

# COURT OF QUEBEC

Small Claims Division

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
Civil Division

No: 500-32-108277-080

DATE: June 8, 2009

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**PRESIDED BY THE HONOURABLE DAVID L. CAMERON, J.C.Q.**

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**JINGLI JI**

[...] Montreal, Quebec [...]

Plaintiff

vs.

**VANESSA MICHÈLE POEJO**

[...] Montreal, Quebec [...]

Defendant

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## JUDGMENT

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[1] Jingli Ji sues Vanessa Michèle Poejo claiming damages related to injuries sustained from bites of two dogs owed by Ms. Poejo.

[2] Mr. Ji asserts that on December 15, 2006, he was bit by the two dogs who were being led on leashes, by a friend of Ms. Poejo, on the sidewalk of Chateaubriand Street near Liège.

[3] The Plaintiff's "dépanneur" is situated on the corner of those two streets. Mr. Ji ran of the dépanneur in pursuit of a woman who had stolen some items. He chased her to her car that was waiting on Chateaubriand Street and, as he was trying to open the door of the car, the two dogs bit him in on his left buttock and his right thigh.

[4] Ms. Poejo contests the claim, alleging that Mr. Ji caused the accident by jumping over the dogs in pursuit of the shoplifter. She alleges that he was bit by only one the two dogs, a pit-bull.

[5] She brings a cross-demand for a total of \$6,828.50 relating to the costs of the destruction of the two animals, the investment she had made in their registration and care and the fines she had to pay to the City of Montreal on being found guilty of infractions pursuant to municipal bylaws.

### **FACTS**

[6] According to Mr. Ji's description of the incident, he was no longer running when the dogs attacked him: he was standing next to the car attempting to open the door.

[7] According to the man walking the dogs, Mr. Carlos Alberto Ferrinha, he stopped the dogs on their leashes in front of the dépanneur when the shoplifter went out holding a large bottle of beer in her hands. Shortly thereafter, Mr. Ji ran out of the dépanneur close enough to the dogs that his leg touched the head of the smaller one, a pit-bull.

[8] The pit-bull bit into the back site of Mr. Ji's left thigh near the top. Mr. Ferrinha testified that only one of the two dogs, the pit-bull, bit Mr. Ji and only in at one place. The pit-bull's jaws were locked into Mr. Ji's body, and Mr Ferrinha had to separate them.

[9] Ms. Poejo only arrived on the scene later. Mr. Ji was laying the sidewalk and her dogs were attached to a tree.

### **FACTUAL ANALYSIS**

[10] The version of the events given by Mr. Ji is more credible than that of Mr. Ferrinha. Mr. Ferrinha cannot have observed the incidents very well or perhaps his recollection is not good.

[11] The Court comes to this conclusion because the medical reports, which are objective, clearly show that Mr. Ji was bitten at two places: on the right thigh and on the left buttock.

[12] The placement of the wounds is more consistent with being attacked by two dogs from behind than being attacked by only one from the left side.

[13] With respect to the cross-demand, Ms. Poejo admitted at trial that she had taken the decision to destroy the dogs a few months after the incident. Because of the involvement of the city's authorities, Ms. Poejo was able to have the costs of the euthanasia subsidised by the city department responsible.

[14] The decision was, however, hers. I was taken responsibly, whether or not the dogs truly constituted a future danger.

[15] Ms. Poejo points out that this was the first time the dogs were involved in any unpleasant incident. Mr. Ji alleged that the dogs had been involved in another incidents but the proof that he provided to this allegation was hearsay recounted to him apparently by a city officer.

[16] In the absence of that witness, the Court cannot rely upon such evidence.

### **LEGAL ANALYSIS**

[17] The drafters of the *Quebec Civil Code* chose to impose liability, irrespective of fault, upon the owner of an animal who causes damages to another.

**1466.** The owner of an animal is liable to reparation for injury it has caused, whether the animal was under his custody or that of a third person, or had strayed or escaped.

A person making use of the animal is, together with the owner, also liable during that time.

[18] In the case of dogs, it sometimes happens that an otherwise well-behaved dog becomes startled and attacks an individual within its reach.

[19] Despite domestication, dogs remain animals and are prone to instinctive behaviour.

[20] The intention of the law is to put the risk of unpredictable behaviours on the part of animals on the owner or the person who is using the animal at the time of an accident.

[21] The owner of an animal has an excuse for such liability if the event was truly caused by the fault of the victim or an irresistible force.

[22] In the present case, Mr. Ji was perhaps ill advised to pursue the shoplifter rather than the simply reporting the matter to the police. He was, however, acting within his right to pursue and arrest the person with a view to delivering her to a peace officer<sup>1</sup>.

**Arrest without warrant by any person**

**494.** (1) Any one may arrest without warrant

(a) a person whom he finds committing an indictable offence; or

(b) a person who, on reasonable grounds, he believes

(i) has committed a criminal offence, and

(ii) is escaping from and freshly pursued by persons who have lawful authority to arrest that person.

**Arrest by owner, etc., of property**

(2) Any one who is

(a) the owner or a person in lawful possession of property, or

(b) a person authorized by the owner or by a person in lawful possession of property,

may arrest without warrant a person whom he finds committing a criminal offence on or in relation to that property.

**Delivery to peace officer**

(3) Any one other than a peace officer who arrests a person without warrant shall forthwith deliver the person to a peace officer.

[23] The activity itself being legal, Mr. Ji would only be responsible for the incident that occurred with the dogs if he interfered with them in a way that constituted a civil fault.

[24] The testimony of Mr. Ferrinha that Mr. Ji came close to the dog or touched it is not reliable enough evidence to establish a case for fault against Mr. Ji.

[25] In all probability, this is simply a case of the dogs becoming startled and attacking what was perceived by them to be a threat.

[26] One of the dogs, named "Maximus"<sup>2</sup> was on a one-meter leash and the pit-bull, "Pirata", was on a 53 centimetre leash.

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<sup>1</sup> *Criminal Code of Canada*, section 494.

<sup>2</sup> According to the 2006 license receipt a Wolf Sepela crossed with Chow-chow and Pit-bull.

[27] It is not clear whether the dogs had to strain against the leashes or whether they had enough slack on the leashes to attack Mr. Ji without pulling against their master. In either event, the loss of control of the animals cannot be attributed to Mr. Ji or to an irresistible force.

[28] The Court wishes to add that Ms. Poejo is not personally blameworthy for the accident. The civil law places the responsibility on her, irrespective of fault.

### **DAMAGES**

[29] The Court accepts the following damages as reasonable:

- Medication	\$ 44.62
- Ambulance	\$137.50
- Taxis	\$126.00
- Trousers ripped	\$100.00
- Temporary incapacity of two weeks, pain and suffering and residual discomfort :	\$2,000.00

[30] The claim for the cost labour to work in the dépanneur is not substantiated. Family members filled in for the Plaintiff at the dépanneur but were not remunerated.

### **FOR THESE REASONS, THE COURT:**

**CONDEMNNS** the Defendant to pay the Plaintiff the sum of \$2,408.12, together with interest at the legal rate of 5% per annum and the additional indemnity provided at article 1619 of the *Civil Code of Quebec*, calculated from December 3, 2007;

**DISMISSES** the Cross-Demand;

**CONDEMNNS** the Defendant to pay, to the Plaintiff, judicial costs in the amount of \$151.

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**DAVID L. CAMERON, J.C.Q.**

Date of hearing: June 1<sup>st</sup>, 2009