

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Pittman v. Morin, 2010 NSSM 56

Between:

CHRISTINE LEIGH PITTMAN

CLAIMANT

- and -

DENNIS MORIN

DEFENDANT

DECISION AND ORDER

Adjudicator: David T.R. Parker

Heard: September 30, 2010
Oral Decision: September 30 2010

Counsel:

Parker:-this matter came before the Small Claims Court in Halifax, Nova Scotia on September 30, 2010 and upon hearing from the witnesses and reviewing the evidence the following oral decision was rendered.

This matter involved damages caused to the claimant's car by a goat of the defendant who resides in Middle Sackville Nova Scotia. At a time when the defendant was away on

vacation his goat was being “goatsat” by another person, at 6:30 in the early morning of July 27, 2010 the claimant was driving her child to daycare and when that child exited the car the goat appeared and went after the child. The child’s screaming alerted the mother and older siblings who were also in the car at the time. The child tried to get away from the goat however the goat continued to try to jump on the child. Running around the car the child eventually managed to get back in the car however the goat proceeded to go after the child ramming into the car and causing damage. An older sibling who was in the car tried to get the goat away from everyone but was unsuccessful and the goat eventually jumped onto the car causing further damage.

The owner of the goat, the defendant in this case explained to the court that the goat was a very friendly goat and that it likes “kids”. He had even seen the goat being patted by local children in the area on occasions. He said that it was a well behaved goat and he showed the court pictures of his goat which appeared in a CBC news article under the caption of "**Billy goat too gruff: neighbors**". While this article carries a lot of comments from neighbors and would be considered hearsay the defendant did enter it into evidence and the consensus of those that spoke in the news article indicated that the goat had a propensity to attack and cause a general disturbance with respect to the neighbors and their property in The Halifax Regional Municipality. I would also note the news article shows a picture of the goat confined to a fenced in area.

The law divides animals into one of two categories. The first category is wild by nature known as *ferae naturae*. The second category would be those considered domesticated by nature and this category is known as *mansuetae naturae*. I grant you it is sometimes difficult to categorize animals as wild by nature versus domesticated by nature. For example, is a cow a domesticated animal or a wild animal? Is a Rottweiler or a Pitbull a wild animal or a domesticated animal? These are questions that face the Small Claims Court on more than one occasion. I think it is safe to say the goat would fit in to the first category of an animal that is wild by nature. No doubt they can be trained to a certain extent but when you have an animal like a goat would you allow it to live in your home. I suggest there is only so far you can go to training an animal like a goat. The same

could be said for a tiger. While they may be well trained they are wild animals. As such the law imposes a very high duty on the owner to prevent any kind of injury from such animals even if the owner believes in his own mind that the animal is harmless. The owner of such an animal will be strictly liable for any injury caused by that animal, which is the case here.

While the rest of my comments are obiter and outside the scope of this decision, domesticated animals that show a vicious streak are also treated the same as a wild animal. The old adage that "every dog is entitled to the first bite" is not applicable in these cases.

The owner of such animals that fall within this strict liability category might escape liability if they can show:

- Consent of the person who is injured or whose property was damaged might escape liability. This was not the case here.
- Contributory negligence where the person who is injured or their property that was damaged, disregarded clear warnings not to go near the animal. This was not the case here.
- An act over which the owner has no control such as a person intervening and allowing the animal to escape its cage or its pen. Which is not the case here and finally,
- An act of God which allows the animal to escape and therefore was beyond the control of the owner.

In each of these cases or situations the owner must show they used due diligence to ensure the damage did not happen.

The claimant brought in a number of statutes or pieces of legislation relating to the impounding and detention of animals and livestock which do not impact upon the decision of this case and if there is a breach of some sort of statute that would be for the statute itself to address whatever remedies it may impose.

For all these reasons the defendant is liable for damages caused by his goat. I have reduced the damages somewhat as they relate to the specific damage to the doors of the vehicle and not too consequential damages resulting from **Simba** the goat. I have also allowed two days car rental while the car is being repaired and not four days car rental as there was uncertainty in the claimant's evidence of the time it would take to repair the car

IT IS THEREFORE ORDERED that the Defendant pay the Claimant the following sums:

\$1235.66 car repairs

\$104.85 car rental

\$89.68 court costs

\$94.88 service costs

\$1525.07 total
