

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION**

2008/CLE/gen/01838

BETWEEN

MELINDA NICKIE ROBINS ROBINSON

Plaintiff

AND

SATCHEEL AMIN ROBINSON

Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Joseph d'Arceuil of Prestige Legal Services for the Plaintiff
Mr. Michael J. Saunders for the Defendant

Hearing Dates: 18 December 2017, 19 April 2018, 17 October 2018

Personal Injury – Fight between husband and wife – Separated - Whether husband caused injuries to wife – Divergence of evidence –Contemporaneous documentary evidence – Evidence of subpoenaed witness supports wife’s testimony – Husband found liable – Damages to be assessed

The parties are fairly senior law enforcement officers and were husband and wife. As the marriage was heading into murky waters, the wife arranged a meeting with the husband in an attempt to salvage it. The mediator was a senior police officer who spoke at their wedding. The meeting took place in the conference room of the Police Staff Association.

During the meeting, the parties were in disagreement with each other’s version of events. Plainly adamant that the marriage was at an end, at some point, the husband decided to leave the meeting. The wife could not accept this so she followed him. They ended up in the parking lot at Victoria Gardens near the Post Office. The wife wanted to speak to him about the marriage but the husband was unwilling to do so. A scuffle ensued. The wife held on to the husband’s shirt and in the process, his chain loosed. She took it and headed to her vehicle which was parked outside of the Police Staff Association. He headed in the same direction. Subsequently, the meeting resumed with the mediator. The wife insisted in interrogating the husband with respect to the chain. She refused to give it back to him until he tells her where he

got it from. All of a sudden, the husband jumped on the table, grabbed her hair and punched her about her face, head and eye. She suffered injuries and went to Doctor's Hospital where she was examined by two doctors. She was discharged that same day.

The wife filed the present action claiming damages for personal injuries suffered. The husband denied that he caused the injuries. He asserted that she assaulted him and, in the process, he had to defend himself from further attacks.

HELD: finding that the husband was liable for the injuries to the wife;

1. It is always a difficult task for a Judge to determine who is telling the truth when the evidence is diametrically opposite. However, in this case, the evidence of the subpoenaed witness and the contemporaneous documentary evidence were helpful in assisting the Court in arriving at its factual findings.
2. On a balance of probabilities, the evidence of the wife and the subpoenaed witness are to be preferred to that of the husband. The Court finds that the husband was liable for the injuries to his wife.
3. Damages and costs are to be assessed at a later date.

JUDGMENT

CHARLES J:

[1] The key issue to be determined in this action is whether Mr. Robinson ("the Defendant") caused the injuries to Mrs. Robinson ("the Plaintiff") on or about 20 November 2005 in the conference room of the Police Staff Association's Administrative Office.

Brief background facts

[2] The parties are relatively high-ranking law enforcement officers. They were husband and wife but were separated on the date of the alleged incident. Their marriage has since been dissolved. It is plain that the relationship between the parties was acrimonious and tumultuous. That led to a meeting to be facilitated by then Inspector Bradley Sands. He is now a Superintendent of Police attached to the breathtaking islands of the Exumas. Supt. Sands know the parties. Indeed, he spoke at their marriage.

[3] During the course of the meeting, Supt. Sands spoke and then invited the parties to express their views on the marriage. The Plaintiff expressed hers to which the

Defendant disagreed. The Defendant, being adamant that the marriage could not be salvaged, walked out of the meeting. The Plaintiff followed him all the way to the parking lot at Victoria Gardens near the Post office. She wanted to speak to him about the marriage but he was not interested. A scuffle then ensued whereby the Plaintiff held on to the Defendant's chain and it loosed. She took it and walked in the direction of the Police Staff Association where her vehicle was parked. The Defendant followed her. Supt. Sands was standing at the door and called them in. The meeting resumed. The Defendant demanded the return of his chain. The Plaintiff did not submit to his request since she wanted to know where he got the chain from. Suddenly, the Defendant jumped on the table, grabbed her by the hair, punched her about the face, head, neck and body, twisted her arm and assaulted her in the presence of Supt. Sands.

- [4] Subsequent to these events, the Police authorities held an investigation into the matter. The Defendant was charged with intentionally and unlawfully assaulting the Plaintiff and also with disorderly behaviour. At a hearing before the Police Disciplinary Tribunal ("the Tribunal"), both charges were dismissed and the Defendant was acquitted.
- [5] On 14 November 2008, Julika Thompson & Co., acting on behalf of the Plaintiff, instituted the present action claiming damages for personal injuries. On 12 January 2009, T. Langton & Co. entered a Memorandum of Appearance on behalf of the Defendant.
- [6] There was a hiatus until 12 March 2012, when Prestige Legal Services filed a Notice of Change of Attorney. On 13 April 2012, the Plaintiff filed a Statement of Claim. At paragraph 14 of the Statement of Claim, she alleged that, due to the Defendant's assault and battery on her, she sustained injuries. She particularized the assault and battery allegedly committed on her, claiming special damages in the amount of \$888.13, general damages to be assessed, interest and costs.

[7] On 19 July 2012, the Plaintiff obtained a judgment in default of defence with damages to be assessed. That judgment was subsequently withdrawn. On 25 November 2013, the Defendant filed his Defence. He accepted and confirmed paragraphs 1 to 6 of the Plaintiff's Statement of Claim which essentially set out that a meeting, arranged by the Plaintiff, was to take place on 20 November 2005 and was to be facilitated by Supt. Sands. At paragraphs 2 to 4 of his Defence, he denied the Plaintiff's version of events contained in paragraphs 7 to 9 of her Statement of Claim. He alleged that he did not assault and batter the Plaintiff. Rather, he says, it was the Plaintiff who assaulted him by choking and striking him with her fists repeatedly to his head and any action by him was purely to defend himself and prevent further assaults by the Plaintiff.

The evidence

[8] Both parties gave evidence. Neither called any witness although the Plaintiff unsuccessfully attempted to call Supt. Sands. Subsequently, Supt. Sands was subpoenaed. On 19 April 2018, he testified before this Court. It is not disputed that Supt. Sands was present and acted as the mediator on the day in question although, at a previous hearing before the Tribunal, Supt. Sands testified, under oath, that he had no knowledge of such meeting. He even denied that he acted as counsellor/mediator.

[9] The Plaintiff testified that the meeting begun and, at a point, the Defendant said that he did not wish to participate and he left. She followed him and told him to come back to discuss their marriage. She said that she walked with him to Victoria Gardens where they started to struggle. During the tussle, the Defendant's chain came out in her hands and she took it. The Defendant then followed her back to her truck which was parked outside the Police Staff Association Office. She said that she started the engine of her truck and was about to leave Bank Lane when Supt. Sands intervened.

[10] The Plaintiff said that Supt. Sands invited both of them back to the office and continued the discussion on their marriage. She said that Supt. Sands told them

that they needed to work on the marriage and she said *"I don't want to work this out if he is of the opinion that the marriage is finished..."* According to her, the Defendant then jumped on the table, held her hair and started to strike her about her face and head with a lion-faced ring on his finger. She said that, in self defence, she struck the Defendant as she tried to free herself from him but he continued the assault, punching her to her face and head.

[11] The Plaintiff said that Supt. Sands took her to Central Police Station. She made a report. Supt. Sands then escorted her to Doctor's Hospital where she sought medical treatment in the emergency room. Dr. Mikhail attended to her whilst at the emergency room. The next day, she went to the Police Complaints and Corruption Unit where she was photographed by Corporal Neely. The Plaintiff submitted a report to Sergeant James who was the investigating officer.

[12] Under cross-examination, she said that after the Defendant "stormed" out of the meeting, she followed him because she wanted to have a conversation with him. She said that she insisted on having a conversation as she needed to bring closure. She said that the Defendant told Supt. Sands that he did not want anything to do with the marriage. She admitted that she struggled with the Defendant at Victoria Park. According to her, she held on to his shirt because he was trying to escape from her and she kept saying that she needed to resolve this issue. She said that she held on to his shirt and the chain got hooked. She went back to Bank Lane. He followed because, according to her, he wanted his chain. She did not give him his chain. At Bank Lane, Supt. Sands intervened and the conversation resumed. She admitted that she was the aggressor at the beginning but afterwards, the Defendant hit her. She said that everyone was encouraging her to drop the case but she did not. A Tribunal hearing was convened and she understood that the case was dismissed.

[13] Under re-examination, she said that she held on to his shirt and that was the only time that she was the aggressor. She said that the Defendant punched her in her

eye and head. She “blacked” out and when she became conscious, the chain was gone. The Defendant was also gone.

[14] She saw two doctors, Dr. Beverton Moxey and Dr. Sam Mikhael at Doctor’s Hospital. Their reports form part of the documentary evidence exhibited in the Bundle of Agreed Documents filed on 15 February 2016. Also, in that bundle are some receipts and the photographs which Corporal Neely took. The photos depicted some injuries to her face and eye.

[15] The Defendant testified. He stated that at the meeting, while the Plaintiff was speaking, he said to Supt. Sands that he is sorry for wasting his time. He also said to his wife that he did not want the marriage anymore so he got up to leave. While leaving, the Plaintiff got up and held on to his shirt and as he pulled away, his right sleeve tore. As he exited the building, his wife followed him. They ended up at the parking lot at Victoria Gardens. As he arrived there, the Plaintiff grabbed his shirt in the neck area and, in the process, held on to the chain that he was wearing. He said that he unfastened the chain and as it fell, she held on to it. He went back to the office of the Police Staff Association. When he entered the building, Supt. Sands opened the door. He showed him his torn shirt. Shortly thereafter, the Plaintiff returned and they resumed their discussion.

[16] The Defendant said that he told the Plaintiff that the marriage was at an end. He asked her to return his chain so that he could leave. She said that will give it to him after they talk. The Defendant said that, at this point, he attempted to leave and the Plaintiff jumped from her seat and held him in a head lock. She struck him on the right side of his head. Supt. Sands told her to stop. She continued and struck him four punches to his head. He threw up his right hand and felt when he hit her. That was when she released him. He left the building. Later on, he was charged and tried before the Tribunal and his case was dismissed.

- [17] Under cross-examination, the Defendant said that after the meeting resumed, he said that he does not want the marriage and then she held him in a headlock. It was suggested that he held her in a headlock but he denied.
- [18] On re-examination, the Defendant said that he did not initiate the altercation. The Plaintiff was the aggressor on the day in question and he was only defending himself.
- [19] Supt. Sands gave sworn testimony at this trial. As stated earlier, at the hearing before the Tribunal, he was in a state of oblivion. He testified that he had no knowledge of such meeting. He even denied that he acted as counsellor/mediator.
- [20] Before this Court, he acknowledged that he knows the parties. He spoke at their wedding. At the time of the alleged incident, he was the chairman of the Police Staff Association and the Plaintiff was the treasurer. He also had a working relationship with both parties as they are all law enforcement officers in the Royal Bahamas Police Force.
- [21] He recalled that he mediated a meeting between the parties on Sunday, 20 November 2005. He said that, at one point, the Defendant left the meeting and the Plaintiff followed him. He did not follow them but stayed there. Eventually, both of them came back. He said that they sat around the conference table. The Defendant was on one side and he sat next to the Plaintiff as they attempted to resolve their marital issues. He said that during the meeting, the issue of the Defendant's chain came up since he was trying to retrieve his chain from the Plaintiff. He said that the Plaintiff was questioning him about the source of the chain. Supt. Sands said "*all of a sudden, Mr. Robinson, well, I could say actually caught me off guard, and he was on the table attacking Mrs. Robinson, and he held her hair andshe received a soccer blow to the face, her face swell instantly. I tried to separate them. He then left the office.*"

[22] Supt. Sands further testified that he took the Plaintiff to Central Police Station and then to Doctor's Hospital. Under oath, he stated that he cannot recall if he was called to testify before the Tribunal. He further stated that, if he was called, he never appeared to testify before the Tribunal.

[23] Under cross-examination, Supt. Sands stated that when the parties returned, he was of the opinion that the chain was the root of the confrontation. The Defendant kept asking the Plaintiff for his chain and the Plaintiff refused to give him. She wanted to know where he got the chain from. Then the Defendant jumped on top of the table, grabbed her by her hair and gave her a "soccer" blow. Supt. Sands said that she got hit next to her eye. He said that he did not see the Plaintiff hitting the Defendant but she was loud. She was not physically aggressive.

[24] It was suggested to Supt. Sands that the Plaintiff was the aggressor. Supt. Sands testified that she was not aggressive in the meeting that he mediated. He said that *"she was loud; she was trying to express herself like a woman would in trying to get to the bottom of what was happening, but in terms of throwing blows and so forth, didn't happen."*

[25] That was the extent of the evidence led in this relatively short matter.

The law

[26] Learned Counsel Mr. d'Arceuil helpfully provided the applicable legal principles on the law of assault and battery. For this, I am indeed grateful. The tort of assault and battery comprise of the act of making contact with the Plaintiff. It must be a direct and intentional act. The Plaintiff must not have consented to the act.

[27] In **Wilson v Pringle** [1986] EWCA Civ 6 (26 March 1986) Croom-Johnson LJ stated at page 4 of the judgment:

"Another ingredient in the tort of trespass to the person is that of hostility. The references to anger sufficing to turn a touch into a battery

(Cole v Turner) and the lack of an intention to assault which prevents a gesture from being an assault are instances of this. If there is hostile intent, that will by itself be cogent evidence of hostility. But the hostility may be demonstrated in other ways.”

[28] In the case of **Seymour v. The Commissioner of Police and another** [2012/CLE/gen/01339], Stephen Isaacs, Sr. J. in dealing with a similar issue referred to **Halbury's Laws of England 3rd Ed Vol 10** page 740, where the learned authors define assault and battery as follows:

"An assault is an offer or attempt to apply force or violence to the person of another in an angry or hostile manner; and if force is actually applied, directly or indirectly, either illegally or without consent of the person assaulted, and in an angry, rude, revengeful or violent manner, the assault becomes a battery, however slight the force may be.

The direct application of any physical force to the person of another may amount to a battery ...anything that can be called a blow, whether inflicted with hand, weapon or missile is a battery. See: *Clerk & Lindsell on Torts, 14th edition at page 357.*" [Emphasis added]

Findings and conclusion

[29] It is always a difficult task for a Judge to determine who is telling the truth when the evidence is diametrically opposite. So, the evidence of Supt. Sands, a senior law enforcement officer, was helpful to the Court. However, learned Counsel Mr. Saunders cautioned the Court to treat his evidence with a grain of salt. In other words, the Court should be circumspect since, at the hearing before the Tribunal, Supt. Sands could not even recall that he acted as the facilitator/mediator at the meeting between the parties. He also testified that he had no knowledge of the case eliciting the prosecutor to apply for him to be deemed an ‘adverse’ witness.

[30] That being said, I had the advantage of seeing, hearing and observing the demeanour of all of the witnesses who testified before me. Despite the amnesia that Supt. Sands might have intentionally or unintentionally suffered before the Tribunal, I found him to be a credible witness. His evidence largely corroborated the Plaintiff’s version of events and also, the agreed contemporaneous documentary evidence.

- [31] With respect to the evidence adduced by the Plaintiff, I found some aspects of it to be reliable and others not to be. The same can be said of the Defendant. In my opinion, both parties embellished their evidence to bolster up their own case.
- [32] That being said, on a balance of probabilities, I preferred the Plaintiff's version of events to that of the Defendant. As I indicated earlier, her version of events was substantiated by the evidence of Supt. Sands and also, by contemporaneous documentary evidence. I believed the Plaintiff when she said that she followed the Defendant all the way to Victoria Gardens in an effort to speak to him on their marriage (which he refused to do since he felt it could not be salvaged). She said that, on that occasion, she was the aggressor. She held him by his shirt. A scuffle ensued and eventually she got hold of his chain. I accepted her evidence that when they returned to the offices of the Police Staff Association, the focus had shifted from salvaging the marriage to the chain. I believed that the Defendant got furious when the Plaintiff refused to give him the chain and he grabbed her and punched her to the face, eye and head. He caused the injuries to the Plaintiff. It surely was not Supt. Sands and I do not believe that she inflicted the injuries to herself.
- [33] In addition, in his Defence, the Defendant averred that any action by him was purely to defend himself from further assaults by the Plaintiff. I also believed that he suffered some injuries at the hands of the Plaintiff. However, he did not file a Counterclaim to his Defence. Without doing so, I am unable to assist him.
- [34] Even if the Defendant was defending himself as he pleaded, the law on self-defence, as I understand it to be, says that you cannot use more force than is reasonably necessary in the circumstances.
- [35] I am of the firm belief that the Defendant was provoked when the Plaintiff did not return his chain and she was interrogating him about it. But even when you are provoked, the law expects people, especially a law enforcement officer, to exercise control over their emotions. What he should have done on the day in

question was to leave what appeared to be a volatile situation and head to Central Police Station to make a report. No doubt, emotions were very high and explosive. When all is said and done, it is a very sad case.

[36] At the end of the day, the Plaintiff was injured. She filed an action in this Court claiming damages for personal injuries inflicted on her by the Defendant. Since I find that the Defendant was liable for her injuries, she ought to be compensated.

[37] The next issue which arises is quantum of damages. I shall deal with the assessment of damages and costs on 12 December 2018 at 12.00 noon for one hour. Both parties are to email (in word format) written submissions on both damages and costs by 5 December 2018.

Dated this 25th day of October, A.D. 2018

**Indra H. Charles
Justice**