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Liability under S2 Animals Act 1971

Ford v Williams (2021) EWCA Civ 1848

This appeal raised questions as to the scope of the strict liability obligation under S2 Animals Act 1971 ("S2") ("the Act"). It arose out of a claim by the claimant/appellant for personal injury damages and consequential losses following an incident on 15 September 2018 when the horse that she was riding ("the horse") reared and fell on top of her. The claimant suffered severe injuries. She sued the defendant/respondent on the basis that, as keeper of the horse, he was strictly liable to her under S(2) of the Act, with no allegations of fault-based liability being made.

A Deputy High Court Judge (the judge) dismissed the claim on the basis that the defendant did not have sufficient (actual or constructive) knowledge for the purpose of S2(2)(c).

The specific (overlapping) issues of law raised on appeal were, when dealing with characteristics not normally found in animals of the same species except at particular times or in particular circumstances (for the purpose of the second limb in S2(2)(b)):

i) Whether identification of the "particular times" or "particular circumstances" when the relevant characteristic arises was necessary for the purpose of S2(2)(b);

IN BRIEF

The Court of Appeal upheld the decision below that the defendant was not liable to the claimant because he did not have sufficient knowledge (actual or constructive) as required by S2(2)(c) of the 1971 Act.

ii) Whether knowledge for the purpose of S2(2)(c) required knowledge of those "particular times" or "particular circumstances".

The claimant contended that the judge was wrong to find that identification of the "particular times" or "particular circumstances" was necessary, as was knowledge thereof. She also challenged the judge's approach to and/or findings on the facts.

The claimant, now 43 years old, was an experienced horsewoman who had been employed by the defendant as a groom, since September 2017. The horse was a 16.1hh chestnut gelding hunter and approximately 19 years old. He belonged to an international polo player who lived locally and became stabled at the defendant's yard as one of the horses under the claimant's management.

In the early morning, the claimant was attending a pre-season autumn meet and riding the horse. Some 20 or 30 metres after trotting into a field, the horse suddenly stopped, stepping back or sideways but refusing to go forwards (known as "napping"); the claimant encouraged him to proceed with her legs, through the reins as well as with a light slap on the shoulder with a riding crop but the horse reared up, fell over backwards and landed on top of her. He struggled on the ground for some five or six minutes before dying.

The judge found as follows:

i) The claimant was acting in the course of her employment with the defendant at the time of the incident;

ii) The rearing was the result of a cardiovascular event. There was "some catastrophic internal, probably cardiovascular, failure which did not cause an immediate collapse but was preceded by sufficient pain or discomfort to cause him to stop and then rear";

iii) It was therefore irrelevant that the horse had in fact reared before and even that it had previously thrown the rider (the claimant) on one such occasion;

iv) It was also irrelevant that the claimant knew of one or more such rearing events; it was not suggested that the horse was "unusually prone" to rearing;

v) Whilst the veterinary experts agreed that a horse might in fact rear as a response to catastrophic internal injury, that was not something that was common knowledge, even among experienced equestrians;

vi) This meant that the strict liability provisions of S2(2) did not apply because the 'particular circumstance' within the meaning of S2(2)(b) which caused the horse to rear was not known to the keeper. Accordingly, there was not the requisite knowledge under S2(2)(c).

It was the last two of these findings that were the focus of this appeal.

The rationale under S2(2) was to impose strict liability on the keeper of an animal not of a dangerous species if damage resulted from dangerous characteristics known to the keeper. Liability under S2(2) was established only if all three limbs of the test set out in the section were made out. In this case it was common ground that the requirements of S2(2)(a) were satisfied and the first limb of S2(2)(b) were not. The question was whether or not the requirements of the second limb of S2(2)(b) and then S2(2)(c) were met.

The authorities demonstrated that it was necessary to identify not only the characteristic but also the particular time or circumstance in which it arose. The judge did not inappropriately conflate Ss2(b) and (c). It was necessary to establish and identify the particular circumstance that gave rise to the characteristic of rearing. This case was unusual, in that there were competing arguments as to the relevant particular time or circumstance; but that did not affect the approach in principle.

Adopting this approach, on the facts, the conditions in S2(2)(b) were met - because the evidence established that the likelihood of the damage (identified in S2(2)(a)) was due to characteristics (namely rearing) not normally found in horses except at particular times or in particular circumstances (including catastrophic internal injury).

For the same reasons, and by the same logic, the knowledge required under S2(2)(c) for a keeper to be liable under the second limb of S2(2)(b) extended to knowledge of the "particular" time or circumstance giving rise to the characteristic in question. It was (rightly) accepted for the claimant that the scope of knowledge required for S2(2)(c) would have to reflect the scope of findings necessary for the purpose of S2(2)(b).

The judge referred to the agreed equine expert evidence; both experts stated that they had not known catastrophic internal injury to be the cause of a horse rearing, though it was "in theory" possible that it might be the cause. The judge was entitled to reach the conclusion that the existence of what was only a theoretical possibility did not make out the necessary finding of knowledge.

The claimant criticised the judge's failure to address expressly the factual (as opposed to expert) evidence on knowledge, but that evidence included the defendant’s oral evidence that he had no professional experience of a horse rearing when in pain, and it was not put to him that he knew that a horse could rear when suffering a catastrophic injury such as a heart attack.

Looking at the evidence in the round, there was no proper basis for appellate interference with what was a finding of fact made by the judge which he was entitled to make, not only by reference to the expert evidence upon which he relied but also the witness evidence of, amongst others, the defendant and the claimant themselves.

At the oral hearing the claimant advanced various further or alternative contentions arising out of a suggested interpretation of the judge's findings on causation, namely;

i) That the judge in fact found that the cause of the rearing was disobedience, such as to fall within a concession made for the defendant; alternatively

ii) That the judge in fact found that the cause of the rearing was panic, alternatively pain.

As for disobedience, the claimant relied on the judge's description of the accident where he described the horse as stopping, stepping back or sideways but not going forward, despite encouragement from the claimant – literal disobedience. But it was abundantly clear that the judge did not find that the horse reared out of disobedience, literal or wilful. He expressly rejected that submission.

As for panic or pain, the judgment simply summarised the parties' respective contentions on causation (and by reference to the claimant’s characterisation and not that of the defendant). His

clear findings that the circumstance giving rise to the rearing was a catastrophic internal injury were to be found elsewhere.

It was therefore entirely unrealistic to suggest that the judge found anything other than that the cause of the horse's rearing (or more accurately the relevant circumstance for S2(2) purposes), was a catastrophic internal injury (as opposed to disobedience, panic or pain).

The Court of Appeal commented that this outcome did not in some way represent a slippery slope that deprived the Act of its intended force. Specifically, it went nowhere near requiring a claimant to establish negligence (or some other fault) in order to create liability under S2(2). Rather, it struck a balance between giving claimants the right to a remedy without establishing any fault on the part of the keeper whilst at the same time ensuring that the keeper would not be liable without knowledge of the particular times or circumstances in which the relevant characteristic under S2(2)(b) arose.

The full judgment is available at: Ford v Seymour-Williams [2021] EWCA Civ 1848 (08 December 2021) (bailii.org)