Case Name:

Pryor v. Ontario Society for the Prevention of Cruelty to Animals

Between
David Pryor, Applicant, and
Ontario Society for the Prevention of Cruelty to Animals, Respondent

[2007] O.J. No. 329

154 A.C.W.S. (3d) 817

Court File No. A-11,067/06

Ontario Superior Court of Justice

L.L. Gauthier J.

Heard: January 25, 2007.
Judgment: January 30, 2007.

(32 paras.)

Counsel:

Blaine Armstrong, for the Applicant.

Jennifer Friedman, for the Respondent.

L.L. GAUTHIER J.:--

INTRODUCTION:

1 The Applicant seeks a determination of his rights, which are dependent upon the interpretation of Minutes of Settlement entered into between the parties on June 28, 2006. Specifically, the Applicant seeks an Order:

> that the seven foals included in the Applicant's total herd count when he re-took possession of horses on September 2nd, 2006 should have been excluded from the total count at that time with the result that additional adult horses should have been released to him.

2 The Respondent seeks a determination of the rights and obligations of the parties pursuant to all paragraphs in the Minutes of Settlement, or, alternatively, a declaration that the Minutes of Settlement are void for vagueness and are therefore unenforceable.

APPLICANT'S POSITION:

3 The Applicant's position relates specifically to paragraph 4 of the Minutes, which provides as follows:

> Pryor shall limit the number of horses kept at the Properties to a maximum of eighteen animals at any given time. Notwithstanding the foregoing, newborn foals will not be included in the calculation provided that the number including foals does not exceed eighteen horses as at November 11 of any year. A foal that is too young to wean as at November 11 may be kept in addition to the eighteen horses until such time as it is capable of being weaned, at the discretion of the Society.

4 The Applicant says that the above means that no foal, whether born before or after the date of the Minutes of Settlement, was to be included in the herd count, except on November 11th of any given year.

RESPONDENT'S POSITION:

5 The Respondent says that only foals born after the return of horses to the Applicant were to be excluded from the herd count. In other words, the foals which were in the care of the Society as of the date of the Minutes of Settlement were to be counted as part of the eighteen.

6 In addition, the Respondent attacks paragraphs 6, 8, 10, 11, 12, 13, and 14 of the Minutes for failing to incorporate time frames, deadlines or payment schedules, and claims that as a result those paragraphs are uncertain. If, as the Respondent posits, those paragraphs are void, then the Minutes are void in their entirety, as the Minutes do not contain a severability clause.

ISSUES (1) and (2):

7 **(1)** Are the Minutes of Settlement void and unenforceable as a result of uncertainty and the potential for conflicting interpretation?

8 **(2)** If not, does paragraph 4 mean that the seven foals which were in the care of the Society on September 2, 2006, should have been excluded from the Applicant's total herd count?

ANALYSIS (1) and (2):

(1) VALIDITY OF THE MINUTES OF SETTLEMENT:

9 As was stated in *Fred Walls & Son Holdings Ltd. v. Ford Motor Company of Canada, Ltd.*, [1998] B.C.J. No. 1519, the starting point for this analysis is to examine the document in question and make every effort to find meaning in the words of the agreement. Difficulties in interpretation should not make a clause bad as not being capable of interpretation so long as the definite meaning can properly be extracted from the clauses under examination (*Marquest Industries Ltd. v. Willows Poultry Farms Ltd.* (1968), 1 D.L.R. (3d) 513, supra).

10 If possible, effect should be given to every paragraph in the agreement.

11 Although certain provisions may give rise to uncertainties, they may nonetheless have meaning regarding the situation they are intended to cover, and will therefore not be void for uncertainty. (*Marquest Industries*, *supra*).

12 The issue is whether the terms of the Minutes of Settlement are such that the intention of the parties to it can be

ascertained with reasonable certainty.

13 It is my view that the intention of the parties can in fact be ascertained from the terms of the Minutes of Settlement. I will review each of the provisions.

> 1 - The Applicant is to withdraw his appeals to the Animal Care Review Board.
>
> 2 - The Respondent shall return certain horses to the Applicant, on terms which are set out later in the Minutes.
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> 3 - The two Orders made pursuant to section 13(1) of the *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. 36, in March 2006 and June 2006, respectively, shall continue to be in effect until revoked by the Society. As well, the Applicant shall provide care for his horses as set out in the Schedule attached to the Minutes of Settlement.
>
> 4 - The Applicant shall be limited to 18 horses at any given time. That number does not include newborn foals, provided that the total number of horses, including foals does not exceed 18 as at November 11th of any given year.
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> 5 - Failure by the Applicant to abide by the terms of paragraph 4 above will result in the Applicant surrendering the horses in excess of 18 to the Society to be dealt with at its discretion. Although this clause does not specify which of the Applicant's animals will be forfeited, the intention of the parties to limit the number, and to reduce the number to 18 if exceeded, is clear.
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> 6 - The Applicant shall advise the Society on an ongoing basis of any addition to or deletion from his herd. The Society is authorized by this clause to enter onto the Applicant's property to determine compliance, and for purposes of enforcement of the terms of the agreement.
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> 7 - Failure by the Applicant to comply with the above provision will result in the Society acquiring the right to remove all of the horses in his care. The clause as drafted refers to the failure to comply with paragraph 5; however, it is reasonable to conclude that the reference was meant to be paragraph 6, which immediately precedes the within clause.
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> 8 - This clause reflects the fact that the Applicant has nine horses in his care at the time of the agreement. The Applicant agrees to reduce the number from nine to four, and those four animals are specified by name. The reduction is to be accomplished by July 10, 2006, failing which the Applicant shall pay the Society's boarding costs for those horses being held by the Society until the Applicant's herd is down to the specified four horses. If the Applicant's herd is not down to the specified four within one month from the date of the Minutes, the Society will be free to dispose of the Applicant's horses in the care of the Society at that time.
>
> 9 - The parties agree that, upon the Applicant making his first payment in accordance with paragraph 15, the Society will release nine specifically named horses together with any of their nursing foal.

10 - Subject to paragraphs that follow, the Applicant surrenders his remaining horses in the care of the Society. Those horses shall be sold by the Society, although the Applicant can assist in this regard. The clause deals further with price and application of sale price to the Applicant's outstanding account to the Society. The provisions of this clause were not raised by or impugned by either party.

11 - The Applicant intends to transfer the horse Amande to his sister. Upon payment of Amande's fair market value, and subject to inspection of the sister's premises, Amande may be delivered to the sister. Disagreement on Amande's fair market value shall be resolved by an independent appraiser. Although no time limit is set regarding the proposed transfer of Amande to the Applicant's sister, the intention to convey this horse is clear. The conditions precedent, i.e. satisfactory inspection of the sister's premises and payment of the fair market value of Amande, are clearly set out.

12 - This clause is an acknowledgement by both parties that three named stallions have been diagnosed as cryptorchid, and the veterinarian has recommended castration for all three. The parties agree that the three stallions will be castrated and two of them, Hombre and Elan Noire, will be sold, unless the Applicant secures a contrary opinion from a veterinarian from the University of Guelph or one otherwise acceptable to the Society. The Applicant will have the option of having Fresco released to him after castration. If the Applicant's veterinarian, as described above, opines that any of the stallions may remain intact, the Applicant may, have one stallion returned to him, or two if he takes Fresco, subject to his herd limit. If he opts for two, he shall ensure that they are kept separate from each other. A veterinary opinion will be obtained as to the advisability of euthanizing Hombre due to his aggressive disposition. The proceeds of the sale of any of the stallions by the Society shall be applied to the Applicant's outstanding account. No time limit is set for the Applicant to obtain his own veterinary opinion, and it is not clear whether the Society's veterinarian or the Applicant's, or both, will be asked for the opinion regarding euthanizing Hombre. Further, it is not clear when the Society will be free to sell any of the stallions.

Notwithstanding those uncertainties, the parties' intentions regarding the stallions are clear: they agree that one or all might require castration. The Applicant has the option, subject to the herd limit, of taking back Fresco and one of the others after castration, if such procedure is required. He will have to keep those two stallions separate. When one reads the provisions of clause 15 of the Minutes, the uncertainties referred to above are resolved. As stated below, clause 15 provides that the Applicant shall be responsible for the boarding and veterinary costs for each of the stallions until they are sold, euthanized, or returned to the Applicant.

13 - This clause deals with the agreement to humanely euthanize two named horses, Papillon and Puce.

14 - Once the Society determines that four specified horses, namely, Myrtle, November 11th, Black Filly, and Christmas, are suitable for sale, it shall advise the Applicant. The sale of such horse(s) shall be delayed if the Applicant pays the boarding costs for such horse(s), and for as

> long as the Applicant pays such boarding costs, but only until November 11, 2006. Those specific horses may be released to the Applicant before disposition by the Society, provided the number of the Applicant's horses permits.
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> 15 - The cost of removal and care of the Applicant's horses has been reduced to $13,000. Terms of payment are agreed to. In addition to the cost of removal and care, the Applicant shall pay daily boarding costs of $6.75 per horse for each of the stallions referred to in paragraph 12, from June 28, 2006, until "the date of their disposition", or until such date as the Applicant advises the Society that he does not want the stallions retained by the Society. Upon such notification from the Applicant, the Society can sell the stallions in accordance with paragraph 10 of the Minutes. The words "the date of their disposition" must mean date of sale or date of return to the Applicant.
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> 16 - If the Applicant fails to make the payments required in paragraph 15, he shall surrender his entire herd to the Society. The latter will be free to dispose of the horses at its discretion, without prior notification to the Applicant, and without the Applicant having the right to assist in securing purchasers. Sale proceeds would be applied against the Applicant's outstanding account with the Society.

14 As can be seen from the above analysis of each of the clauses, the Minutes of Settlement are sufficiently definite and clear that the intentions of the parties can be ascertained. In my view, there is nothing obscure, imprecise, or contradictory in the Minutes.

15 There is uncertainty about the disposition of Amande, but in my view that does not render the Minutes void and unenforceable.

16 There is disagreement about the interpretation of clause 4, which I will deal with under issue number (2); however, disagreement about interpretation of clause 4 does not render the Minutes void.

17 Each party alleges a breach of the Minutes of Settlement by the other party, but again, a breach or alleged breach does not mean that there was a lack of consensus when the parties entered into the agreement. It does not mean that the essential terms of the agreement cannot be ascertained, or that the Minutes are not capable of definite interpretation.

18 Disagreement about the interpretation of the document does not render the agreement void and unenforceable.

19 The answer to the first question therefore is no.

(2) INTERPRETATION OF CLAUSE NUMBER 4:

20 The Supreme Court of Canada, in *Eli Lilly & Co. v. Novopharm Ltd.; Eli Lilly & Co. v. Apotex Inc.*, [1998] S.C.J. No. 59, discussed the parol evidence rule and said the following at paragraphs 54 and 55 of that decision:

> The contractual intent of the parties is to be determined by reference to the words they [the parties] used in drafting the document, possibly read in light of the surrounding circumstances which were prevalent at the time. Evidence of one party's subjective intention has no independent place in this determination.
>
> Indeed, it is unnecessary to consider any extrinsic evidence at all when the document is clear and unambiguous on its face.

21 The Applicant's position is that the words in clause number 4 are clear and unambiguous. They mean that the seven foals that were released to the Applicant together with certain adult horses on September 2, 2006, should not have been included in the total herd limit of 18. Put another way, those foals would not be considered in the total herd count until November 11, 2006.

22 The Respondent's position is that the foals which were being cared for by the Society when the Minutes of Settlement were entered into were to be included in the total herd count, but that foals which would be born after the return of the Applicant's horses to him would not.

23 The Respondent's position further is that, if the foals were not to be considered in the total herd count, then there would have been no need for paragraph 14 which refers to what the Respondent has called the "waiting list" horses.

24 I cannot agree with the Respondent's proposition. Firstly, paragraph 4 of the Minutes is, in my view, plainly worded. It speaks to a herd limit of 18 horses. It begins with the words "shall limit", which imply an absolute limit, but goes on to state that "[n]notwithstanding the foregoing", newborn foals will not be included in the count. The words "notwithstanding the foregoing" indicate an exception to the limit, and the clause goes on to describe the exception, i.e. the newborn foals. The clause then utilizes the words "provided that", which connote a condition to the exception; that is, "that the number including foals does not exceed eighteen horses as at November 11 of any year." The meaning is clear. No matter how many newborn foals may be in the Applicant's herd, he can have no more than 18 horses, adult and foal, on November 11th of any given year.

25 One must presume that the parties intended the legal consequences of their words; see *Joy Oil Co. v. The King*, [1951] S.C.R. 624, at p. 641.

26 Clause 14 of the Minutes does not contradict the clear words of clause 4. It deals with four named horses which may become available for release to the Applicant. The paragraph refers to the suitability of those named horses for sale as determined by the Society. This suggests that the issue around these particular animals is their physical condition.

27 A total of 24 horses were removed from the Applicant's premises by the Society. The Minutes of Settlement reflect the agreement by the parties that only 15 of those 24 would be available for return to the Applicant.

28 The provisions of the Minutes of Settlement, when read together, provide that 15 adult horses could be returned to the Applicant, together with the foals, if the proper conditions are met. This includes the Applicant's option regarding the return of one or two stallions. According to the plain meaning of the Minutes, the Applicant could only receive 14 of the 15 named horses in addition to the foals. When one factors in the four horses which the Applicant retained on his property, the total horses he would eventually have, following the return of the specific horses named at paragraphs 9, 12, and 14, would be 18.

29 Those 15 horses are referred to in different paragraphs, with different conditions relating to their possible eventual return to the Applicant. This leads to the conclusion that the conditions are not only the number of animals to be returned, but their physical suitability for return.

30 I cannot accept the Respondent's suggestion that the foals which were born by September 2, 2006, would not be included in the herd count, but that foals born in the future would be. There is no logic or rationale for this proposition, and the plain meaning of the provisions in the Minutes of Settlement does not suggest such interpretation.

31 I therefore conclude that, as of September 2, 2006, the Applicant was entitled to the return of 14 of the 15 named horses which were in the care and control of the Society, in addition to the foals, subject to the physical condition of the horses in question and to the payment of outstanding accounts. The answer to the second question is yes.

32 If counsel cannot agree on the costs of this proceeding, they are to communicate with the Trial Co-Coordinator within 15 days to set a date and time for a hearing, which can, at the option of counsel, be conducted by teleconference

call.

L.L. GAUTHIER J.

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