

Claim No: 431466

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: Widgery v. Hebert, 2014 NSSM 61

BETWEEN:

RICHARD WIDGERY and SUSAN WIDGERY

Claimants

- and -

BRIAN HEBERT and NOREEN HEBERT

Defendants

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on November 4, 2014

Decision rendered on November 25, 2014

**APPEARANCES**

For the Claimants          self-represented

For the Defendants        self-represented

**BY THE COURT:**

[1] The Claimants and Defendants are neighbours on a suburban street in Dartmouth. Unfortunately, nothing that I do in this case stands any chance of solving the underlying problem of neighbours who do not get along.

[2] The claim seeks damages of \$250.70 for the cost to repair a broken window which the Claimants contend was broken by a lacrosse ball thrown by the 14-year old son of the Defendants in or about May of 2014.

[3] The Claimants did not witness the window being broken. Ms. Widgery says she heard a crack which she believes was the sound of the window being hit. Some time later she went out to inspect and found an orange lacrosse ball which she brought inside her house. The Claimants did not do anything about it at that time, although they had their suspicions as to who might be responsible.

[4] It was some weeks later that the police were called by the Claimants due to a complaint that they had about Mr. Widgery allegedly harassing a guest of the Defendants because of the way she had parked in front of the Claimants' house. It was during their conversation that the Claimants had with the police officer that the subject of the broken window came up. The officer took the ball and presented it to the Defendants. He then reported back to the Claimants.

[5] There is a difference of opinion as to what the Defendants told the officer. According to the Claimants, the officer said that the Defendants had acknowledged that their son had broken the window and that they would pay for the repair. The Defendants say that when the officer showed them the lacrosse

ball, their son was not home and all they said was that they would ask their son if he had broken the window, and that if he had, they would accept responsibility.

[6] I believe it is more likely that the Defendants' version of the conversation is correct, although it is possible that they said more, or at least that the officer believed there had been a greater commitment. Either way it does not matter. The issue is whether there is any legal liability for the damaged window that can be attached to the Defendants. Even if the Defendants had said "we will pay" that would not be an enforceable promise, in the absence of an underlying legal duty to pay. It would be what the law calls a gratuitous promise, which is not enforceable in court.

[7] The Defendants testified that they spoke to their son who denied shooting the ball that broke the Claimants' window. The Defendants also testified that there are a number of youth and young adults on their street who play lacrosse. These included two members of the Halifax Mooseheads hockey team who were billeted with the Defendants during the 2013-14 season.

[8] I cannot say that it is more probable than not that the window was broken by the Defendants' son. As such there is no basis in law to hold them liable. There is also no need for me to consider the further difficult question of whether the Defendants could be held vicariously liable for their teenaged son's actions, even if he had done what the Claimants believe he did.

[9] The claim is therefore dismissed.

**Eric K. Slone, Adjudicator**