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**Blake v. British Columbia (Society for the Prevention of
Cruelty to Animals)**

**Between
Judith Blake, Plaintiff, and
The British Columbia Society for the Prevention of Cruelty to
Animals, Defendant**

Victoria Registry No. 86/0944

[1987] B.C.J. No. 1700

British Columbia County Court
Victoria, British Columbia

Gow Co. Ct. J.

Heard: May 21, 1987

Judgment: July 16, 1987

John Campbell, Esq., for the defendant.

GOW Co. Ct. J.:-- The defendant Society is a corporation by reason of s. 2 of the Prevention of Cruelty to Animals Act., R.S.B.C. 1979 c. 335. Section 12 confers upon an authorized agent of the Society power in certain circumstances to seize, hold, destroy or dispose of any animal. It provides:

12.(1) Subject to section 13, an authorized agent of the society may examine, seize, hold, destroy or dispose of any animal found straying at large, abandoned or apparently ownerless.

- (2) Subject to section 13, an authorized agent of the society may examine, seize, hold, destroy or dispose of any animal that, in his opinion and in the opinion of either a person sworn under section 8 or a peace officer, will not receive suitable care unless removed from the custody of its owner. Where an animal is seized pursuant to this subsection, its owner is liable to the society for the cost incurred by the society by reason of any action of the society or its authorized agent acting under this subsection.

- (3) An authorized agent of the society may examine, seize, hold and destroy any animal that, in his opinion and in the opinion of either a person sworn under section 8 or a peace officer, appears to be so severely injured, sick or suffering as to be beyond recovery.
- (4) On information on oath by an authorized agent of the society, or peace officer, that he has reasonable ground for believing that an animal is being ill treated or neglected in a building, premises, vehicle, aircraft or vessel, a justice may by warrant under his hand authorize and empower the authorized agent or peace officer to enter, using the force necessary to effect an entrance, and search the building, premises, vehicle, aircraft or vessel, and to examine any animal found there to determine whether further action should be taken under this Act, and the authorized agent or peace officer may act in accordance with that warrant.
- (5) The person who forces an entrance pursuant to the powers contained in subsection (4) shall without delay after the entry and inspection notify the owner or custodian of the animal, if known, of his action.
- (6) An authorized agent of the society or peace officer exercising in good faith any power granted by this section is not liable in damages for any entry on property or for any action lawfully taken under this section.

In the afternoon of August 8, 1985 and in the morning of August 9, 1985, Lynn West, formerly shelter supervisor and now secretary-manager and Hans Schinkel, inspector, of the Victoria branch of the Society and its authorized agents, acting on information received, attended at the premises, a dwelling house, of the plaintiff located at 5545 Sooke Road, Victoria. Because of what they there saw Schinkel, pursuant to s. 12(4) obtained search warrants. Both, accompanied by the then secretary-manager, three other inspectors and an R.C.M.P. Constable, then returned to the plaintiff's premises on the afternoon of August 9, 1985 and seized 89 cats which they took to the Society's shelter in Victoria. There the cats were examined by a veterinarian, Dr. Atkinson, and acting upon his recommendation, 61 cats were euthanized. The remaining 28 cats were quarantined and treated. On the evening of August 14-15, 1985 the Society's shelter was broken into and 24 of the cats were stolen. On September 1, 1985 the Society's shelter was again broken into and the remaining 4 cats, together with 34 other cats and 9 carrying cages, the property of the Society, were stolen.

On August 14, 1986 the plaintiff commenced action against the Society.

In her statement of claim she alleges:

5. The apprehended cats were siezed [sic] by the Defendant's employees or agents, ostensibly pursuant to the provisions of section 12 of the Prevention of Cruelty to Animals Act, R.S.B.C., Chapter 335 and amendments thereto.
6. The said seizure by the Defendant's employees or agents was reckless, and in the alternative based on an opinion of the Defendant's employees or agents that was not an opinion based or held on "good faith" as required by section 12 of the Prevention of Cruelty to Animals Act.
7. Prior to the seizure the Plaintiff had properly cared for all of her animals under difficult financial constraints and circumstances. Whereas certain of the animals were sick, the Plaintiff was taking proper and appropriate measures to care for and adequately provide for all of her animals.

8. The Plaintiff's seized animals, almost without exception, were not so severely sick as to be beyond recovery. Most of the cats were perfectly healthy.
9. The Defendant society through its employees or agents destroyed the large majority of the Plaintiff's cats.
10. The Defendant society through its employees or agents destroyed these said animals on the basis of an opinion that the animals being destroyed appeared "to be so severely injured, sick or suffering as to be beyond recovery".
11. The opinion so held that the animals destroyed were beyond recovery, was an unreasonable [sic] or recklessly held opinion and was not held in good faith by those agents or employees of the Defendant who were responsible for the destruction of the Plaintiff's cats.
12. The Plaintiff had sought the return of her destroyed cats and all of her seized cats prior to the destruction of her animals by the Defendant, The British Columbia Society for the Prevention of Cruelty to Animals.
13. The Plaintiff has suffered [sic] great mental anguish and pain for the actionable and improper seizure of her cats and the actionable and improper destruction of most of her cats by the Defendant.
14. The Plaintiff has suffered [sic] the loss of her property in the ownership of her animals through the improper and actionable conduct of the employees or agents of the Defendant.

In the prayer she claims inter alia:

- a) Damages for trespass and breach of statutory duty;
- b) Damages for loss of property;
- c) Damages for mental suffering;
- d) Punative damages; ...

The Society applies for an order pursuant to R. 18(A) dismissing the plaintiff's claim. Filed in support are affidavits of West and Schinkel and in reply an affidavit by the plaintiff and one by a Patrick Simpson.

The issue here is - did the agents of the Society act in good faith when they entered upon the premises of the plaintiff, seized the cats which there were in her possession, held some and destroyed others?

Under R. 18(A) the applicant who asserts the affirmative of an issue must prove it on a balance of probabilities.

What does "act in good faith" mean in the context of s. 12?

The qualification of the "context of s. 12" requires reference to s. 8 which provides:

- (8) Officers and employees of the society are, ex officio, authorized agents of the society for the purpose of the ensuing provisions of this Act and other laws relating to the prevention of cruelty to animals. Every officer and employee, and every other person specifically appointed an authorized agent in that behalf by the society, has, on being duly sworn before a justice, the powers and duties that by law belong to and are incumbent

on a constable, to make effective the purposes of the Society under the ensuing provisions of this Act and any other law relating to the prevention of cruelty to animals.

The badge of good faith is honesty and so a thing is deemed to have been done in good faith if it was done honestly, whether or not it was done negligently. c.f. Sale of Goods Act, R.S.B.C. 1979 c. 370, s. 2. In the context of s. 12 an authorized agent of the Society acts in good faith when, without wrong intention or motive, he exercises his statutory powers in a honest manner and with the honest belief that he is being faithful to his statutory duties and obligations. c.f. B & T Masonry Inc. etc. (1977), 3 B.C.L.R. 357 per McTaggart Co. Ct. J. at p. 359.

On the materials before me I have no doubt, and so find, that the agents of the Society acted in good faith when they entered on the premises of the plaintiff and seized the cats. The photographs contained in Exhibit 'C' to Inspector Schinkel's affidavit are eloquent testimony of the unfortunate plight of the cats when in the possession of the plaintiff.

I have equally no doubt, and so hold, that the agents of the Society acted in good faith when they destroyed 61 of the seized cats. I accept the evidence of Inspector Schinkel contained in paragraph 11 of his affidavit where he says:

And I have been an inspector with the S.P.C.A. for the past 10 years, and have during that time evaluated literally thousands of animals. It was my opinion, based on Dr. Atkinson's recommendations, the condition of the animals, and the resources available to the shelter, that it was highly improbable that any of the animals euthanized would have survived without considerable continued suffering being visited upon them.

The decision to euthanize was not taken lightly or recklessly, but only after a careful review of the condition of each cat. I refer to the affidavit of West, in particular paragraphs 17 to 20 thereof, whose evidence I accept.

I have equally no doubt, and so hold, that the agents of the Society acted in good faith when they held the remaining 28 cats. That action was taken following upon a report from Dr. J.A. Grigor, a veterinarian, who examined them at the request of the Society. His report which is Exhibit "B" to West's affidavit, was the basis for the decision which these agents made to quarantine and treat the remaining cats.

I do not doubt that subjectively the plaintiff was much attached to her many cats. However that attachment seems to have blinded her to the reality that she did not have the resources to enable her adequately to care for them. It has been said that there are "more ways of killing a cat than choking her with cream". One way is by sentimentality, unaccompanied by common sense.

The application is granted, and the plaintiff's claim is dismissed, but, in the circumstances, I make no order as to costs.

GOW Co. Ct. J.

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