IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO C L 1997/L-100

| | | |
|---|---|---|
| BETWEEN | LAKELAND FARMS LIMITED | PLAINTIFF |
| A N D | DR P SAMUELS | DEFENDANT |

Mr. D Henry and Mr. Edward Brightly instructed by Lake Nunes Scholefield DeLeon & Company for the Plaintiff

Ms Nicole Lambert instructed by Myers Fletcher & Gordon for the Defendant.

HEARD: 15th 16th and 17th December, 1998
1st 2nd 3rd February, 1999,
22nd March, 1999 and 25th October, 1999

MARVA McINTOSH, J

The Plaintiff, Lakeland Farms Limited is the owner of a stud farm and provides, in addition to stud services other facilities for the keep and care of horses for its clients within the context of the provision of these services.

The Plaintiff and the Defendant, Dr P Samuels entered into a contract whereby the Defendant left horses (mares) at the Plaintiff's farm to be service by particular stallions and to be provided with general and upkeep of the mares and their offspring born in due course. The servicing of the mares by particular stallions was arranged and these arrangements were governed by a "Breeding Contract' under which a service fee and a stallion fee was charged. Other arrangements were oral.

This action arose as a result of the Defendant failing to pay fees specified by the Plaintiff for the agreed services over a period of time as a result of which the Plaintiff has refused to hand over the mares and their foals to the Defendant.

The Defendant's defence is that the amount being claimed by the Plaintiff was totally inaccurate and resulted from "unilateral retroactive increases in rates which were never agreed between the Plaintiff and the Defendant." In addition the Defendant has counterclaimed for damages for breach of contract - that the Plaintiff wrongfully detained his mares, and foals, that the Plaintiff by retaining these animals did not make it possible for them to be serviced and bred and claimed a set off of $50,600 the amount owed for veterinary services allegedly rendered by the Defendant to certain horses which were on the Plaintiff's farm.

The Plaintiff in evidence stated there are standard rates charged for the services provided and these rates were communicated to the customer and in the event that any rate was being varied adequate notice would be given of the new rate applicable and at the appropriate time this rate would be applied. There is no evidence that any complaint was made by the Defendant in relation to the rates i e that they were unreasonable or excessive.

Mr. Donovan Staple, the Plaintiff's Accountant, gave evidence that he prepared figures in relation to the Defendant's account. It transpired that there had been errors made and the figures were not accurate but these errors were identified and when adjustment of $46,820.00 was taken into account the original balance of $353,770.00 which was claimed as being due on June 30, 1997 would in fact be reduced to $306,950.00. In fact the Plaintiff's standard rates were moved up in November, 1995 to $250 per mare per day and although this was communicated to the Defendant in October 1995, the Plaintiff nevertheless claimed at a reduced rate of $220.00 per day up to June 1996 and thereafter at the applicable rate of $250 per day from July 1996 to February 1997.

Mr. Richard Lake, owner and Managing Director of Lakeland Farms Limited, the Plaintiff in this case in his evidence stated that he operated a stud farm - keeping mares, breeding horses, selling horses and retaining some for racing.

He testified that he knew the Defendant Dr P Samuels who entered into an arrangement in 1994 with the Plaintiff to keep his horses there. The Defendant was a friend of Mr. David Murphy who was then farm manager there.

The arrangement was that the farm should keep and care for the Defendant's horses, feeding and providing them with pastures etc.

At first a small number grew to include the horses:

1. Exotic Ruler
2. Fiery Link
3 Mekamara - in which Defendant had half an interest, and the foals of these horse.

It could have been 3 to 9 horses at any particular time.

Invoices were sent out on a monthly basis and by letter of June 26, 1997 a statement of account accompanied by a letter was sent to the Defendant Dr Samuels.

The Plaintiff received a letter from the Defendant indicating that the statement sent by the Plaintiff was in error, that the Defendant had advised Plaintiff on June 21, 1997 that his agreement with the Plaintiff was at an end, that the Plaintiff wrongfully refused to deliver up his animals causing him substantial loss, and enclosed a bill for professional services which services he had rendered at Plaintiff's request.

Mr. Lake further testified that the Defendant was a "bad payer" that is he would pay a part of his bill and carry forward a portion never really paying in full. In addition to this Mr. Lake said the defendant refused to go through the figures with the Plaintiff's Accountant.

Under cross examination Mr. Lake described the system in respect of rates which he said were fixed and therefore there was no necessity for any negotiations to be entered into between the customer and the Farm Manager and the Farm Manager had no authority to vary rates or make private arrangements without the consent of the Managing Director.

He testified that it was the norm - the practice, on local stud farms for horses to be detained if the fees were not paid and denied that the Defendant had done any veterinary work on the farm , denied that Mr. David Murphy continued to work on the farm after

Miss Elizabeth Miller the current Farm Manager testified as to the method of running the

farm, the veterinarians employed by the Plaintiff (the Defendant was not one of them) and the procedures involved in having a mare services for breeding purposes.

The services provided as described in detail by the present Farm Manager Miss Elizabeth Miller were very complex and involved a specialised area of expertise, in fact the animals were not brought to the farm merely to graze on the Plaintiff's land for a reward but were to be improved by the workman's expenditure of time, labour and skill.

Dr C Alexander also testified as to his specialisation which was animal fertility.

The Plaintiff argued that the contract between Plaintiff and Defendant was not an agistment contract. It included provisions of pasturage and grain, veterinary services, blacksmith services and general care and upkeep of horses (mares) and their offsprings born in due course.

At all material times the Plaintiff engaged three veterinarians to tend to the horses on the farm among them Dr Alexander whose area of specialisation was animal fertility.

Further the Plaintiff contended that the horses were brought to the farm not merely for breeding purposes but to be nurtured and prepared for breeding (ultimately being serviced by a stallion) and this involved pre-natal and post-natal care of the mares and their off springs.

The Plaintiff claimed that the Defendant implicity acknowledges that his arrangement with the Plaintiff was essentially to facilitate and ensure the breeding of his horses as he left three mares - Exotic Ruler, Fiery Link and Mekamara on the Plaintiff's farm and part of his claim relates to losses allegedly incurred by him, because the mares were "left empty" whilst in the care of the Plaintiff (he expected them to be improved).

The Plaintiff asked the court to reject the Defendant's evidence that he was unaware of the of the new rates and to reject the Defendant's invoice dated August 11, 1997 in respect of veterinary services rendered to the horse "Jaded Island" The Plaintiff described this as a classic example of a party throwing figures at the head of the court without proving them and cited the case of **ROBINSON V LAWRENCE 11 JLR 450** in which it was held inter alia that special damages must be strictly proved. The Plaintiff further argued that the Defendant when asked to give a breakdown for the computation of

his charges for the treatment of the horses he allegedly treated, was unable to do so and could not even assist the court as to the charges for injections or physical examination of the animals.

The Plaintiff's case is that in the circumstances it is entitled to keep in its custody, care and control the Defendant's mares after the Defendant's demand for the return of the animals and that Plaintiff is entitled to recover its expenditure in keeping and caring the Defendant's animals since the date of demand for their return and referred to the case of **SCARFE V MORGAN {1835-42} ALL E R 43.**

In determining whether the Plaintiff is so entitled the type of contract entered into between the Plaintiff and the Defendant is the deciding factor.

The Defendant has denied owing the sum claimed by the Plaintiff and has counterclaimed for the sum of $50,600.00 representing his fees for veterinary services rendered by him to the Plaintiff's horses and damages for loss of opportunity for breeding his mares and other losses incurred by him as a result of the detention of the horses.

Dr Samuels, the Defendant gave evidence that he entered into an agreement with the Plaintiff through its Farm Manager, Mr. David Murphy (who was in effect its agent) in respect of Defendant's horse "Exotic Ruler" The agreement was for the keeping and caring of the horse and was in effect what is known as an agistment agreement.

Agistment agreement is stated in paragraph 214 of Volume 2 **HALSBURY's** laws of England **4TH EDITION** to arise:

> "where one man, the agister takes a man's cattle, horses or other animals to graze on his land for reward usually at a certain rate per week on the implied term hat he will redeliver them to his owner on demand."

It is the evidence of the Defendant that Mr. Murphy agreed to give him a special rate on the horse "Exotic Ruler" in consideration for the Defendant who is a vet, agreeing to make himself available to render services at short notice at a reduced charge. The special rate agreed was below the firm rate and was to be $100 per day unless and until Mr. Murphy notified him to the contrary.

In May 1994 the Defendant sent another mare "Fiery Link" to the farm and the agreement was that the Defendant would pay the usual farm rates for this horse. The

agreement in respect of the horse "Exotic Ruler" would be unchanged while the rates for "Fiery Link" would be the going rate per day charged by the farm from time to time.

The Defendant's evidence was that he dealt solely with Mr. David Murphy and had no discussions or dealings with Mr. Lake, the farm owner at any time.

The arrangements made by the farm manager would include notification of the rates with mare owners for the keep and care of mares left on the farm.

In fact no documentary evidence was presented to the court to indicate that the Defendant treated horses on the farm, or charged for them a reduced rate except for an invoice dated August 11, 1997 produced by the Defendant in respect of veterinary services, which he allegedly rendered several years previous to 1997 on the Plaintiff's farm.

The Defendant in his evidence as to what veterinary services he rendered was hesitant and vague and admitted that his area related mainly to small animals such as cats, dogs etc.

There are three questions to be determined:

First, what were the terms of agreement between the Plaintiff and the Defendant?

The Defendant claimed that the contract was an agistment contract as defined in **HALSBURY'S LAWS OF ENGLAND** Volume 2 paragraph 214 and under such a contract:

> "in the absence of special agreement, the agister, has no lien upon the animals he agists, for he expends no skill upon them, he merely takes care of them and supplies them with food, and his remedy is to bring an action for the price of grazing."

The Plaintiff on the other hand is contending that the contract between the parties was in the nature of a contract for the hire of work and labour. This

> is a class of bailment based on a contract in which one of the two contracting parties undertakes to do something to a chattel, for example, to carry it or repair it, in consideration of a price to be paid to him. It is essential to constitute a valid contract of this description that there should be some work to be performed in connection with a specified chattel and that money should be agreed to be paid as the price of the labour."
>
> **HALSBURY'S LAWS OF ENGLAND** Vol 2, Paragraph 1262

I find that the Plaintiff, Lakeland Farms Limited, through its servants and or agents, including veterinarians and blacksmiths have expended time, labour and expertise in the keep and care of the Defendant's horses and that the contract between the Plaintiff and the Defendant was not an agistment contract but involved a great deal more than mere "keep and care." The Defendant had an obligation to pay the rates agreed from time to time and whatever "special" arrangements he might have had with Mr. David Murphy ( and these are questionable as there is no evidence that Mr. Murphy had authority or approval to make such arrangement) would have ended when Mr. Murphy ceased to be farm manager of Lakeland Farms and the normal going rates would apply.

The rates were reasonable, in fact there was never any suggestion that they were excessive or exorbitant, and they were communicated to the Defendant who failed to keep up the payments and fell into arrears.

Second, was the agreement between the parties terminated by the Defendant on June 21, 1997?

I am of the view that there is in fact a custom or practice that when a customer falls into arrears his animals are not delivered to him unless he makes full payment or makes arrangements for payment and the Plaintiff was entitled to detain the Defendant's animals because there were sum outstanding and the Defendant failed to pay or to make arrangements to pay.

Third, was the Plaintiff entitled to refuse to deliver up the Defendant's horses in June 1997?

In the light of the finding above, the Plaintiff had a lien on the horses and was entitled to detain them. In addition the costs incurred for their keep and care during the period of withholding must be borne by the Defendant.

I find that the Defendant did not render any veterinary services to horses on the Plaintiff's farm, submitted no bills, has no evidence to support his claim as to the Plaintiff's indebtedness to him save one invoice prepared by him dated August 11, 1997 in respect of services which were allegedly rendered several years previously on the Plaintiff's farm and the Defendant's evidence in respect of the price of drugs and the types of treatment he allegedly administered on the Plaintiff's farm to the horses was vague and lacked

credibility. I find that the Plaintiff is not indebted to the Defendant for veterinary services.

The Defendant's horses were not wrongfully detained by the Plaintiff nor were they allowed to be "left empty" and not bred.

I accept the evidence of Miss Elizabeth Miller as to the efforts made to service and breed the Defendant's horses and the Defendant's failure and/or refusal to communicate with her and to give any instructions in this regard.

In the circumstances, Judgment for the Plaintiff on the claim in the sum of $2,678,849.32 with interest at 48% on each month's expenses. Costs to the Plaintiff to be agreed or taxed. Judgment for the Plaintiff on the counterclaim with costs.