

Dog bite - \$40,000

Damian Scattini, Brisbane

On 26 February, 1999 Samios DCJ awarded the plaintiff in a Brisbane District Court action \$40,270.65 in compensation after a guard dog under the control of a security officer attacked the plaintiff.

The Facts

There was some divergence in the versions of events. According to the plaintiff, on 7 December, 1996, he attended a local bar and had a few drinks. As he was exiting the pub, he was hit by an unknown assailant and fell to the ground. The next thing he remembered was being taken away by attending police officers and being placed in the back of a police car. The version accepted by the judge (as propounded by the attending police officer and the Redcliffe Hospital records) was that the plaintiff attended at the Redcliffe Hospital where he created a disturbance and the police were called to take him away. Naturally, this divergence between the plaintiff's recollection and that of other witnesses became a major issue at trial. On route to the watchhouse, the plaintiff kicked out the rear side window and exited the police vehicle as it was waiting to turn at an intersection. Police gave chase but lost the plaintiff who hid in a nearby toilet block located on the premises where the plaintiff worked.

Mr Carey, a security guard employed by the defendant E.M. Investments Pty Ltd, was in the course of his employment patrolling the nearby lagoon. Mr Carey heard (on his police scanner) that the plaintiff had escaped police custody and decided to assist the police because as he said in his evidence, he did not think that the police would find the plaintiff without the assistance of his trained search dog. Once Mr Carey arrived at the scene, he spoke with police and deployed his dog - "Durack" a Belgian Shepherd Malinois. According to the plaintiff, when Mr Carey's dog found him, Mr Carey set the dog on him and the dog bit the plaintiff on the arm, the chest and the legs. According to

Mr Carey, the dog never came in contact with the plaintiff.

The police arrived and took the plaintiff into custody.

On the way to the watchhouse, the police took the plaintiff to the Redcliffe Hospital for examination of his injuries. The plaintiff, in panic, refused treatment. The medical records from the attendance contain a diagram of the plaintiff's trunk indicating irregular lacerations on the left side of his chest which corresponded with the scars he bears to the present day.

The plaintiff was then taken to the watchhouse and released the next morning. The plaintiff attended at his local doctor later that day and obtained a tetanus injection among other treatment.

The plaintiff was at the time working as a car detailer at a local motor vehicle auctions centre. He subsequently had to quit his job because he couldn't continue working because of the stress he had suffered as a result of the dog attack.

The Pleadings

The plaintiff made a claim for assault and in the alternative, personal injuries sustained as a result of the defendant's employee's negligence.

The defence argument was that the plaintiff injured himself while climbing over barbed wire or while climbing through the broken police car window. It maintained that no dog attack occurred.

The Trial

The claim was heard in the Brisbane District Court over two (2) days commencing on 15 February, 1999.

The plaintiff gave evidence first. He explained, inter alia, that he did not climb the fence because one of the fence panels was loose and allowed easy access. In cross-examination, it was specifically put to him that the dog attack may have been an accident. The plaintiff was adamant that it was a deliberate attack. The plaintiff was also cross-examined at length

about the early part of the evening.

The plaintiff called his treating doctor to confirm that he saw the plaintiff on the day of the incident. The doctor confirmed that the plaintiff's scars were fresh (at the time) and consistent with a dog bite.

The plaintiff then called a doctor specialising in occupational therapy who also confirmed that the injuries were a dog bite rather than a barbed wire laceration or a broken glass window scratch.

The plaintiff also relied on an odontologist (an animal dentist). The defence challenged the witness' expertise until the judge ruled that the odontologist in question was qualified because he had done his master's research in the scars left by dog bites on humans. The odontologist was 90% certain the arm injury was caused by a dog bite.

All of the plaintiff's medical witnesses discounted barbed wire and a broken window as a cause of the injuries. Even the defendant's own medical expert had to concede that the injury was either caused by a dog bite, barbed wire or a window laceration.

The plaintiff called a psychiatrist to confirm that post the incident, the plaintiff developed a psychiatric condition and was unable to work for a period of some nine (9) months.

Finally, the plaintiff called the dog's trainer who gave evidence that the dog was trained in a number of commands and that the dog was very obedient at the time when training took place.

The defence called one of the attending police officers, the security guard in question and a doctor who examined the plaintiff.

In the course of the action, Mr Carey discovered his diary about his work at the lagoon. One of the entries in his diary referred to an incident where a number of males attended at the lagoon and when Mr Carey asked them to move on the note reads: "They said they will be back with knives. They did not show up."

Durack missed out, next time". Mr Carey's explanation in cross-examination was that when he said Durack missed out, he meant his dog missed out on "showing his skills".

The diary also showed that Mr Carey had called police to assist him at the lagoon on a number of previous occasions.

Mr Carey reduced the number of commands he used with the dog from three or four to one; a command for "alert". Apparently, the dog could figure out from Mr Carey's "vibe" what he was to be alert about. In cross-examination, Mr Carey remembered another command - "release". When pressed, he said that was for the dog to release someone's arm - although according to Mr Carey, that never occurred.

The Decision

On 26 February, 1999 Samios DCJ delivered his written reasons. He found that the dog handler was negligent by allowing the dog to come into contact with the plaintiff. The judge was not satisfied that the attack was deliberate.

The plaintiff was awarded \$25,000 in general damages. His past economic loss was restricted to the nine (9) months during which he was suffering from a psychiatric condition, but there was no allowance made for future economic loss.

His Honour also awarded \$5,000 for aggravated damages given the circumstances of the attack.

As the defendant had refused the plaintiff's formal offer of \$15,000 plus Magistrates Court costs (made in May, 1998), Samios DCJ also awarded the plaintiff solicitor/client costs.

The defendant then made an impromptu application for a stay of the judgment pending an appeal. The application was unsuccessful.

In subsequent correspondence, the defendant again raised the possibility of a stay of execution on the judgment, but this has not occurred to date. The defendant has, however, appealed the decision to the Queensland Court of Appeal on quantum and liability on a number of bases including a ground that the finding of negligence was not open on the evi-

dence because the plaintiff maintained that the attack was deliberate. The appeal is expected to be heard some time in June or July, 1999. ■

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APLA Membership at 31 March 1999

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