar began to hiss and spit and ‘swipe’ (which I took to mean swipe at them with his paw). The defendant tried to push Oscar away with his shoe, and then pushed or hit or tapped Oscar with his ball-throwing stick (the one used to play with his dog). Up until this point Oscar had been hissing, spitting and swiping. Oscar then ran away. The defendant was not aware at that time that Oscar had suffered any injury as a result of any contact with the ball-throwing stick. Based on this evidence I was satisfied that the tip of the claimant’s ball-throwing stick had touched or grazed Oscar. It was not, in other words, a swinging, hard blow.

Analysis and decision

[13] The thrust of the claimant’s position, both during his cross-examination of the defendant and his wife, and in his submissions at the end of the hearing was that

a.the defendant’s evidence was not credible;

b.that Oscar's behaviour, even if it included hissing, spitting and swiping, could not and did not represent "any real threat of injury to the child or the defendant or his wife;" and

c.regardless of any perception of danger, a "blow to the head that affects an eye was completely unjustified."

[14] I was not persuaded by these submissions.

[15] First, the onus of proof on a balance of probabilities is on the claimant.

[16] Second, finding as I do that Oscar did begin to hiss, spit and swipe at some point (a fact the claimant himself accepted as a possibility), it is not for me or the claimant to question the defendant's perception at this point that his child or dog might be at some risk. The defendant and Oscar were in a narrow, enclosed space on the path. The cat had adopted a menacing stance. It was advancing (or at least blocking their advance down the path). It was not retreating. The fact that Oscar may have been reacting to the presence of the dog, or had perceived itself to be under some threat (and hence acting out as a result), does not negative the defendant's perception that Oscar posed a threat. To suggest that Oscar at that moment did not pose "a *real* threat" is arm-chair quarterbacking after the fact.

[17] Third, and flowing from the second, I am satisfied that given the defendant's reasonable perception of Oscar's conduct as representing a threat he was entitled to attempt to move or push Oscar away. His attempt to push Oscar back with his shoe

and then with his ball-throwing stick was not unreasonable conduct in the circumstances.

[18] Fourth, there is the question of the contact between the stick and Oscar's eye.

There was nothing to suggest that the defendant violently or brutally beat Oscar with the stick. Such conduct would have been unreasonable. What happened was rather contact between Oscar and the stick which, on the evidence, was contact with his eye. An eye is notoriously sensitive to injury. A minor or fleeting contact with an eye can cause severe and lasting damage. That seems to have been the case here. But there was nothing to point to the defendant intentionally aiming for Oscar's eye. What evidence there was points to an accidental contact while trying to push an aggressive cat away. While the result was unfortunate it was also clearly accidental and unintended.

[19] All this means that the claimant has failed to establish any grounds for liability on the part of the defendant.

[20] Accordingly, on these facts and for these reasons I must dismiss the claim.

Augustus M. Richardson, KC, Small Claims Court Adjudicator