

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Fentiman v. British Columbia Society for
the Prevention of Cruelty to Animals*,
2009 BCSC 1141

Date: 20090821
Docket: S55737
Registry: Nanaimo

2009 BCSC 1141 (CanLII)

Between:

Muriel Fentiman

Plaintiff

And:

**The British Columbia Society for the Prevention of Cruelty to Animals,
BCSPCA Nanaimo & District Branch and Julie Hitchcock**

Defendants

Before: The Honourable Mr. Justice Johnston

Reasons for Judgment

Counsel for Plaintiff:

N. B. Evans

Counsel for Defendants:

C. A. Rhone and
C. Morcom (articled student)

Place and Dates of Trial:

Nanaimo, B.C.
July 21, 22, 23 and 24, 2009

Place and Date of Judgment:

Nanaimo, B.C.
August 21, 2009

INTRODUCTION

[1] The plaintiff, Ms. Fentiman, breeds dogs at her house in Nanaimo. On December 12, 2008, employees of the defendant British Columbia Society for the Prevention of Cruelty to Animals (“B.C.S.P.C.A.”) went to Ms. Fentiman’s home, and when they left, they took with them three adult dogs and seven puppies.

[2] Ms. Fentiman claims damages against the B.C.S.P.C.A. for taking the animals and for the manner in which they were taken. The plaintiff discontinued all claims against the other defendant, Ms. Hitchcock, when the trial began, by consent, and without costs to any party.

BACKGROUND

[3] In November and December 2008, Ms. Hitchcock was employed by the Nanaimo and District Branch of the B.C.S.P.C.A. (the “Branch”) as an animal care attendant. As an animal care attendant, Ms. Hitchcock did not have the powers of an authorized agent under the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372, but her job duties included investigating complaints about the treatment of animals brought to the attention of the Branch. Ms. Hitchcock’s ability to investigate was circumscribed by her lack of authority such that she could not enter onto the property of a person under investigation without that person’s consent, and she had no authority to take possession of animals without the consent of the owner.

[4] The Branch has a policy that every complaint of potential animal abuse or neglect must be investigated. Each complaint received is entered into the computer records of the Branch. On occasion, there is some short delay in entering the complaint information into the computer record and, in the interim, a written memorandum is created by the person who received the complaint and is passed along to someone else for investigation.

[5] Ms. Hitchcock went to Ms. Fentiman’s home on three separate days in response to complaints received by the Branch. Ms. Fentiman and Ms. Hitchcock

disagree about the dates on which two of those encounters occurred. I prefer the evidence of Ms. Hitchcock on dates of visits, as she had the records of the Branch available to her, as well as handwritten notes that she made contemporaneously with each visit. Ms. Fentiman, however, was relying in part on her memory and in part on a calendar on which she made some notations. After she made brief notes on her calendar, Ms. Fentiman realized that she had noted one visit by Ms. Hitchcock on a day when the Branch was not open. She then reconstructed her notes to reflect this fact. While there was nothing sinister in this, it does call into question the reliability of Ms. Fentiman's memory and notes as to dates of Ms. Hitchcock's visits.

[6] The first complaint and visit by Ms. Hitchcock to Ms. Fentiman's home occurred on November 18, 2008. Ms. Hitchcock drove to Ms. Fentiman's home in a van marked with B.C.S.P.C.A. Nanaimo and District Branch markings, and parked in her driveway. Ms. Hitchcock was wearing dark trousers and a navy blue jacket, which Ms. Hitchcock says looked somewhat official, although it was not a uniform such as what a B.C.S.P.C.A. special constable might have worn.

[7] Ms. Fentiman and Ms. Hitchcock disagree as to how Ms. Hitchcock got into Ms. Fentiman's home on that day, but both agree that Ms. Hitchcock did get inside the house.

[8] Ms. Fentiman says that when she saw the defendant's van pull into her driveway she went outside to ask why the defendant was there. Ms. Hitchcock says that Ms. Fentiman told her that she had list of complaints about deplorable conditions and dirty and under exercised dogs, and that if Ms. Fentiman did not allow her to enter the house, Ms. Hitchcock would call the police, get a warrant, and have special constables from up and down Vancouver Island attend.

[9] Ms. Hitchcock testified that she knocked on Ms. Fentiman's door, and when Ms. Fentiman answered it, she introduced herself explained that the shelter had received some "concerns," and asked if she could enter to meet Ms. Fentiman's

“gang” – meaning her dogs. She says Ms. Fentiman was smiling and readily allowed her to enter her home.

[10] It is reasonably clear that Ms. Fentiman knew that Ms. Hitchcock was looking into a complaint about the conditions under which she was keeping her dogs. Ms. Hitchcock looked into a bedroom, in which there was a mother dog and some puppies, the kitchen area where she saw other dogs, and in a room off the kitchen, where she could see adult dogs through a glass door.

[11] Based on what she could see of Ms. Fentiman’s home and her conversation with Ms. Fentiman on that day, Ms. Hitchcock was satisfied that Ms. Fentiman had a clean home in which both adult dogs and puppies were well looked after.

[12] On December 11, 2008, someone else complained to the Branch about the conditions in which Ms. Fentiman was keeping her dogs. Ms. Hitchcock went back to Ms. Fentiman’s home that day, and had a brief conversation with Ms. Fentiman while standing in Ms. Fentiman’s foyer. Based on what Ms. Hitchcock could see of the interior of Ms. Fentiman’s home from the foyer area, nothing appeared to have changed since her visit on November 18, and Ms. Hitchcock was satisfied that there was no cause for concern on the part of the B.C.S.P.C.A., told Ms. Fentiman so, and left.

[13] On December 12, 2008, the Branch received a third complaint about Ms. Fentiman. When that complaint was referred to her, Ms. Hitchcock telephoned Ms. Fentiman to say that another complaint had been received. Ms. Hitchcock testified that she told Ms. Fentiman that she must have missed seeing a litter of poodle puppies the day before, and Ms. Fentiman, after some hesitation, told her she was hiding dogs in her back yard.

[14] Ms. Fentiman says that when she telephoned, Ms. Hitchcock said that she had learned that Ms. Fentiman had dogs in an outbuilding, and that she was coming over to Ms. Fentiman’s home, could get a warrant within a half hour, and would bring

officers with her. Ms. Fentiman understood that all of this would presumably happen if she did not allow Ms. Hitchcock to look in the outbuilding.

[15] Ms. Hitchcock's version of this telephone conversation is somewhat inconsistent with her evidence about her visit the day before. She testified that on that visit, she had remained in Ms. Fentiman's foyer, and had not looked around the home at all. On that evidence, it is hard to see how she could have missed seeing any of the dogs she agrees that she did not look for. It is unlikely that she could have been referring back to her November 18 visit because Ms. Fentiman testified that all of the dogs and puppies were in the house on Ms. Hitchcock's first visit and that the puppies had been out in the shed for parts of only two days on December 12, 2008.

[16] Ms. Hitchcock and another animal care attendant, Ms. Brown, went to Ms. Fentiman's home on December 12. They entered the home and sat in the kitchen with Ms. Fentiman. Shortly after they arrived, Mr. Lasota entered the house. Ms. Fentiman testified that she has known Mr. Lasota for most of her life and that he was like a brother to her. Mr. Lasota was at Ms. Fentiman's to pick up one of his dogs, which Ms. Fentiman had been caring for. Mr. Lasota told Ms. Hitchcock that one of the other adult dogs in Ms. Fentiman's home, a female with four puppies, was also his, and that Ms. Fentiman was taking care of them for him.

[17] Mr. Lasota did not testify.

[18] After Mr. Lasota left, Ms. Hitchcock, Ms. Brown and Ms. Fentiman talked further in Ms. Fentiman's kitchen, and then went outside to the rear of the home to inspect a shed.

[19] Inside the shed, Ms. Hitchcock saw several puppies and she could hear what sounded to her like adult dogs behind a partition in another part of the building.

[20] Ms. Hitchcock did not approve of the conditions in which she found the puppies for several reasons: they were isolated from human contact while in the shed; she thought the area in which the puppies were was not clean, with dog feces and urine on the floor; the air was stale; and the building was cool.

[21] Ms. Fentiman testified that the puppies were ordinarily kept in her house, and that she had started putting them out in the shed for a couple of hours just days before.

[22] Although no charge was laid, the defendant has pleaded that the dogs in question were in distress, as that word is defined in s. 1(2) of the Act:

- (2) For the purposes of this Act, and animal is in distress if it is
 - (a) deprived of adequate food, water, shelter, ventilation, space, care or veterinary treatment,
 - (b) injured, sick, in pain or suffering, or
 - (c) abused or neglected

[23] It is not clear why distress was pleaded, as Ms. Hitchcock did not testify that she believed the animals were in distress and the defendant conceded that Ms. Hitchcock lacked any authority to act even if she found animals in distress. The defence is that the animals were voluntarily surrendered by Ms. Fentiman.

[24] I am not persuaded on the evidence that the puppies were in distress, as defined under s. 1 of the *Act*. Ms. Hitchcock's criticisms of the conditions in which she saw the puppies fell short of making a case for distress, and seemed more an expression of her preference for where the puppies should ordinarily have been kept, without resolving the question as to whether the puppies were ordinarily kept in the shed.

[25] Ms. Hitchcock and Ms. Fentiman stood outside the shed and discussed matters. They disagree as to what was said.

[26] Ms. Hitchcock says that after she and her co-worker looked in the out-building, they stood outside in the snow with Ms. Fentiman, at which time Ms. Hitchcock made it clear that she thought the out-building was an unacceptable place to house the dogs. It is not clear whether Ms. Hitchcock meant just the puppies or all of the dogs, including the adult dogs she had heard but not seen. She says that Ms. Fentiman told her that the puppies were the result of an accidental

breeding and that at least some of the adult dogs elsewhere in the shed belonged to her daughter and were at Ms. Fentiman's because the daughter was having some matrimonial difficulties and was unable to house the dogs for a time. Ms. Hitchcock says that she urged Ms. Fentiman to take all of the dogs into the house and keep them there with the other adults and the puppies that were already inside the house. Ms. Hitchcock says Ms. Fentiman said that she could not do that because her daughter's dogs were not housebroken. Ms. Hitchcock says that in the context of that conversation she raised the possibility that Ms. Fentiman could surrender the animals in the shed to the B.C.S.P.C.A. and she says that she explained that surrender meant that the animals would become B.C.S.P.C.A. property and that the B.C.S.P.C.A. would find good homes for them. Ms. Hitchcock says that Ms. Fentiman appeared to consider that suggestion briefly, and then indicated agreement.

[27] Ms. Fentiman said that Ms. Hitchcock told her she was an old lady, and in over her head, and then they went back into the kitchen where Ms. Hitchcock demanded lists of dogs on the premises. She said that Ms. Hitchcock thrust a book toward her and demanded that she sign. Ms. Fentiman says she thought she was signing a receipt and did so without reading what she was signing and without having it adequately explained to her.

[28] Ms. Fentiman says that Ms. Hitchcock was quite firm that she was seizing some of her dogs, while Ms. Hitchcock is equally firm that Ms. Fentiman agreed to take her up on the suggestion that Ms. Fentiman surrender some of her dogs and puppies.

[29] Ms. Fentiman testified that Ms. Hitchcock had what looked like a receipt book out while she sat at Ms. Fentiman's kitchen table, and that she pushed the book at Ms. Fentiman and told her to sign it. Ms. Hitchcock testified that she did not have a receipt book with her, as she had not expected to be receiving any animals, and that she picked up a receipt book when she and Ms. Brown returned to their office to get some crates so they could transport the dogs.

[30] Ms. Hitchcock and Ms. Brown returned to the Branch office to obtain the crates, then went back to Ms. Fentiman's home. By the time they returned, Ms. Fentiman had brought the puppies and adult dogs from the shed into her home.

[31] Ms. Hitchcock testified that Ms. Fentiman told them that she was keeping one adult dog and one puppy from the animals that had been out in the shed, so she altered the document she had prepared to reduce the numbers of animals accordingly. Ms. Hitchcock said after the animals were all loaded into the van, Ms. Fentiman said she might have chosen the wrong puppy, so they went to the van and Ms. Fentiman selected another puppy in substitution for the one she had held back.

[32] Ms. Fentiman testified that she was surprised that Ms. Hitchcock only wanted to take three of the four adult dogs from the shed. She also testified that Ms. Hitchcock and Ms. Brown loaded all of the puppies from the shed; she estimated that there were ten puppies, then said there were nine, and gave Ms. Fentiman one back when she said she had promised one to her granddaughter for Christmas.

[33] The form completed by Ms. Hitchcock states that three adult dogs, reduced from four, and seven puppies, reduced from eight, were taken away by Ms. Hitchcock and Ms. Brown that day.

[34] Ms. Fentiman and Ms. Hitchcock disagree over whether Ms. Fentiman helped put the animals into crates, with Ms. Hitchcock saying that Ms. Fentiman preferred to do it, and Ms. Fentiman saying that she took no part in the loading.

[35] In any event, the three dogs and seven puppies were put into crates and the crates were loaded into the van. Ms. Fentiman then changed her mind about the puppy she had held back, and another puppy was taken from the van in substitution for the one that she had selected. The remaining puppies were then taken by Ms. Hitchcock and Ms. Brown to prearranged foster homes, and the adult dogs to the B.C.S.P.C.A. kennel.

[36] All of the dogs have been sold by the B.C.S.P.C.A. on a cost recovery basis.

[37] Ms. Fentiman had other adult dogs and puppies on December 12, 2008 but they were in her house. There was no discussion of removing any of the dogs or puppies that had been inside Ms. Fentiman's home when Ms. Hitchcock and Ms. Brown first arrived on December 12, 2008. Both Ms. Fentiman and Ms. Hitchcock agree that of the dogs Ms. Hitchcock found in the shed, one adult and one puppy were retained by Ms. Fentiman.

[38] Mr. Young is a friend of Ms. Fentiman who lives in Richmond. Ms. Fentiman telephoned Mr. Young on December 12, 2008, while Ms. Hitchcock and her co-worker were back at the Branch facilities to get dog crates.

[39] Mr. Young was familiar with Ms. Fentiman's home and the shed in question, having assisted Ms. Fentiman to renovate the shed. The renovations he described included insulating the walls and ceiling and putting down new flooring.

[40] Mr. Young says that when Ms. Fentiman called him on December 12, 2008 she was crying and complained to him that the B.C.S.P.C.A. were taking her dogs. He telephoned Ms. Fentiman back and asked to speak to any B.C.S.P.C.A. person present. He says that he spoke to a woman, asked why the B.C.S.P.C.A. were at Ms. Fentiman's home, and the person on the telephone told him that the B.C.S.P.C.A. was not charging Ms. Fentiman with anything, and that as long as Ms. Fentiman cooperated the B.C.S.P.C.A. would just forget about the matter. He says that the woman on the telephone told him that Ms. Fentiman's dogs were in deplorable conditions and in a place unsuitable for dogs, and that Ms. Fentiman was too old. Mr. Young thought the woman on the telephone identified herself, but he is not one hundred percent sure.

[41] Ms. Hitchcock says that when she returned to Ms. Fentiman's home on the evening of December 12, 2008 with the animal crates, Ms. Fentiman handed her a telephone, saying that she wanted Ms. Hitchcock to speak with her friend. Ms. Hitchcock said there was a loud, irate voice on the other end of the telephone

asking her who she thought she was and telling her that Ms. Fentiman's dogs were her family. Ms. Hitchcock says that she asked the person to identify himself but he continued to talk in a loud voice so she thanked him for his concern and said that she was there to assist Ms. Fentiman and handed the telephone back to Ms. Fentiman. Ms. Hitchcock said that she walked back to the foyer area of Ms. Fentiman's home and could hear Ms. Fentiman elsewhere in the home speaking on the telephone in a loud and apparently angry voice.

ISSUES

[42] In his opening, counsel for the plaintiff said that the issues requiring decision were as follows:

1. Were there reasonable and probable grounds for the defendant B.C.S.P.C.A. to investigate the plaintiff?
2. If there were, did the defendants act lawfully?
3. Did the defendants act according to their own policies and their governing legislation?
4. Did the defendants convert the plaintiff's dogs and dispose of them?
5. Did the defendants advise the plaintiff of her rights under the *Act*?
6. What general and punitive damages, if any, should the defendants be ordered to pay to the plaintiff?

[43] In my view, this case falls to be decided on the issue set out in the fourth question, which, in turn, requires a decision on whether, when possession of the plaintiff's animals was transferred to the B.C.S.P.C.A. on December 12, 2008, property in those animals also transfers, and, if not, whether the B.C.S.P.C.A. is liable in damages to the plaintiff.

[44] I recast the issues in this way because it is not clear whether any cause of action arises from the first of the issues listed above, which, in my view, speaks more to whether the plaintiff might have had a defence to a charge brought under the *Act*. I know of no charge that was brought under that *Act*. If the first issue stated were meant to found a claim for damages based on lack of sufficient grounds to warrant an investigation, I know of no claim in law that would support such assertion. Furthermore, no authority for such a claim was tendered and the matter was not argued. Thus, I do not need to decide whether the defendant had reasonable and probable grounds to investigate the plaintiff.

[45] The second issue, as framed by the plaintiff, might seem to hinge on the first, but it also might raise the claim of conversion alleged in the pleadings, and thus would fit within the fourth of the issues stated above.

[46] The relief claimed in the third paragraph above may raise questions of damages flowing from breach of statute, as dealt with in *Canada v. Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205, 143 D.L.R. (3d) 9, and *Holland v. Saskatchewan*, 2008 SCC 42, 294 D.L.R. (4th) 193. The pleadings here do not raise a cause of action that would invoke those decisions and, in any event, liability for damages for breach of statute was not argued by either counsel and need not be decided in this case.

[47] If the third issue stated by counsel were intended to raise the question of whether the B.C.S.P.C.A. should be ordered to pay damages caused by an employee acting in excess of any authority conferred by the *Act*, or who held herself out as having authority she did not actually possess, it was not pursued at trial.

[48] The fifth issue framed by the plaintiff presupposes that the *Act* conferred rights on the plaintiff, that the defendant had an obligation to advise the plaintiff of those rights, and that failure to do so gives rise to an action for damages. None of those questions were raised in argument and, if they are raised in the pleadings, it would be on a somewhat tortured reading of paragraphs 16 and 18 of the Amended Statement of Claim. They read:

16. The Claimant says the Defendants acted in bad faith, exercised their powers without any regard for the rights of the Claimant, wrongfully seized the Claimant's property and converted the Claimant's property without colour of right causing the Claimant severe mental distress and damages.

...

18. The Defendants' Representative conducted her activities as against the Plaintiff with malice aforethought without taking into consideration the consequences of her actions and without any regard for the rights and security of the person of the Plaintiff.

[49] In her evidence, the plaintiff did say she expected to receive some notice that the B.C.S.P.C.A. was about to dispose of her dogs, and to have a time in which to act to protect her interests. A review of the statute shows that there may be some support for this belief found in s. 18:

18. If an animal is removed from the custody of its owner under section 11 and taken into the custody of the society, the society may destroy, sell or otherwise dispose of the animal 14 days after the society has given notice to the owner in accordance with section 19.

Nevertheless, similar to the third issue stated by counsel, this was not argued at trial and, I take it, is not pursued by the plaintiff as a separate cause of action.

[50] The sixth issue framed by the plaintiff is dealt with as part of the fourth.

POSITION OF THE PARTIES

[51] Ms. Fentiman says that she was intimidated, if not threatened, by Ms. Hitchcock's repeated statements to her that if she did not cooperate and do what Ms. Hitchcock wanted her to do, that Ms. Hitchcock would return with a warrant, special constables "from up and down the Island", and the R.C.M.P. Ms. Fentiman lives alone, is 71 years of age, and is somewhat hard of hearing. Ms. Fentiman was concerned that her neighbours might see a B.C.S.P.C.A. vehicle or personnel in and around her home.

[52] Ms. Fentiman says that all of these factors combined to create a situation in which the three adult dogs and seven puppies were removed from her without her

consent, or informed consent, or that any apparent consent was vitiated by duress. She says that had the puppies not been removed from her, she could and would have sold them for \$600 each, which was the price she has always charged for puppies.

[53] The defendant's position is that Ms. Fentiman voluntarily surrendered the adult dogs and puppies to the Nanaimo and District Branch of the B.C.S.P.C.A., and that Ms. Hitchcock did not, by word or action, cause or contribute to any aura of intimidation or duress that could reasonably have influenced Ms. Fentiman's decision to give up the dogs.

ANALYSIS

[54] The question to be answered is whether ownership of, or property in, the three adult dogs and seven puppies transferred from Ms. Fentiman to the Nanaimo and District Branch of the B.C.S.P.C.A. on December 12, when possession changed. If it did, the defendant was within its rights to sell the animals or otherwise treat them as its own property.

[55] If ownership or property did not pass from plaintiff to defendant on December 12, then the defendant has wrongfully converted the plaintiff's property and is liable to the plaintiff in damages.

[56] The defendant's assertion that the dogs were surrendered amounts to a claim that Ms. Fentiman voluntarily transferred possession of the dogs to the B.C.S.P.C.A. with the intent to transfer ownership of them.

[57] The defendant relies in part on a document signed by Ms. Fentiman in her kitchen on December 12, 2008, which the defendant says is an acknowledgement that she surrendered her dogs to the B.C.S.P.C.A.

[58] The document in question is two-sided. The first side is a receipt that appears to have been intended to be used when members of the public purchase animals, dog licences or services from the B.C.S.P.C.A. The reverse of the paper has four

sections, after each of which is an area for a signature. The top section is headed “SURRENDERED ANIMAL”, and is an acknowledgement that the owner of an animal is surrendering the animal to the B.C.S.P.C.A. The second section is headed “STRAY ANIMALS” and is intended to be signed by someone who asserts that an animal is a stray to the best of their knowledge. The third section is also under the “STRAY ANIMALS” heading and is intended to signify that the person signing, not the owner of an animal, is nevertheless surrendering the animal to the S.P.C.A.

[59] The fourth and bottom section is headed “CLAIMED ANIMAL” and reads:

I hereby certify that I am the lawful owner of the animal claimed and described within and I hereby release the above mentioned Society from any responsibility for the present or future condition of the animal, or from any liability or claim arising out of or any future dispute re ownership.

[60] Ms. Fentiman signed after the fourth, or “CLAIMED ANIMAL” section.

Ms. Hitchcock explained that when she was instructed on the use of this document, she was told that someone signing the bottom was in effect agreeing to the terms of the surrender portion at the top.

[61] Ms. Hitchcock says that before Ms. Fentiman signed the bottom of that form, she read in full to her the top portion under the “SURRENDERED ANIMAL” heading. She says she then turned the form around and asked Ms. Fentiman to read that portion to herself.

[62] This controversy might well have been resolved, or some assistance derived, from the evidence of the third person present, a B.C.S.P.C.A. employee named Ms. Brown. However, she did not testify. Plaintiff’s counsel has agreed that I ought not to draw any adverse inference from her failure to testify.

[63] I am reluctant to draw such an inference where counsel has considered the matter and agreed to not seek such an inference. I merely remark upon the possibility that Ms. Brown’s evidence might have assisted on this question.

[64] As domestic animals, dogs are personal property. Ownership of personal property is generally evidenced by physical possession or custody of that property,

and ownership can be transferred by physical transfer coexistent with an intention to pass ownership. I do not understand Ms. Fentiman's position to be that she transferred possession of the dogs to the defendant temporarily, or that she reserved the right to retake possession at a later date. Instead, I understand her position to be that she gave up possession of the dogs because of duress or coercion exerted by Ms. Hitchcock. If duress or coercion were found, it would negate the effect of the physical transfer of the dogs, and would be a full answer to any suggestion that Ms. Fentiman intended to transfer ownership in them.

[65] The document upon which the defendant relies does not assist in divining the intention of the parties. I cannot conclude from the writing and, in particular, the location of Ms. Fentiman's signature on the document, that the document evidences her intention and desire to surrender property in her animals to the defendant.

[66] In favour of transfer of ownership or entitlement is the bare fact that the B.C.S.P.C.A. did get possession of the dogs on December 12, 2008. Possession of property is *prima facie* evidence of ownership.

[67] Ms. Fentiman says Ms. Hitchcock took possession of the dogs after bringing to bear substantial pressure, including threats of involving police and special constables. This started on December 12, 2008 when Ms. Hitchcock telephoned and told her that she had just learned that Ms. Fentiman had an outer building, that she was coming to Ms. Fentiman's home, and if Ms. Fentiman did not let her in she would bring the police. Ms. Fentiman's position is that this threat, coupled with continuing pressure exerted by Ms. Hitchcock once she and Ms. Brown arrived, effectively deprived her of any volition, so she had no intention to transfer ownership, or make a gift, of the dogs to the B.C.S.P.C.A.

[68] Yet, if this were the true state of affairs, one would reasonably expect that Ms. Fentiman would have enlisted the aid or support of Mr. Lasota, who she has known for a long time and considers like a brother, when he arrived at her home after she says Ms. Hitchcock made the telephone threat, and while Ms. Hitchcock and Ms. Brown were there. Ms. Fentiman did not mention Mr. Lasota's visit in her

evidence in chief, although she twice referred to him, once when she identified him in one of the photo exhibits, and once when she said that three of the dogs in her house were his. Ms. Fentiman first mentioned Mr. Lasota in cross examination, when she described how Ms. Hitchcock obtained Mr. Lasota's name and address, as well as information about his dogs, from him.

[69] Additionally, the lack of any real effort to recover property in the animals at least until this action was commenced on February 20, 2009, tells against continuing property rights in Ms. Fentiman. Ms. Fentiman testified that she understood that the B.C.S.P.C.A. had to tell her what the charges were; I take it that she means that the B.C.S.P.C.A. had to tell her what deficiencies they objected to, give her seven or 14 days to rectify any problems, and if she did what was required of her, she would get the dogs back. Although Ms. Fentiman says she spoke to a Mr. Eccles in Vancouver, who she understood to be the chief executive officer of the B.C.S.P.C.A., and offered to pay his way over to inspect her home, she did not contact the Branch to ask for the return of her dogs.

[70] Militating against transfer of ownership is Ms. Fentiman's obvious agitation when she telephoned Mr. Young on December 12, 2008. Mr. Young said he called Ms. Fentiman's home and spoke to a woman, who probably identified herself to him and who told him that she would not charge Ms. Fentiman with anything as long as she cooperated, that the dogs were in deplorable condition and the place was not suitable for dogs, and that Ms. Fentiman was too old. This evidence tends to corroborate Ms. Fentiman's description of events, although Mr. Young does not support Ms. Fentiman's assertion that Ms. Hitchcock hung up on him.

[71] On the whole, I prefer the evidence of Ms. Hitchcock to that of Ms. Fentiman. I do not say that because I thought Ms. Fentiman was in any way attempting to deceive or mislead me. I accept that she is an honest witness who tried her best to testify truthfully. However, her evidence was at times quite confusing, and it seemed to me that she fixed upon certain aspects of what happened, and then magnified them in her mind. An example is her evidence that Ms. Hitchcock threatened to

bring down the power of the R.C.M.P., special constables and warrants to search. Ms. Fentiman repeated this evidence in the context of more than one visit by Ms. Hitchcock, and I was left uncertain whether she meant to tell me that the threat had been made once but operated on her throughout, or that the threat had been repeated more than once, and so was magnified.

[72] As well, Ms. Fentiman's failure to seek the assistance of her long-time friend Mr. Lasota on December 12 is a circumstance that speaks strongly against duress or coercion.

[73] I find that possession of the adult dogs and puppies was transferred from Ms. Fentiman to the B.C.S.P.C.A. voluntarily on December 12, and that the transfer was not induced or brought about by duress, coercion, or pressure brought to bear by the B.C.S.P.C.A. on Ms. Fentiman, at least sufficiently to render her apparent agreement involuntary. I find that transfer of possession was accompanied by the intent to transfer ownership, so that property in the dogs passed from plaintiff to defendant on that day.

[74] In any event, Ms. Fentiman has not discharged the burden upon her to prove on a balance of probabilities that the defendant converted her property.

[75] The action is dismissed with costs to the defendant.

The Honourable Mr. Justice Johnston