

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim No. SLUHCV2019/0527

BETWEEN:

PECKHURST CHASTANET

Claimant

and

**1.KIZY SHERLAN BOUDHOO
2. JEANIEL HARPER**

Defendants

APPEARANCES:

Mrs. Veronica Barnard for the Claimant

Mr. Eghan Modeste for the 1st Defendant

2021: October 14;
November 11, 12; (written submissions)
2024: April 22.

JUDGMENT

[1] **CENAC PHULGENCE J.:** The claim arises out of an attack on the claimant, Mr. Peckhurst Chastanet ("Mr. Chastanet") by two dogs on the 3rd day of March 2019 on the Belmont Main Road, Dennery one of which was in the control of the 1st defendant, Ms. Kizy Sherlan Boudhoo ("Ms. Boudhoo") at the time. The 2nd defendant was never served and as a consequence the time for service of the claim expired without the validity of the claim being extended.

- [2] Mr. Chastanet seeks to recover from Ms. Boudhoo special damages in the sum of \$33,670.00 for medical and related expenses, transportation expenses and the cost of farm help, general damages for personal injuries together with interest thereon at the rate of 6% per annum and costs. On the other hand, Ms. Boudhoo disputes Mr. Chastanet's claim stating that her dog did not bite Mr. Chastanet but merely scratched him on the leg.
- [3] The principal issue for determination by the Court, therefore, is whether Ms. Boudhoo's dog caused injury to Mr. Chastanet.

Evidence of the Attack

- [5] Five witnesses were called at the trial. Both Mr. Chastanet and Ms. Boudhoo gave evidence on their behalf whilst Ms. Boudhoo called a further two witnesses namely Mr. Lester Celestin ("Mr. Celestin") and Ms. Lindy Boudhoo, and Mr. Chastanet called one other witness in the person of Dr. Haden Alcindor.

Mr. Peckhurst Chastanet

- [6] Mr. Chastanet's evidence of the attack coming from his witness statement is in summary that:¹

On Sunday 3rd March 2019 at about 3:00 p.m. he was walking from his farm at Belmont to his home which is also in Belmont. Just as he approached the home of Ms. Boudhoo, which is along the Belmont public road, a white pit bull dog came rushing towards him. It was loose and had no leash. The house was not fenced at the time of the attack on him by the dogs. As he got close to the house, he saw Ms. Boudhoo coming from the house with a plate in her hand and heading towards a drain along the road.

When he noticed the white pit bull running out towards him, he immediately stopped. The dog launched at him and he tried to push it away with his foot. The slipper he was wearing fell off, he tried to put it back on and at that point, the dog grabbed his left leg and he kicked it off really hard. He then felt another dog biting at his waist.

¹ See paragraphs 2-10 of Mr. Chastanet's witness statement.

He then hit that one off with his hand. After that bite he noticed it was a brown mongrel that bit him at his waist.

During the attack, Ms. Boudhoo came and made many attempts to control the pit bull and to get it off his leg. It was very difficult because the dog had on no leash and was very aggressive. After the pit bull bit him he was able to kick it off really hard, it calmed down a bit and Ms. Boudhoo was able to control it and took it home.

He immediately felt a lot of pain and saw that he was bleeding heavily. He saw a concrete block on the side of the road; he sat on it and asked the nearest neighbour to give him a piece of rope to tie his left leg to contain the bleeding.

Ms. Boudhoo then brought him a white towel to help wipe off the blood. He believes she also called the ambulance. He sat on the block for about fifteen minutes awaiting the ambulance. Realising that it was taking so long, he then called his friend Clarence who came with his car PK9408 to take him to the Dennergy Hospital. Whilst he was sitting on the concrete block Ms. Boudhoo grabbed the pit bull and took it inside her home.

- [7] In cross-examination, Mr. Chastanet admitted that he did not know what kind of dog it was, but that it looked like a pit bull.
- [8] He further accepted that the dog which bit him on the waist was the brown mongrel dog and that this dog did not latch onto his waist but that it had just grabbed him, and he was able to knock it off immediately.
- [9] Mr. Chastanet further stated that the brown mongrel dog did not bite him on the leg as well.
- [10] Conversely Mr. Chastanet denies the assertion that Ms. Boudhoo's dog did not bite him on the leg. He states that when Ms. Boudhoo's dog grabbed him he kicked it off and it just cut his flesh open and that is the time when Ms. Boudhoo grabbed the dog.

[11] Mr. Chastanet in his comment on Ms. Boudhoo's witness statement denied her version of events and states that Ms. Boudhoo was coming by the road to the drain. She came to throw something there. He saw her coming and then he saw the dog just run out of the house and attack him. It is after Pugsy bit him and he kicked her off that Ms. Boudhoo grabbed it and the other dog jumped on his back and bit him by the waist. According to Mr. Chastanet the bite by his waist cured in five days. It was not that bad. However, the one where the pitbull bit him was cut open wide. Mr. Chastanet says he is not claiming for both dogs. According to him, if the bite was like the mongrel dog's, he would not claim for anything.

[12] Mr. Chastanet also denied Ms. Lindy Boudhoo's version of events and asserts that the pitbull or bulldog bit him on his leg first and then the mongrel dog bit him on the waist, that the dog bit him, he then kicked it off him and that is the time Ms. Boudhoo got to hold the dog. He was bleeding so heavily and was frightened that he would bleed to death. He asked someone to get him a piece of rope to tie the leg so the bleeding could stop. Mr. Chastanet says that the defendants did not take him to the hospital. He had to call a friend to take him.

Ms. Kizy Sherlan Boudhoo

[13] On the other hand, Ms. Boudhoo's evidence as stated in her witness statement is that:²

She is the owner of a white female bulldog named Pugsy. On the 3rd day of March 2019, she was at home with Pugsy and her sister Lindy was also at home at the time. Her neighbour has a brown mongrel dog. At about 2:30 pm she heard her neighbour's mongrel dog barking and noticed Mr. Chastanet walking along the main road in front of her house. She was about to feed Pugsy, however, Pugsy then pushed the gate open and ran onto the road and started barking at Mr. Chastanet as well. She immediately ran after Pugsy to hold her in order to prevent her from getting too close to Mr. Chastanet and called out to Lindy, her sister. The neighbour's mongrel continued barking at Mr. Chastanet.

² See paragraphs 4-8 of Ms. Boudhoo's witness statement.

When Mr. Chastanet saw Pugsy, he tried to kick Pugsy several times whilst directing his attention toward Pugsy. Suddenly, the neighbour's mongrel attacked him by biting him and actually latching on to his waist with its teeth. Upon being bitten by the neighbour's dog, Mr. Chastanet screamed out in pain. Pugsy then appeared to become excited and ran toward Mr. Chastanet so she immediately grabbed her to try to prevent her from making contact with him but Pugsy managed to scratch Mr. Chastanet's leg in her state of excitement.

Pugsy was at the time just a few months old and had neither attacked anyone nor showed any signs of aggression before. After the scratch she immediately restrained Pugsy and took her into the house and then returned to assist Mr. Chastanet. She assisted Mr. Chastanet by calling the ambulance and brought him diluted salt water to wash out his wounds. Lindy also assisted by bringing clean towels to wipe the wounds.

Mr. Chastanet accepted their help, however, he did not wait for the ambulance and left the scene on a pick-up van and proceeded to the Dennery Polyclinic. Ms. Boudhoo says from her observation, Mr. Chastanet had been bitten, however, the scratch to his leg by Pugsy was superficial as were the bites by the neighbour's mongrel dog, which latched on to his waist whilst biting him and also bit him about his lower body. The neighbour's mongrel was not restrained as she was entirely focused on controlling Pugsy.

[14] Ms. Boudhoo in cross-examination agreed that her house was not fenced when Mr. Chastanet was bitten but that her balcony had a gate.

[15] Ms. Boudhoo also agreed that after the dog bit Mr. Chastanet it bit someone else about a year later. At that time, she was going in with her vehicle, the gate was open, and the man was passing, and the dog went out of the gate and bit him.

- [16] That at the time of the attack on Mr Chastanet, she was not emptying the plate. She went out of the gate to get the plate as she was about to feed the dog. When she went out in the yard the dog ran and she immediately ran after it.
- [17] Ms. Boudhoo denied that Pugsy ran out and attacked the claimant and bit him and then she came and held her. However, in her witness statement she said that when Pugsy ran out onto the road she ran after her to prevent her from getting too close to Mr. Chastanet. She does not say that she held her. It was only after Mr. Chastanet was bitten by the neighbour's mongrel dog and Pugsy ran towards Mr. Chastanet that she says she immediately grabbed Pugsy to try to prevent her from making contact with Mr. Chastanet.
- [18] When asked whether she saw Mr. Chastanet do anything to provoke Pugsy, Ms. Boudhoo replied that when the dogs started barking, he started kicking it to prevent it from getting to him. As a result, Pugsy got more excited maybe. She said that the dog was trying to defend itself and is not aggressive.
- [19] Ms. Boudhoo insisted in her evidence that Mr. Chastanet suffered a superficial wound; it was like a scratch; it did not penetrate or puncture, it was the first layer of skin that was damaged.

Ms. Lindy Boudhoo

- [20] Ms. Lindy Boudhoo in her witness statement states:³

Her sister Kizy is the owner of a white female bulldog named Pugsy. On the 3rd day of March 2019 she was at home with her boyfriend and her sister and she heard her sister shout her name at about 2:30 pm. She could tell that the shouting was coming from the front yard and so she immediately ventured to the yard to find out what was happening and noticed Mr. Chastanet trying to kick Pugsy because she was barking. Kizy was about to grab on to Pugsy. She also noticed the neighbour's mongrel dog coming very close to Mr. Chastanet. The mongrel dog then jumped

³ See paragraphs 4-8 of Ms. Lindy Boudhoo's witness statement.

onto Mr. Chastanet and latched on to his side. It then started biting him and bit him on his side and on his leg.

Mr. Chastanet screamed and started struggling to try to stop the biting and Pugsy got excited and attempted to leap onto Mr. Chastanet's leg but Kizy grabbed on to her. Although Kizy was able to prevent Pugsy from biting Mr. Chastanet, Pugsy managed to scratch Mr. Chastanet's leg as she leapt forward, however, the scratch was minor and superficial. Kizy then took Pugsy away and the attack by the mongrel dog continued.

Ms. Lindy Boudhoo says when the biting by the mongrel ended, Mr. Chastanet sat on the ground and she noticed that he was bleeding from his side and his leg. She proceeded to the house to get some towels for his leg and a phone to call the ambulance.

[21] Ms. Lindy Boudhoo in cross-examination said that Pugsy was about 5 feet from Mr Chastanet on the road barking when she saw him kicking the dog.

[22] In cross-examination, Ms. Lindy Boudhoo said she knew what was going on because her sister Kizzy shouted her name, she heard the commotion and proceeded downstairs. When she got downstairs the mongrel dog was leaping onto Mr. Chastanet. That was also when the scratch on Mr Chastanet's leg occurred and when the mongrel dog attacked Mr. Chastanet and latched on to him. Pugsy was moving forward barking and backing away from him when he kicked it. When it jumped the paw made contact with Mr. Chastanet's leg. He was kicking out all the time trying to kick Pugsy away from him.

[23] Ms. Lindy Boudhoo says she was able to observe Mr Chastanet's wounds since she was the one who assisted him. According to her, it was not a deep gash and she assumes he suffered a superficial injury based on what she saw.

- [24] However, Ms. Lindy Boudhoo also states that Mr. Chastanet's leg was bleeding at the time; that there were a few places where he was bleeding from the side, waist, behind the leg and at the top of the leg where Pugsy scratched him.

Mr. Lester Celestin

- [25] Mr. Celestin in his witness statement states in summary that:
- On the 3rd day of March 2019 at about 2:45 pm Lindy woke him up and informed him that her sister's dog was involved in an attack on Mr. Chastanet. He says he went outside and saw Mr. Chastanet sitting on the side of the road and being attended to by Kizy. He was then informed by Kizy and Lindy that an ambulance had already been called and they waited for the ambulance to arrive. After waiting for a few minutes Mr. Chastanet left the scene on a van. The ambulance arrived shortly thereafter, and he informed them that the injured person had left the scene and travelled to the hospital via private vehicle.
- [26] Mr. Celestin under cross-examination agreed that when he came out of the house the attack was already over.

Submissions and Analysis

- [27] Mr. Chastanet's case is that Ms. Boudhoo's dog Pugsy, a pit-bull has caused injury to his person by biting him and that Ms. Boudhoo as the owner of the dog is liable for this injury.
- [28] Mrs. Veronica Barnard ("Mrs. Barnard"), Counsel for Mr. Chastanet invites this Court to find that Ms. Boudhoo having admitted that she is the owner of the dog, and having admitted that she was in control of the dog and having admitted that she had to hold the dog to prevent further attack on Mr. Chastanet, is liable for the consequences of the dog's bite.
- [29] Conversely Mr. Eghan Modeste ("Mr. Modeste"), Counsel for Ms. Boudhoo argues that in order to succeed on his claim Mr. Chastanet would need to establish that his injuries were caused by the dog belonging to Ms. Boudhoo and such a claim could be bolstered if Mr.

Chastanet could show that the dog belonging to Ms. Boudhoo was a dangerous dog as defined in the **Animals Act**.⁴

- [30] Mrs. Barnard argues that Ms. Boudhoo has admitted that she was the owner of the dog, that she was in control of the dog, that she was holding the dog to "prevent further attack" on Mr. Chastanet, that the dog left her and ran to Mr. Chastanet on the road and that she fenced her home after the attack.
- [31] Mrs. Barnard further submits that there is no evidence that Mr. Chastanet in any way shape or form provoked the dog or did anything that was likely to provoke the dog. Counsel asks the Court to consider that the dog has without any provocation attacked and injured a second person. It ran from Ms. Boudhoo's fenced home onto the road and attacked that second person.
- [32] Mrs. Barnard posits that the doctor's report shows injuries consistent with a dog bite namely puncture wounds and lacerations. She further submits that Mr. Chastanet's wound at his waist was not significant, it healed and there was no need to pursue the owner of the mongrel dog.
- [33] Mrs. Barnard submits that there is ample evidence that Ms. Boudhoo's dog was aggressive and attacked Mr. Chastanet unprovoked, bit him and he suffered from the wounds caused. The evidence before the Court shows that the dog had a propensity to attack humans unprovoked. Ms. Boudhoo did not keep her dog under proper control, her home was not fenced, nor was the dog placed on a leash to restrain it.
- [34] Mrs. Barnard argues that the photograph submitted by Ms. Boudhoo shows a large dog which appears to be definitely more than 20 kilos. However, I do not agree with Counsel on this point. The photograph does not offer any account of the weight of the dog at the time

⁴ Chapter 3.11, Revised Laws of Saint Lucia, 2020.

of the incident nor has any evidence of the breed of the dog from a veterinarian been put before the Court at all.

[35] Counsel argues that Ms. Boudhoo has produced no document or certificate which identifies the dog as anything other than a pit bull, or that the dog was not a ferocious dog but in the circumstances, I believe the onus to be Mr. Chastanet to prove his allegation and find that he has equally not provided any document or certificate to say that Ms. Boudhoo's dog is a pit-bull. I am of the view that consideration of provisions of the **Animals Act** is not relevant to resolution of the claim. The Court is being asked to make a finding that Pugsy is a dangerous dog in the absence of any evidence of the breed of the dog.

[36] On the other hand, Mr. Modeste submits that Mr. Chastanet's injuries were not serious but were of a moderate degree of severity, Mr. Chastanet sustained no fractures or other more serious injuries.

[37] Mr. Modeste argues that Ms. Boudhoo was truthful and did not attempt to conceal the fact that her dog scratched Mr. Chastanet, and she maintained that Mr. Chastanet was not bitten by her dog.

[38] Conversely, Mr Modeste submits that Mr. Chastanet was only truthful when he acknowledged that he demanded \$10,000.00 from Ms. Boudhoo. He further submits that Mr. Chastanet was untruthful in his evidence and without question embarked upon a campaign to not only convince the Court that his injuries were caused by Ms. Boudhoo's dog, but to also cause Ms. Boudhoo to appear to be indifferent to his injuries.

[39] Mr Modeste argues that Mr. Chastanet clearly contradicted his own evidence at trial and whilst commenting on the evidence of Ms. Kizy Boudhoo. Counsel invites this Court to consider that whilst commenting on the evidence of Kizy Boudhoo, Mr. Chastanet stated that it was not true that Kizy Boudhoo brought him any towels and that it was her sister Lindy Boudhoo who brought him a towel, however, in his witness statement he said that Kizy's sister, Lindy and her boyfriend Lester were present and did nothing.

- [40] Mr. Modeste submits that Mr. Chastanet, whilst commenting on the evidence of Ms. Kizy Boudhoo, commented that he asked 'a guy' for a rope and tied his leg with the rope all in an attempt to embellish the injury to cause it to appear more serious than it actually was.
- [41] The difficulty with Mr. Chastanet's assertion according to Mr. Modeste is that firstly, there were no other individuals present immediately after the engagement with the two dogs and, had it been necessary for anyone else to get a rope to tie his leg, that individual would not have left Mr. Chastanet who allegedly was bleeding profusely, to tie his leg himself.
- [42] I do not agree with Mr. Modeste's submissions and find that the parties were generally consistent in the evidence provided, and the areas of inconsistency do not support a finding of untruthfulness by Mr. Chastanet or an intent to cause Ms. Boudhoo to appear indifferent to Mr. Chastanet's injuries. When Mr. Chastanet said that Lindy and her boyfriend Lester were there and neither said nor did anything, that was after he said Ms. Boudhoo had brought him the white towel and he believed she called the ambulance. Clearly, he was speaking about Lindy and Lester alone when that statement was made.
- [43] As regards Mr. Chastanet's evidence that he got a rope and tied his own leg, there is no evidence to contradict this and Counsel's assessment of whether he was able to tie his leg himself or whether if the neighbour had indeed brought the rope, he would not have allowed Mr. Chastanet to tie his leg on his own are at best speculation. One thing which is clear even from the evidence is that Mr. Chastanet was bleeding, and this was supported by the evidence of Ms Lindy Boudhoo both in her evidence in chief and in cross-examination.
- [44] Mr. Modeste submits that during cross-examination, Mrs. Barnard kept asking Ms. Boudhoo questions which began with the words "After your dog bit Mr. Chastanet" and Ms. Boudhoo proceeded to answer the questions without resisting the insinuation that her dog bit Mr. Chastanet. This questioning and the subsequent responses under cross examination Mr. Modeste argues, were a simple legal trap which had been set on an 'unawares' Ms. Boudhoo who was also perhaps overwhelmed by the process of a trial.

- [45] In relation to this submission, the Court is able to identify and manage the extent of any legal trap if such a thing were to exist and is also in a position to assess and weigh the evidence placed before it and to consider the manner in which it is adduced.

Discussion

- [46] The starting point in determining liability in this case is Article 987 of the **Civil Code of St. Lucia**⁵, which states:

"987. "The owner of an animal is responsible for the damage caused by it, whether it be under his or her own care or under that of his or her servants, or have strayed or escaped from it..."

- [47] Mrs. Barnard argues that the dog by its very nature (a pit bull) is a dangerous and ferocious dog falling within the definition of a dangerous dog under the Animals Act. The definition section of the **Animals Act** defines a dangerous dog as:

"...any dog over 20kg with a propensity to attack humans or domestic animals without provocation and includes but is not limited to—

- (a) fighting dogs;
- (b) dogs, such as, Dobermans, Rottweilers, Ridgebacks, Akitas, Bullmastiffs, Mastiffs, German Shepherds; and
- (c) any dog designated a dangerous dog by the Minister of local government by order published in the Gazette;

- [48] Ms. Barnard also cites sections 36 (1) and 38 of the **Animals Act** which state respectively:

"Except for the purposes of compliance with subsection 32(1), a person who owns a dangerous dog shall keep that dog under proper control in his or her private premises."

A person who owns a dangerous dog shall ensure that the premises on which that dog is kept are secured by a fence or wall of a suitable height and that such fence or wall is so constructed and maintained as to prevent the escape of the dog. "

"For the purpose of this section, fence or wall includes a gate."

- [49] Section 38 of the Act renders an owner liable to a fine and having already found insufficient evidence to classify the Pugsy as a dangerous dog, the application of the **Animals Act** to this claim is a matter which need not be explored further.

⁵ Cap. 4.01, Laws of Saint Lucia.

- [50] I do however find Article 987 of the **Civil Code** particularly instructive and applicable. Ms. Boudhoo is the owner of the dog, Pugsy and thus liable for any damage caused by it.
- [51] It is agreed by both parties that this dog, Pugsy, on the 3rd of March 2019 did leave the premises of its owner and venture onto the roadway and began barking at Mr. Chastanet. During this time another dog (the mongrel) leapt onto Mr. Chastanet and then bit him on the waist all whilst he was kicking away at Pugsy. Sometime thereafter Ms. Boudhoo is able to restrain Pugsy and take her away from Mr. Chastanet.
- [52] Mr. Chastanet claims that he was bitten by Pugsy before Ms. Boudhoo could restrain her dog. Ms. Boudhoo on the other hand asserts that Mr. Chastanet was not bitten by Pugsy but scratched by him.
- [53] Having seen and heard the witnesses I find the evidence of both parties to be largely consistent but for the primary point of contention of whether Ms. Boudhoo's dog actually bit Mr. Chastanet on the leg or did he simply suffer a scratch and the corresponding extent of his injury and the period of his recovery. On assessment of the totality of the evidence, I find on a balance of probabilities that Mr. Chastanet did suffer some degree of injury caused by Ms. Boudhoo's dog Pugsy and that Ms. Boudhoo is as such responsible for the injury to Mr. Chastanet caused by her dog.
- [54] In determining the nature and degree of this injury the evidence of Dr. Alcindor proves particularly useful, the extent to which I will illustrate later in this judgment.
- [55] In determining the nature and extent of the injury I have the benefit of the oral testimony of Dr. Alcindor who attended to Mr. Chastanet and his written medical report exhibited to Mr. Chastanet's claim who found the injury to Mr. Chastanet's leg to be more akin to a bite rather than a scratch. Dr. Alcindor described the injuries to the left leg as puncture wounds, bites and partly torn. He said there were circular bites some more deep than others.

- [56] Having made such a finding, the Court is now charged with determining the appropriate measure of compensation in damages.

Assessment of Damages

Special Damages

- [57] Mr. Chastanet seeks compensation for special damages incurred as a result of the attack. Special damages in the sense of monetary loss which they have sustained up to the date of trial must be pleaded and particularized. "It is plain law that one can recover in action only special damages which has been pleaded and of course proven".⁶
- [58] With respect to his claim for special damages, in his statement of claim Mr. Chastanet seeks the sum of \$5,320.00 for transportation services, \$4,500.00 for maintenance of his dasheen and vegetable farm, \$2,800.00 for feeding and maintaining his 35 pigs and 15 goats, \$9,950.00 for medical consultation, \$2,100.00 for medical report and \$9,000.00 for loss of income.
- [59] According to Mr. Chastanet in his witness statement, he was not even able to walk and had to pay a driver to transport him to the Health Centre for daily dressing and treatment. He says he paid Clarence William a total sum of \$4,200.00 and attached receipts in support collectively marked Exhibit "PC7". It is his evidence that he paid Mr. Eugene Bispart a total of \$1,120.00 to help maintain his dasheen and vegetable farm. In support, Mr. Chastanet exhibits receipts collectively marked Exhibit "PC8". He says he also paid Mr. Bispart \$2,800.00 to take care of his 35 pigs and 15 goats and exhibits receipts collectively marked Exhibit "PC 9".
- [60] Conversely, Ms. Bodhoo's evidence from her witness statement is that she visited Mr. Chastanet at his home daily for one week following the incident in order to make clear her remorse for his ordeal, despite the fact that Pugsy had barely injured him. She says Mr.

⁶ Per Diplock LJ in *Ilkiw v Samuels* (1963) WLR 991 at 1006.

Chastanet informed her that he was feeling better, and she witnessed him walking with a slight limp but without the aid of crutches.

[61] Ms. Boudhoo says two days after the incident, her father accompanied her to Mr. Chastanet's home and they offered Mr. Chastanet \$1,000.00 to settle the matter, which he accepted. The sum of \$1,000.00 was for a tetanus injection, antibiotics and analgesia that Mr. Chastanet would have paid for at the Dennerly Polyclinic. The funds were also intended to cover other expenses as Mr. Chastanet informed them that he had a farm and he needed to pay someone to care for his animals.

[62] Ms. Boudhoo says they also offered to pay a worker to cut the grass for his animals and requested that he send a person of his choosing but no one ever presented themselves for that task. As well, they offered to take Mr. Chastanet to the Health Centre for his daily wound dressing sessions as directed by the doctor but Mr. Chastanet refused that offer and said that he wanted them to give him money to pay someone to take him to dress his wounds instead. Ms. Boudhoo says they also offered Mr. Chastanet an additional \$600.00 for his travel expenses and he refused and indicated that he wanted \$1000.00 per week from them indefinitely.

[63] In commenting on the evidence of Ms. Boudhoo, Mr. Chastanet denied her version of events, stating that it was her father alone who came to his home and asked him to 'hold' \$1000.00 to pay the guys for now and they would arrange a payment for them. Contrary to what Ms. Boudhoo says Mr. Chastanet says they never offered anybody to do anything for him and it was when her father visited him that he told him about needing someone to take care of his animals.

[64] Mr. Chastanet says Ms. Boudhoo and her family never offered to bring him to the Health Centre. They never offered him any money. In fact, he says they brought the police to his home and said they gave him \$1000.00 to take care of everything and he told them that cannot take care of it.

[65] I think it beneficial to cite an apt passage from the dicta of Lord Goddard CJ in **Bonham-Carter v Hyde Park Hotel**⁷ that:

“Plaintiff’s must understand that if they bring actions for damages, it is for them to prove their damage; it is not enough to write down particulars, and so to speak, throw them at the head of the court saying, “This is what I have lost, I ask you to give me these damages” They have to prove it”.

Farm Help

[66] From the evidence of both Mr. Chastanet and Ms. Boudhoo it is apparent that Mr. Chastanet is the owner of a farm and animals which needed attending whilst he recovered. It is clear from the medical report of Dr. Alcindor dated 4th April 2019, that from the first consultation on 15th March 2019, it was noted that as part of his recovery, Mr. Chastanet was to have no weight bearing on the affected foot. It was also noted that Mr. Chastanet was not able to participate in any sports, physical activities or work until treatment had been completed and confirmation given by the Orthopaedic Surgeon. I have noted that whilst the medical report of 4th April 2019 was exhibited to Mr. Chastanet’s witness statement, it is the report dated 23rd September 2019 which was served on the defendant subsequent to the claim and to which the defendant responded in her defence. As a result, I will make reference to the later report which would provide a more accurate picture of the claimant’s condition at the date the claim was filed.

[67] At the date of the medical report, that is 23rd September 2019, Dr. Alcindor states that Mr. Chastanet was still mobilising on crutches with no weight bearing. Dr. Alcindor states that the feet are a part of the body specialised in daily movement of the body from one point to another and therefore any serious injury to the feet results in a reduction of one’s independence and inability to commute.

[68] As at the 23rd September 2019 report, which was 24 weeks or six months post injury, Dr. Alcindor reports that the wound to Mr. Chastanet’s left leg had healed but got re-infected and that it would take perhaps another month to heal with excellent wound care and surgical intervention.

⁷ (1948) 64 T.L.R. 177 at 178.

[69] It is accepted that an offer of money was made to Mr. Chastanet and that he did not accept it, however that does not mean that Mr. Chastanet would not be entitled to the damages claimed once he is able to prove them. I accept that Mr. Chastanet's receipts in relation to farm help span 4th March to 28th April 2019 and 19th September to 16th October 2019 which were periods when, according to Dr. Alcindor, he was not able to undertake physical tasks.

[70] Whilst Mr. Chastanet in his statement of claim seeks special damages in the sum of \$7,300.00 for farm help, having considered his evidence in his witness statement and the receipts exhibited which only amount to \$3,920.00, I award Mr. Chastanet the sum of **\$3,920.00** for the cost of farm assistance (farm work and tending to his pigs and goats).

Transportation

[71] I also find that Mr. Chastanet over the period of his recovery would have incurred transportation expenses associated with moving himself about, a matter which by her evidence Ms. Boudhoo had appreciated as well. The receipts produced by Mr. Chastanet span 4th March to 16th October 2019 which is consistent with Dr. Alcindor's assessment of the impact of Mr. Chastanet's injuries on his ability to move about independently. Mr. Chastanet claimed \$5,320.00. However, having reviewed the receipts, I find that he has only proven the sum of \$4,200.00. I therefore award the sum of **\$4,200.00** for transport expenses incurred.

Medical related expenses

[72] Mr. Chastanet claims the sum of \$9,950.00 for medical consultations and \$2,100.00 for cost of medical reports. Having reviewed the receipts exhibited, I award the sum of **\$7,050.00** as total medical related expenses.

Loss of Income

[73] Mr. Chastanet seeks the sum of \$18,000.00 for loss of income as a driver and the sum of \$28,800.00 for loss of farming income as a result of his injuries. To this end, Mr. Chastanet exhibited two letters, one from his employer Construction and Machinery Services Ltd. and the other from his customer Mabouya Tropifresh.

[74] Taking in to account the period of his sick leave and having considered the employer's letter from Construction and Machinery Services Ltd., I note that it does not state that Mr. Chastanet was not paid during the period of his time away from work nor does it state the period over which he was away from work. The letter also does not reference the period of his recovery. I find that Mr. Chastanet has failed to provide sufficient evidence of loss of income to support an award of \$18,000.00.

[75] I also note that the letter from Mabouya Tropifresh states Mr. Chastanet earned approximately \$1,200.00 a week during 2018. It does not speak of his earnings in 2019 or any impact thereon. In this instance Mr. Chastanet's claim appears to be based on past earnings and not his actual income lost as a result of the attack and over the period of his recovery. I also consider that Mr. Chastanet would have paid for farm assistance during the period of his inability to work. In the circumstances, I find insufficient evidence to justify an award of damages for loss of farming income.

[76] Based on the foregoing, I award the sum of **\$15,170.00** to Mr. Chastanet as special damages.

General Damages

[77] Mr. Chastanet claims general damages for pain and suffering and loss of amenities. The evidence of Mr. Chastanet in respect of his injuries, the management of same and his recovery has been challenged by Ms. Boudhoo. I rely on the medical report of Dr. Alcindor as regards the injuries and management of the said injuries none of which has been challenged by the cross-examination of Dr. Alcindor.

[78] I refer to the seminal authority of **Cornilliac v St. Louis**⁸ in respect of the factors to be considered in arriving at an award of general damages for personal injuries that is: (a) the nature and extent of injuries sustained; (b) nature and gravity of the resulting physical

⁸ (1965) 7 WIR 491.

disability; (c) pain and suffering; (d) loss of amenities; (e) the extent to which pecuniary prospects are affected.

The nature and extent of injuries sustained; nature and gravity of the resulting physical disability and pain and suffering

[79] Mr. Chastanet at the time of the incident was 34 years old and married. In his witness statement he says that after he was bitten by Pugsy he immediately felt a lot of pain and saw that he was bleeding heavily. He says by the time he got to hospital the bleeding had subsided a little and he was given painkillers. He goes on to say that the wound at his waist had healed well but he still suffers occasional pain in his leg despite the fact that the wound closed. Later on in his witness statement Mr. Chastanet says he suffers a lot of pain in his left leg. As a result of the injuries, Mr. Chastanet says he was unable to work, drive or participate in any social activities.

[80] Conversely Ms. Boudhoo in her witness statement states that on 15th March 2019, Mr. Chastanet visited her home and she observed him walking freely and without the assistance of a cane or crutches. Ms. Boudhoo says that within three weeks of the incident, Mr. Chastanet was seen walking and driving around the community. She also says she saw him at the Laborie beach on Monday, 22nd April 2019, which was a public holiday and he was engaged in a social gathering and enjoying himself all whilst walking without assistance and without showing any signs of apparent injury. Mr. Celestin and Ms. Lindy Boudhoo give a similar account of the day at the beach.

[81] Ms. Boudhoo says she even saw Mr. Chastanet catching breadfruits near the bridge in Derniere Riviere, Dennery about one month after the incident. Accordingly, although he was bitten by the neighbour's dog and scratched by Pugsy, there did not appear to be any long term or serious effects upon Mr. Chastanet and, when she saw him catching the breadfruits, he certainly did not appear to her to be someone incapable of working.

[82] Of course, Mr. Chastanet in commenting on Ms. Boudhoo's evidence denies her account of the day at the beach, and he was only sitting on the lunch table and going to rest in the van.

He denies that he was catching breadfruit as one month after the incident he was unable to walk without crutches and the wound was still open.

[83] I am inclined to accept Mr. Chastanet's evidence as his account of the impact of the injury he sustained is consistent with Dr. Alcindor's medical report. I do not doubt either that Ms. Boudhoo may have seen Mr. Chastanet without crutches, however the evidence does reveal that Mr. Chastanet was unable to work as supported by the medical certificates exhibited.

[84] Mr. Chastanet's case is supported by a Medical Report of Dr. Hayden Alcindor dated the 23rd September 2019. At the date of this report, Mr. Chastanet was twenty-four (24) weeks (6 months) post injury. Dr. Alcindor reviewed the history of the injury and states that the lesions produced by the canines were multiple puncture wounds approximately three (3) millimeters each, in the form of rings and a few linear lacerations. The lesions on his left leg were worse measuring approximately four (4) centimeters by zero point five centimeters (4 cm x 0.5 cm). Mr. Chastanet was transferred to the Dennery Hospital where the wounds were nursed and treated with antibiotics and analgesia. He was referred to an Orthopaedic surgeon for further treatment and evaluation.

[85] Mr. Chastanet's first consultation after the incident was held on the 15th of March 2019, the findings at the time indicated that Mr. Chastanet was doing better, but complained about intense pain, swelling, numbness, stiffness to his left leg (calf region) and heaviness in the left leg. The wounds associated with the injuries were healing very slowly.

[86] As part of the recovery, Dr. Alcindor advised there should be no weight bearing on the affected foot. In addition, the wounds had to be cleaned and dressed regularly. Therefore, he opined that Mr. Chastanet was not able to participate in any sports, physical activities or work until treatment had been completed and confirmation given by an Orthopaedic surgeon.

- [87] At the time of Dr. Alcindor's report Mr. Chastanet had been treated with (i) conservatives management for a period of four (4) weeks, (ii) analgesia, (iii) antibiotics and (iv) routine dressing every other day and wound debridement when necessary.
- [88] During the last reported clinical evaluation on 23rd September 2019, Mr. Chastanet complained of pain and swelling to the leg and also the area of hard granulation got re-infected, burst and started secreting pus then serohematic fluid, the sinus was approximately 0.4 cm. Dr. Alcindor noted that Mr. Chastanet was still mobilizing on crutches with no weight bearing.
- [89] Dr. Alcindor reports that Mr. Chastanet had not at the time regained his independence and required crutches or a walking stick, due to the lingering effects that will cause pain, swelling and stiffness of the affected leg and re-infection of the wound.
- [90] According to Dr. Alcindor the injuries sustained by Mr. Chastanet are consistent with injuries of moderate degree of severity. He says that Mr. Chastanet's injuries have reached maximal progress given the time required to make an accurate assessment of the injury but that an additional three (3) months was required to make an impairment assessment and disability evaluation. I pause to note that there was no further report after this report which provided such assessment or evaluation.
- [91] In his report Dr. Alcindor highlights that any serious injury to the feet results in a reduction of one's independence or ability to commute. Dr. Alcindor's assessment on the 23rd September 2019 was that the wound to the left leg had healed but got re-infected and that healing time was unpredictable though there was progress. He opined that it would take another month to heal with excellent wound care and surgical intervention. The evidence does show that Mr. Chastanet did undergo surgery.
- [92] During that period of healing, Dr. Alcindor states that Mr. Chastanet would not be able to undertake any physical activity due to the limitations of immobilised and non-weight bearing of affected leg. Dr. Alcindor states that the inability to commute freely and independently,

the swelling and pain after walking, running and jogging, even after standing for long hours and intense exercises will constitute a whole person impairment in ADL (Activities of Daily Living) of 12%.

[93] He puts the total whole person impairment in ADL consequent on the accident at 15%. He however goes on to say that this impairment is not permanent, but there may be permanent discomfort of the affected leg as a result of soft tissue damage. Importantly, the doctor says this degree of impairment should not preclude participation in all physical tasks indefinitely.

[94] In cross examination Dr Alcindor mentioned that the last time he saw Mr. Chastanet was on 13th October 2020 and that the wound had already healed. He also says that Mr. Chastanet had occasional swelling to the left leg but no tenderness to the area.

Assessment of general damages

[95] In arriving at the award for general damages, I am guided by the dicta of Lord Hope of Craighead in **Wells v Wells**⁹ where he observed that:

“The amount of the award to be made for pain, suffering and loss of amenity cannot be precisely calculated. All that can be done is to award such sum within the broad criterion of what is reasonable and in line with similar awards in comparable cases as represents the Court’s best estimate of the plaintiff’s general damages.”

[96] According to Georges J in **Samantha Anthony as Next Friend of Okorie Anthony v Gregory Edward**,¹⁰ the proper exercise of the judge’s discretion should fall within a certain defined compass to be justified/acceptable rather than out of synch or arbitrary.

[97] Both Mr. Chastanet and Ms. Boudhoo rely on the authority of **Samantha Anthony as Next Friend of Okorie Anthony v Gregory Edward** where in 2010 the sum of \$10,000.00 was awarded to the claimant for injuries sustained as a result of a dog bite. In this matter the claimant suffered several 2cm tooth marks in the left pre-auricular (face) area, left temple and occipital (head) area; a 2 cm scratch on his left scapular area and anterior shoulder;

⁹ (1998) All ER. 481.

¹⁰ SLUHCV2008/0656 (delivered 19th November 2010, unreported).

multiple gashes on both buttocks and back on the left thigh; and a deep gash on the top of his left buttock.

Loss of Amenities

[98] The only evidence in relation to loss of amenities is Mr. Chastanet's statement in his witness statement that as a result of the injuries he was not able to participate in social activities but there is no information as to what this means or what social activities are being referred to. It is also not clear whether this is currently the position. He also says he presently walks with a limp, but it is not clear on the evidence how this has affected his life or if it has in any way. In light of the dearth of evidence, I make no award for loss of amenities.

[100] Considering the evidence of the nature of the injuries as provided in the medical report and Mr. Chastanet's evidence, it is clear that he suffered some level of pain as a result of the injury to his left leg and the reinfection of the wound on his left leg. It is not clear what, if any, the resulting disability would be given that Dr. Alcindor clearly says in his report that while he assessed Mr. Chastanet to have whole person impairment of 15% in 2019, he does say that this is not permanent. Having assessed the injuries to the claimant in **Samantha Anthony**, it is apparent that Mr. Chastanet's injuries were not as severe as those of the claimant in that case. In fact, Dr. Alcindor classified the injuries as having a moderate degree of severity. The claimant in **Samantha Anthony** also suffered hypertrophic (thickened) itchy scars on his left flank which do not feature in Mr. Chastanet's case.

[101] In all the circumstances of this case it is my considered view that an award in the sum of **\$8,000.00** in respect of pain and suffering would be just in this case bearing in mind all the factors and considering the authority of **Samantha Anthony** and the age of that case.

Interest and Costs

[102] Mr. Chastanet also claims interest and costs, I propose to treat with those matters briefly before making my final award. The **Civil Code of St. Lucia** in Article 1009A empowers the court on rendering judgment to make an award of interest for such period between the date of the cause of action and the date of judgment at such rate as the court thinks fit. I am

further guided by the Court of Appeal decision of **Martin Alphonso et al v Deodat Ramnath**¹¹ affirmed and applied in **Ruth Dubois et al v Francis Maurice**.¹²

Order

[103] Based on the foregoing discussion, I make the following orders:

- (1) Judgment is entered for the claimant against the defendant, Ms. Kizy Sherlan Boudhoo.
- (2) The defendant, Ms. Boudhoo shall pay the claimant special damages in the sum of \$15,170.00, together with interest thereon of 3% per annum from the date of the incident, 3rd March, 2019 to the date of judgment.
- (3) The defendant, Ms. Boudhoo shall pay the claimant general damages for pain and suffering in the sum of \$8,000.00, together with interest thereon of 6% per annum from the date of service of the claim to the date of judgment.
- (4) Interest on the total award of \$23,170.00 at the rate of 6% per annum from the date of judgment to the date of payment.
- (5) Prescribed costs on the total award to the claimant pursuant to CPR 65.5 to be paid by the defendant, Ms. Boudhoo.

[104] I am extremely grateful to Counsel and the parties for their patience in awaiting this judgment. The delay in its delivery is deeply regretted.

Justice Kimberley Cenac-Phulgence
High Court Judge

By the Court

Registrar

¹¹ [1996] 56 WIR 183.

¹² SLUHCVP2013/0007 delivered 18th May 2018, unreported.