

COMMONWEALTH OF DOMINICA
DOMHCV2011/001

BETWEEN:

JEREMY WINSTON **Claimants**
ROSALIE ECO FOREST RETREAT LTD
and

TIMOTHY WILLIAMS **Defendants**
SAMANTHA WILLIAMS

Before: The Hon. Justice Brian Cottle

Appearances:

Mr. Michael Bruney for the Claimants
Mrs. Zena Dyer for the Defendants

[2012: April 20th]
[July 27th]
[November 22nd]

JUDGMENT

- [1] **COTTLE J:** The claimant owned an ass. He also operated an eco lodge offering accommodation to visitors in a rustic setting. He says he used his animal to transport the luggage of his guests to their forest lodgings. He also offered rides to paying guests through the rain forest which formed part of his property. The defendants occupy an adjacent property. No fence separates the two holdings. The claimant has brought the present claim averring that the defendants have unlawfully taken possession of his ass and were so negligent that they permitted the animal to go missing causing the claimant to suffer loss.
- [2] In their defense the defendants say that the claimant's ass strayed unto their property whereupon they secured it. They later took it to another neighbor's property where there was a barn. From the barn the donkey was removed by persons unknown. They deny negligence. They say they notified the claimant through one or more of his workmen and asked him to collect his ass but the claimant failed to do so. In their pleadings the defendants also express a belief that it was the claimant or his agent who surreptitiously removed the donkey from the barn where it had been placed.

- [3] During the trial much emphasis was placed on the allegation that the defendants had impounded the animal. This is because, with the concept of impounding the beast, comes an implication that the defendants would only return the ass to its owner upon conditions. The defendants deny that they had impounded the donkey. They say they were ready to return the ass but were in fear of their neighbor the claimant who was the possessor of a licensed firearm.
- [4] For the purposes of this claim it is not necessary to decide this point although the police officer who investigated the affair testified that the defendants told him they had impounded the donkey. The undisputed fact is that the defendants took possession of their neighbor's ass. They dealt with it in a manner inconsistent with the rights of the true owner when they stabled it out of his sight in a remote barn belonging to a third party. Having taken possession they were bound to take care to keep the animal safely. They failed to do so. They put it at a location so insecure that it could be removed by persons unknown. They have thus failed in their duty of care to their neighbor. They have caused him loss and must compensate him for that loss.
- [5] On the issue of the quantum of damages, there was a claim for aggravated and exemplary damages. As I understand the claim for aggravated damages, the claimant says the defendants' actions were motivated by malice and it is open to the court to consider that the claimant's proper feelings of dignity and pride might have been injured. There was some evidence that the neighbor whose barn was used may have intended to run a competing business of offering horseback rides. I found this evidence to be very tenuous and not worthy of an award of aggravated damages.
- [6] Similarly I do not find sufficient evidence to persuade me that the defendants' conduct was calculated to make a profit which might exceed any compensation that a court would award. I therefore decline to award exemplary damages.

Compensation for the loss of the donkey

- [7] The claimant annexed to his witness statement a detailed breakdown estimating the costs of obtaining a replacement donkey. The total claimed amounts to \$13,876.24. The defendants led evidence through the police officer Sgt. Bruno who suggested that the replacement cost of a locally sourced ass would have been in the region of \$150.00 in 1975. He was not able to offer the court a current valuation.
- [8] The estimate of the claimant appears to be on the high side but it is the best evidence which was provided to the court. I therefore award the claimant \$13,876.24 as compensation for his animal. The defendants will pay the claimant prescribed costs in the sum of \$2,081.00

Brian Cottle
High Court Judge