SUPREME COURT OF YUKON

Citation: *Liedtke-Thompson v Gignac*, 2015 YKSC 5

Date: 20150210
S.C. No. 11-A0009
Registry: Whitehorse

Between:

TINA LIEDTKE-THOMPSON

Plaintiff

And

PAUL GIGNAC

Defendant

Before: Mr. Justice L.F. Gower

Appearances:

Tina Liedtke-Thompson — Self-Represented
Debra L. Fendrick — Counsel for the Defendant

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is the second phase of a trial involving a claim and counterclaim arising from a brawl between the plaintiff, Tina Liedtke-Thompson ("Ms. Liedtke"), and the defendant, Paul Gignac, on May 2, 2009. The brawl resulted in mutual allegations of assault and battery between the parties. The first phase of the trial, held from January 14-18, 2013, was to determine liability. On February 4, 2013, I released my reasons, cited at 2013 YKSC 9, dismissing Ms. Liedtke's claim, but finding in favour of Mr. Gignac, i.e. finding that Ms. Liedtke had committed an assault and battery upon him. This second phase is to assess the damages Ms. Liedtke owes to Mr. Gignac.

[2] In between the two phases of the trial, Ms. Liedtke appealed my decision on liability to the Court of Appeal of Yukon. In reasons cited at 2014 YKCA 2 and 2014 YKCA 10, the Court of Appeal dismissed Ms. Liedtke's appeal.

[3] The assessment of Mr. Gignac's damages was conducted on December 16, 2014, and these are my reasons.

FACTS

[4] Ms. Liedtke is 47 years old. She met the Gignacs in 1991, when Mr. Gignac's wife, Darcie Gignac, came to work for Ms. Liedtke as a hairdresser. In September 2005, Ms. Liedtke purchased the house next door to the Gignacs. She and her three daughters became close friends with the Gignacs, and the two families often socialized and pursued outdoor activities together. Ms. Liedtke's youngest daughter became the best friend of the Gignacs' daughter of the same age, and Ms. Liedtke and Mrs. Gignac also became the best of friends.

[5] During the evening of May 1, 2009 and the early morning hours of May 2nd, the Gignacs hosted a party at their residence on 87 Walnut Crescent, in Whitehorse. The party started amicably enough, involving the playing of darts and shuffleboard and the consumption of a few beers by the Gignacs and their four guests, one of whom was Ms. Liedtke. The party was variously taking place on the Gignacs' deck, in their house and in their shop, which was located in the backyard. Some of the partiers became increasingly intoxicated.

[6] Eventually an argument occurred between Ms. Liedtke and Mr. Gignac over an alleged sexual impropriety by him towards her. Ms. Liedtke had just before disclosed the same allegation to Mrs. Gignac, which had upset her significantly. This ultimately led to a

confrontation between Mr. Gignac and Ms. Liedtke in the shop, which involved Ms. Liedtke, in a very angry state, yelling, screaming and swearing at Mr. Gignac, advancing towards him trying to scratch at him and hit him with her hands. Mr. Gignac told Ms. Liedtke in no uncertain terms that he wanted her to leave the shop and his property. At one point he was backing up between the car and the snow machine in the shop, which were parallel to each other, while blocking Ms. Liedtke's advances by pushing her hands and arms away. As Mr. Gignac backed up towards the "man door" of the shop, he pivoted around, with Ms. Liedtke mirroring his movement, such that she ended up with her back to the man door. At that point, Mr. Gignac turned to face the back of the shop and started to walk towards one of the male guests. Ms. Liedtke picked up a piece of wood and came at Mr. Gignac from behind. The wood was a piece of a warehouse pallet which had been cut up for firewood. It was just over 1 foot long, about 4½ inches wide at the widest point, and about 1½ inches thick. The heads of two nails protruded from one end. The guest yelled, "Paul, look out" and, as Mr. Gignac was starting to turn around to face Ms. Liedtke, she struck him on the head with the piece of wood. Mr. Gignac immediately put his arms up in self-defence and apparently grappled with Ms. Liedtke. The two of them then fell over the snow machine, landing on the concrete shop floor in the space between the snow machine and the car. Mr. Gignac landed on top of Ms. Liedtke.

[7] Mr. Gignac suffered two lacerations to his scalp. He received four stitches to close one wound and two stitches to close the other. The day after the incident he suffered from a pounding headache, blurry vision, a sore jaw and a sore ear. He was unable to eat solid food for approximately three weeks and could not chew comfortably for an

unspecified period of time beyond that. Presently, he experiences occasional headaches and has to wear a mouth guard at night because he grinds his teeth.

[8] Ms. Liedtke also suffered physical injuries from the fall onto the shop floor. These included:

a) a shattered right collarbone;

b) a surface bruise above the broken collarbone;

c) a blackened left eye and reddening of the eyeball;

d) a bleeding nose;

e) several bruises to her forearms and upper arms;

f) a bruise on her left hand;

g) a bruise on the inside of her left leg; and

h) a lump on the back of her head.

[9] Ms. Liedtke complained to the police that she had been assaulted by Mr. Gignac. Accordingly, he was arrested during the early morning hours May 2, 2009 and was detained in police custody overnight. He was charged with the criminal offence of assault causing bodily harm upon Ms. Liedtke. He retained defence counsel to defend him on that charge. Ultimately, on February 10, 2010 the Crown prosecutor directed the entry of a stay of proceedings on the charge.

[10] During the liability phase of the trial, Mr. Gignac acknowledged that he has a criminal record for a break, enter and theft which occurred when he was about 16 years old, and for which he received probation. He also admitted to a common assault in 1991, for which he pled guilty and received a $500 fine. However, Mr. Gignac testified in this

phase of the trial that he has only recently been prohibited from entering the United States, despite the stay of proceedings on the charge of assault causing bodily harm.

[11] Ms. Liedtke was never charged criminally for the assault and battery upon Mr. Gignac.

[12] It was implicit in my reasons on liability that I did not accept Ms. Liedtke's evidence that Mr. Gignac was sexually inappropriate with her. Rather I expressly find, for the purposes of these reasons on damages, that it was the other way around, i.e. it was Ms. Liedtke who was sexually inappropriate with Mr. Gignac.

[13] Mr. Gignac has experienced negative psychological consequences from this incident. Beforehand, he testified that he and his wife were very social people, who often spent time with friends in the outdoors or playing games. Since the incident, Mr. Gignac feels that Ms. Liedtke has deceitfully propagated lies within the community of Whitehorse about the alleged sexual impropriety, which has damaged his reputation and that of his wife. This has resulted in the two of them becoming much more reclusive. In addition, Mr. Gignac claims that Ms. Liedtke began a continued campaign of insults and harassment towards him and his wife after the incident. This involved Ms. Liedtke and her daughters yelling and screaming profanities at him whenever he was in the backyard. He also claims that Ms. Liedtke would confront him during his workday while he drove a propane delivery truck around Whitehorse. He testified that she would give him the finger and yell at him out of her vehicle window, occasionally stopping other traffic on the road. He said that he eventually became terrified of being confronted by Ms. Liedtke.

[14] At his home on 87 Walnut Crescent, in order to have more privacy, Mr. Gignac erected a virtual wall of firewood along the chain link fence separating his backyard from

that of Ms. Liedtke. The wall was 7 feet high and 53 feet long. He also installed two video cameras on the exterior wall of the garage attached to his house which faced Ms. Liedtke's residence. He did this so that he could monitor whether Ms. Liedtke or her daughters were outside of their house, so that he could determine whether it was safe to go in his own backyard. Mr. Gignac also testified that Ms. Liedtke wrote harassing messages directed towards him on an old mattress which was outside of her house.

[15] Ultimately, Mr. Gignac testified that the campaign of harassment by Ms. Liedtke made it so uncomfortable for him and his wife that they decided to sell their home on 87 Walnut Crescent on May 31, 2010. The couple then moved out to a property they own on Little Atlin Lake, where they renovated an old cabin to make it habitable on a year-round basis.

[16] As a result of this move, Mr. and Mrs. Gignac had to arrange rental accommodations in Whitehorse for their daughter. This was because it became too inconvenient for her to manage the long daily commute while she was finishing her high school education in the city.

[17] Presently, because of the continuing unpleasantness arising from this incident, Mr. Gignac and his wife have the Little Atlin Lake property up for sale and plan to leave the Yukon permanently, as soon as they are able to. Mr. Gignac maintains that the lies and deceit spread by Ms. Liedtke have resulted in he and his wife being treated differently by former friends and community members, to the extent that they are no longer comfortable residing here.

ISSUES

[18] Mr. Gignac seeks the following damages:

a) general damages in the range of $30,000;

b) punitive damages in the range of $5,000;

c) special damages of $132,408.87, arising from:

- the sale of 87 Walnut Crescent;
- his daughter's rental expenses; and
- the renovations to the Little Atlin Lake cabin.

[19] Mr. Gignac also seeks double costs, pursuant to Rule 39(27)(b) of the *Rules of Court,* following an offer he made to Ms. Liedtke on July 9, 2012 to settle this matter by a mutual withdrawal of their respective claims.

ANALYSIS

General Damages

[20] In *Stapley v Hejslet*, 2006 BCCA 34, the British Columbia Court of Appeal suggested that general damages are not solely dependent on the seriousness of the injury, but also involve an appreciation of the victim's loss in the specific circumstances of the individual case. At para. 45, the Court stated:

> 45 … I think it is instructive to reiterate the underlying purpose of non-pecuniary damages. Much, of course, has been said about this topic. However, given the not-infrequent inclination by lawyers and judges to compare only injuries, the following passage from *Lindal v. Lindal*, supra, at 637 is a helpful reminder:
>
> > Thus the amount of an award for non-pecuniary damage should not depend alone upon the seriousness of the injury but upon its ability to ameliorate the condition of the victim considering his or her particular situation. It therefore will not follow that in considering what part of the maximum should be awarded the gravity of the injury alone will be

> determinative. An appreciation of the individual's loss is the key and the "need for solace will not necessarily correlate with the seriousness of the injury" (Cooper-Stephenson and Saunders, *Personal Injury Damages in Canada* (1981), at p. 373). In dealing with an award of this nature it will be impossible to develop a "tariff". An award will vary in each case "to meet the specific circumstances of the individual case" (Thornton at p. 284 of S.C.R.). (emphasis already added)

[21] The Court of Appeal continued, at para. 46, to set out a non-exhaustive list of common factors influencing an award of general damages:

a) age of the plaintiff;

b) nature of the injury;

c) severity and duration of pain;

d) disability;

e) emotional suffering;

f) loss or impairment of life;

g) impairment of family, marital and social relationships;

h) impairment of physical and mental abilities;

i) loss of lifestyle; and

j) the victim’s stoicism (which should not, generally speaking, reduce the award).

[22] Mr. Gignac’s counsel provided only two cases on general damages. The first was *Mack v KWS*, [1998] BCJ 522 (SC). In that case, the defendant admitted to hitting the plaintiff on the head with a baseball bat, but claimed he did so in self-defence and with provocation. Neither excuse was accepted by the trial judge. The plaintiff suffered a significant head injury, including a skull fracture and post-concussion syndrome. He

experienced many months of pain, including sleep disruption, vision problems, hearing loss, neck stiffness, memory loss and mood swings. He showed good recovery after five months, but was still unable to work. The court found that he would experience some emotional distress and memory loss for some time. The award of general damages was $35,000.

[23] The second case submitted by Mr. Gignac's counsel was *Pacheco v Degife*, 2014 BCSC 1570. In that case, the vehicles driven by each of the plaintiff and the defendant were involved in a minor collision. This led to an altercation in which the plaintiff was struck in the head by the defendant with a baseball bat. However, the plaintiff was the aggressor and was held to be 75% liable for his injuries. The plaintiff was hospitalized for about a week. He suffered a mild traumatic brain injury as a result of the incident and spent the next few months at home sleeping for 12 or more hours per day. He also experienced dizziness, memory loss and sensitivity to bright light. About three months after the incident, he was completely asymptomatic. The Court awarded him $30,000 in general damages, before accounting for his 75% responsibility.

[24] I find *Mack* and *Pacheco* to be significantly more serious cases than that of Mr. Gignac, and I distinguish them on that basis.

[25] Ms. Liedtke, who represented herself during this phase of the trial, provided a number of cases on general damages for assault and battery involving head injuries. Of those cases which I found to be roughly comparable to that of Mr. Gignac, the range of damages is from $7,000-$20,000. A brief summary of this case law follows:

(a) *Baines v Westfair Foods Ltd (cob Real Canadian Superstore)*, 2007 BCSC 473: general damages: $15,000; assault & battery - struck on head, kicked

in face, abrasions to mouth, lost front tooth, cracked tooth, pain in mouth and head, humiliation, disfigured facial appearance, speech problems.

(b) *Bolinski v Middleton*, 2003 BCSC 1887: general damages: $10,000; assault & battery - contusions, abrasions and lacerations to face, pain, bruising and swelling in face, headaches, back pain, mild to moderate soft tissue injury to back.

(c) *DLW v McLeish*, 2006 BCSC 1056: general damages: $10,000; assault & battery - eye bruising and swelling, cuts to feet, glass removed from feet some months later, extensive bruising on hand, pain in eye, feet and hand, psychological injury.

(d) *Hwang v Ricketts*, [2004] OJ No 944 (SC): general damages: $20,000; assault & battery - struck 3-4 times in head – gash on top of head, lacerations from bridge of nose to below eye, 19 stitches to face, two staples to 1.5 inch cut on head, one lower eyelid slightly lower than other, dry eye, eye stiffness, ongoing eye problems.

(e) *Kenny v Mastromatteo*, [2008] OJ No 2485 (SC): general damages (Plaintiff 1): $20,000; assault & battery – pain to arm, head, neck, shoulders and hip, aggravation of symptomatic back pain, headaches, nervous shock, psychological sequeale.

(f) *Leszczak v Carter*, 2006 ABPC 158: general damages: $12,000; assault & battery - neck cut, split lip requiring stitches, slight back injury, jaw pain, jaw clicking and popping, severe headaches.

(g) *Salamon v Morrow*, 2004 SKQB 534: general damages: $7,000; assault & battery - black eye, contusions, abrasions and lacerations to head, face, arms and body.

(h) *Serinken v Loucks*, [2003] OJ No 3865 (SC): general damages: $7,500; assault & battery - loss of consciousness, minor concussion, large subgaleal hematoma external to the skull, comminuted fracture of facial bone, reduction surgery, slight deformity and numbness in face.

(i) *Springett v Shanklin*, 2001 BCSC 853: general damages: $20,000 (includes an unspecified amount for aggravated damages); assault & battery - struck in the face by a beer mug during a bar fight, cut over eye, on forehead and cheekbone, 25 stitches, glass fragments remaining in face, permanent scarring, headaches, humiliation; scarring permanent, eye injury - 6 months.

[26] I bear in mind here that the nature of Mr. Gignac's loss goes well beyond the seriousness of his physical injuries. He has also experienced significant emotional suffering, as well as an impairment of his social relationships with former friends and other community members. In addition, he has experienced a significant change of lifestyle as a result of the incident and the campaign of harassment by Ms. Liedtke. On the other hand, I conclude that these factors relate more to the issue of punitive damages, which I will come to next, rather than to general damages. I find that a reasonable award for general damages is $8,000.

Punitive Damages

[27] The leading case on punitive damages is *Whiten v Pilot Insurance Co.*, 2002 SCC 18, where Binnie J summarized the relevant principles at para. 94:

> …(1) Punitive damages are very much the exception rather than the rule, (2) imposed only if there has been high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour. (3) Where they are awarded, punitive damages should be assessed in an amount reasonably proportionate to such factors as the harm caused, the degree of the misconduct, the relative vulnerability of the plaintiff and any advantage or profit gained by the defendant, (4) having regard to any other fines or penalties suffered by the defendant for the misconduct in question. (5) Punitive damages are generally given only where the misconduct would otherwise be unpunished or where other penalties are or are likely to be inadequate to achieve the objectives of retribution, deterrence and denunciation. (6) Their purpose is not to compensate the plaintiff, but (7) to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened. (8) Punitive damages are awarded only where compensatory damages, which to some extent are punitive, are insufficient to accomplish these objectives, and (9) they are given in an amount that is no greater than necessary to rationally accomplish their purpose. (10) While normally the state would be the recipient of any fine or penalty for misconduct, the plaintiff will keep punitive damages as a "windfall" in addition to compensatory damages. (11) Judges and juries in our system have usually found that moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient. (my emphasis)

[28] In *Mack*, cited above, the defendant struck the plaintiff with a baseball bat. He inflicted three blows, one to the head, one to the shoulder and 12 to the plaintiff's back. The trial judge rejected the defences of self-defence and provocation. She described the defendant's attack as "an act of vigilante justice" and imposed an award of punitive damages to discourage others from committing similar acts. The amount of the award was $7,000.

[29] In *Desjardins v Blick*, [2009] OJ 1234 (SC), the plaintiffs sued for damages caused by the defendants' deliberate action to erode soil beneath their garage. The parties had been neighbours for more than 30 years and the defendant thought that the plaintiffs' garage was encroaching on his property. Even though subsequent surveys determined that the garage was properly on the plaintiffs' property, the defendants excavated up to the property line, which led to subsidence of the garage. The trial judge also found that the defendants had harassed and intimidated the plaintiffs in various ways over a period of approximately six years, including acts of vandalism, placing dangerous materials on or about the property line, and taunting the male plaintiff to fight. This caused the plaintiffs to fear leaving their property unattended, and ultimately to attempt to sell their home. The trial judge referenced the quote from Justice Binnie in *Whiten*, which I set out above, and then concluded, at paras. 30 and 31:

> 30 Mr. Blick's conduct since 2002 has been an escalating tirade against his neighbours intended to injure their property and the plaintiffs. Citizens of this country are not required to accept neighbours embedding injurious traps on their property nor should they require guards of their home during temporary absences. The above actions of Mr. Blick are unacceptable and shocking to two seventy year old neighbours and this court.
>
> 31 Mindful of Justice Binnie's direction that moderate awards of punitive damages are generally appropriate, I award punitive damages in this case in the amount of $5,000 payable by Mr. Blick.

[30] In *Fitzpatrick v Orwin*, 2012 ONSC 3492, the plaintiff and the defendants were neighbours. They got into a dispute over the fact that the male defendant discovered a large dead coyote on the hood of his truck early one morning, which he believed had been placed there by the plaintiff. The defendants complained to the police, who charged

the plaintiff with criminal harassment. The charge was later withdrawn. The plaintiff and the defendants then engaged in a protracted dispute about the property line, resulting in the police being called several times. The plaintiff sued the defendants for malicious prosecution, but his claim was dismissed. The defendants successfully counterclaimed for intentional infliction of mental distress.

[31] The trial judge described the plaintiff's conduct as waging "a reprehensible campaign of worry and intimidation" against his neighbours (para. 171). The trial judge also noted that the plaintiff had taken advantage of the opportunities he had to encounter the defendants in person so that he could insult them (para. 174). In addition, he emphasized that the plaintiff had waited for the male defendant to emerge from his house "so that he could relish in the shock and fear" of seeing the defendant discover the carcass of the dead coyote (para. 174). Significantly, for the case at bar, the trial judge found that it was appropriate to award punitive damages because the plaintiff's misconduct would otherwise have remained unpunished. At para. 169, the trial judge stated:

> 169 In the present case, a charge of criminal harassment was laid against Mr. Fitzpatrick, but ultimately withdrawn. Because the charge was withdrawn, Mr. Fitzpatrick did not receive any punishment for the acts of harassment that I have found he committed against the Squires. As such, I do not have to consider the adequacy of his punishment, because he has so far been able to avoid any. Since Mr. Fitzpatrick's misconduct will otherwise remain unpunished, I find this an appropriate circumstance in which to award punitive damages. (my emphasis)

In the result, the judge awarded $20,000 in punitive damages.

[32] In the case at bar, I am satisfied that Ms. Liedtke also waged a campaign of harassment and intimidation against the Gignacs, supposedly justified by Ms. Liedtke's allegation that Mr. Gignac had been sexually inappropriate with her. However, as I have made a finding of fact that it was Ms. Liedtke who was sexually inappropriate with Mr. Gignac, the entire campaign was groundless and needlessly vindictive. Further, like the plaintiff in *Fitzpatrick*, Ms. Liedtke was never charged criminally for the assault she committed upon Mr. Gignac. Nor was she ever held to account for her campaign of harassment. Thus, because I conclude that her misconduct will otherwise remain unpunished, I find this is an appropriate case to award punitive damages to Mr. Gignac.

[33] On the other hand, it must be remembered that the plaintiff in *Fitzpatrick* was found personally liable for the intentional torts of trespass and infliction of mental suffering. In the case at bar, following the assault and battery, there was no evidence that Ms. Liedtke intentionally trespassed on Mr. Gignac's property. Further, while her harassment campaign was clearly a form of misconduct, it was arguably less severe than that of Mr. Fitzpatrick. Finally, it must also be acknowledged that Ms. Liedtke herself suffered significant injuries from the fall to the shop floor, including a shattered collar bone.

[34] Taking all of these circumstances into account, and remembering the admonition in *Whiten* that "moderate" awards of punitive damages are generally sufficient, I am satisfied that the award in this case should be no more than $5,000.

Special Damages

[35] Mr. Gignac seeks special damages arising from the sale of his home on 87 Walnut Crescent and the renovation of his cabin at Little Atlin Lake. He also claims

compensation for the costs of renting accommodation in Whitehorse for his daughter over the period from April 6, 2011 to May 2012, to facilitate the completion of her high school education in the city. Mr. Gignac provided particulars of these damages in his "Special Damages Summary", filed December 19, 2014.

[36] In her written outline, under the submissions on special damages, Mr. Gignac's counsel also mentioned the two security cameras and the wall of cordwood Mr. Gignac erected along his common fence line with Ms. Liedtke's property. However, no particulars were provided with respect to these expenses, nor was any mention made of them during counsel's closing argument. Accordingly, I decline to make any award with respect to these items.

[37] There is some authority to support the compensation of a victim for moving costs necessitated by a defendant's tortious misconduct. In *CY v Perreault*, 2006 BCSC 545, the defendant forcibly entered the plaintiff's security controlled apartment building in downtown Vancouver. He threatened her with a knife and sexually assaulted her by touching her with his fingers and mouth and raping her. The plaintiff had come to Canada from Japan in 1994 to marry her husband, who was 30 years older than her. At the time of the sexual assault in 2003, the plaintiff had moved to Vancouver ahead of her husband as part of their plan for his imminent retirement. She was, apparently on a temporary basis, sharing the apartment with a female roommate. The two women were moved to a hotel for a few days, following the incident. Soon after the sexual assault, the plaintiff found herself overcome with fear, anger, frustration and depression about the incident. This ultimately led to her divorcing her husband and moving back to Japan.

[38] The trial judge included in her award of special damages the plaintiff's hotel and moving expenses. With respect to the latter, which only amounted to $573.91, it appears that these were in relation to the plaintiff's move to a new apartment in Vancouver, but not to her ultimate relocation back to Japan. The trial judge concluded, at para. 22:

> 22 I accept these amounts as reasonable and substantiated by the evidence. It is not reasonable to expect Ms. C.Y. to simply move back into the same apartment after the incident. The door was broken, belongings were scattered, there was blood on the carpet, and she had emotional difficulty going back even to collect her clothes. She moved to a new apartment at the end of the month, but had to stay in a hotel in the meantime. Some of the hotel bills were paid for by the management group for the apartment building, but the above amount was not covered.

[39] In *Fitzpatrick*, cited above, similar to the case at bar, the victimized defendants found it necessary to install security cameras as part of an extensive security system all around the perimeter of their house. In addition, the defendants ultimately concluded that they could no longer stay in the house because of the strain and acrimony and decided to sell and relocate (para. 47). The trial judge included in his award of special damages the defendants' moving costs ($1,575) and the real estate commission charged on the sale of their home ($17,587.50).

[40] In the case at bar, Mr. and Mrs. Gignac purchased their Little Atlin Lake property in 2008. I found as a fact during the first phase of the trial that Ms. Liedtke purchased her home next door to the Gignacs in 2005. Mr. Gignac testified during the second phase of the trial that he purchased 87 Walnut Crescent in 2007 or 2008. I conclude that he must be mistaken in that regard, and that the Gignacs already owned their home when Ms. Liedtke purchased hers in 2005. It remains unclear precisely when the Gignacs purchased their home. In any event, Mr. Gignac testified during the second phase of the

trial that he and Mrs. Gignac intended to remain there for about 10 to 15 years and that ultimately they would have retired to the property on Little Atlin Lake.

[41] The total costs of the renovations to the old cabin on this property are $125,379.61.

[42] It is reasonable to conclude that, had the original retirement plans of the Gignacs unfolded as they intended, then they would have been investing in the renovation of the old cabin on the Little Atlin Lake property, while continuing to reside at 87 Walnut Crescent, in order to prepare for their retirement. In other words, the expenses incurred by them to renovate the old cabin would have been incurred, over time, in any event.

[43] However, Mr. Gignac's counsel argued that, but for Ms. Liedtke's conduct, these renovation expenses would have been incurred over a much longer period than was actually the case (roughly, from May to October, 2010) and in a much more affordable manner. Nevertheless, counsel has failed to persuade me, on a balance of probabilities, of the extent to which the Gignacs have actually suffered a loss in this regard.

[44] Mr. Gignac's counsel made a similar argument regarding the sale of the Gignacs home, which was also necessitated by Ms. Liedtke's conduct. The suggestion here was that they recovered less in equity from the sale because of the pressure to sell as quickly as possible. However, once again, there is no clear evidence of the extent to which the Gignacs suffered a loss here. Rather, the evidence is that the Gignacs recovered almost $73,000 in equity from the sale of 87 Walnut Crescent.

[45] I suppose it might be argued that the cost of the rushed renovation (approximately $125,000) significantly exceeded the equity recovered from 87 Walnut (approximately $73,000), such that the Gignacs were out-of-pocket the difference of approximately

$52,000. However, the Gignacs had a choice here. They did not necessarily have to move immediately to the property on Little Atlin Lake. While I can appreciate Mr. Gignac's subjective desire to be as far away from Ms. Liedtke as possible, the City of Whitehorse is large enough that he could have relocated to another area of the city where he would have had less chance of being confronted by Ms. Liedtke. Further, should her harassment have elevated to a criminal level, he also had the option of applying to court for a peace bond.

[46] Mr. Gignac's counsel indicated in her final argument that she was seeking full recovery of all of the renovation expenses. When I raised the questions of causation and remoteness, counsel suggested that I could consider applying a 25% "negative contingency" and reducing the award by that amount from the total of approximately $125,000. No authority was provided in support of that proposition.

[47] In the result, I am unable to accept that the renovation expenses are a legitimate form of special damages. First, there is a significant question of causation for these particular damages. Mr. Gignac has not persuaded me on a balance of probabilities that "but for" Ms. Liedtke's misconduct, he would not have incurred the renovation expenses in the longer term in any event. Second, Mr. Gignac now has a renovated and habitable cabin to show for his expenses. Thus, I am unable to see how he has suffered a loss by choosing to go that route. Third, even if it could be said that his expenses were caused by Ms. Liedtke's actions, in my view, they are too remote to be compensable as special damages. Finally, any reduction from the total using a negative contingency approach would be purely arbitrary and discordant with the general principle that special damages are compensable as actual out-of-pocket expenses incurred by the victim.

[48] I similarly conclude that the claim to be compensated for rental expenses paid for Mr. Gignac's daughter is not supportable. Had the Gignacs chosen to live elsewhere in Whitehorse, rather than moving out to the Little Atlin Lake property, which I find they could reasonably have done, then these expenses would not have been incurred. Accordingly, Mr. Gignac has failed to persuade me that the expenses were caused by Ms. Liedtke's misconduct. Further, even if a causation argument could be made, these expenses are too remote to constitute legitimate special damages.

[49] On the other hand, the conveyancing fees incurred by the Gignacs on the sale of 87 Walnut Crescent ($704.55) are legitimate special damages. Similarly, relying upon the authority of *Fitzpatrick*, I will also award the real estate commission paid by the Gignacs on the sale ($13,650) as special damages. It is arguable here that, but for Ms. Liedtke's misconduct, including her campaign of harassment, the Gignacs would not have been pressured to sell their home, even if they had chosen to move to another area within the City of Whitehorse. Further, had the Gignacs not been subjected to such pressure, they may well have been able to arrange a private sale of the home where a realtor's commission would not have been charged. Lastly, it was reasonably foreseeable by Ms. Liedtke that her harassment might cause the Gignacs to move.

Costs

[50] Mr. Gignac's counsel wrote a letter to Ms. Liedtke's counsel on July 9, 2012 offering to settle this matter by both parties agreeing to discontinue their respective actions and bearing their respective costs.

[51] Rule 39(27)(b) of the *Rules of Court* provides:

> If the defendant has made an offer to settle a claim for non-monetary relief and the offer has not expired or been withdrawn or been accepted,
>
> …
>
> (b) if the plaintiff's claim is dismissed, the defendant is entitled to costs assessed to the date the offer was delivered and to double costs assessed from that date.

This sub-rule applies to the case at bar. Ms. Liedtke was the original plaintiff and her claim was dismissed. Accordingly, Mr. Gignac, as the original defendant, is entitled to double costs from the date of delivery of the above letter, which I assume to be the same day as which it was written, i.e. July 9, 2012.

[52] Pursuant to Rule 60(9), "…costs of and incidental to a proceeding shall follow the event unless the court otherwise orders." In this case, because the questions of liability and damages were determined in separate phases of the trial, it may be necessary to clarify that the term "event" in this sub-rule means the totality of the proceedings in determining both liability and damages: *Alers-Hankey v Solomon*, 2005 BCSC 514, at para. 18. Here, Mr. Gignac was successful in both phases of the trial.

[53] Ms. Liedtke has indicated in general terms in this phase of the trial that she is now impecunious. However, she relayed that information in the context of a submission that any award of damages in favour of Mr. Gignac will be unenforceable for the foreseeable future. Ms. Liedtke did not argue that this should be a factor in my decision about costs. In any event, financial hardship is not a basis for departing from the usual rule with respect to costs, i.e. that they follow the event: *Robinson v Lakner*, [1998] BCJ 1047 (BCCA).

CONCLUSION

[54] I make the following awards of damages:

- General Damages: $8,000
- Punitive Damages: $5,000
- Special Damages: $14,354.55

TOTAL: $27,354.55

[55] I further award Mr. Gignac party and party costs on Scale B for all the steps that he was required to take in the proceedings up to July 9, 2012, and double costs on the same basis from and including that date to the completion of this trial. I emphasize that this will include any further steps required by Mr. Gignac to complete the taxation of his bill of costs, if that is not agreed to by Ms. Liedtke. Should there be any issues arising on the taxation of costs, I will remain seized of this matter for that limited purpose only.

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GOWER J.