

## THE HIGH COURT

## SOUTH EASTERN CIRCUIT COUNTY OF TIPPEARY

[Circuit Court 2014 No. 834]

[High Court 2017/28 CAT]

BETWEEN

PHILIPA GRAHAME KNOWLES

PLAINTIFF/RESPONDENT

AND

JOHN HALLEY PRACTISING AND TRADING

UNDER THE STYLE AND TITLE OF BYRNE AND HALLEY

VETERINARY SURGEONS

DEFENDANTS/APPELLANTS

**JUDGMENT of Mr. Justice Meenan delivered on the 12th day of March, 2019****Background**

1. This action comes before the Court by way of an appeal from an order of the Circuit Court of 30 May 2017. The plaintiff's claim is for damages for breach of contract and/or negligence and breach of duty arising out of a pre-purchase examination carried out by the defendant, a veterinary surgeon, on a horse ("Brockagh Rock") which the plaintiff was intending to purchase in January 2013.

2. The plaintiff is a retired lady who resides in Shropshire, England. Prior to her retirement the plaintiff used to keep and own horses, operated a livery yard and used to break-in horses. The plaintiff owned a particular horse called Plutonium ("Pluto") for many years. Under the direction of Ms. Emily Philip, a professional event rider, this horse reached a three-star level and gained some 120 British eventing points. Unfortunately, this horse developed a problem with his spine and was diagnosed with a condition which is colloquial known as "kissing spines".

3. "Kissing spines" is a condition whereby the spinous processes, for sections of bone attached to the vertebrae, are too close together and impinge or overlap on each other, or are close to touching. This condition forced Pluto into retirement.

4. Following the retirement of Pluto, the plaintiff sought to purchase a new horse and Brockagh Rock came to her attention.

5. Prior to purchasing Brockagh Rock the plaintiff was very concerned that the fate which befell Pluto would not befall Brockagh Rock, that is the horse would not develop "kissing spines". With this in mind, the defendant was instructed to carry out a pre-purchase examination on the horse. In particular, the plaintiff made it clear that part of the pre-purchase examination was to include carrying out x-rays on the horse's back.

6. On 10 January 2013 the defendant carried out pre-purchase examination including x-rays of the spine. When carrying out the examination, the defendant filled out a "certificate of veterinary examination of a horse on behalf of a prospective purchaser". This recorded:

"X-rays of front feet and all four fetlocks and lumbar spines show no obvious abnormalities likely to affect performance". The certificate did disclose some minor abnormalities but gave the opinion that:

"In my opinion, on the balance of probabilities, the conditions reported above do not prejudice this horse's suitability for purchase to be used for eventing".

The plaintiff purchased Brockagh Rock following the defendant's report.

7. Unfortunately, despite a reasonable start, Brockagh Rock developed serious problems. Ms. Emily Philip described the horse as "getting more and more shut down" in that he was not taking in his surroundings. In July 2013 Brockagh Rock deteriorated to the point that there were serious safety issues in continuing to ride him for eventing. Because of this, Brockagh Rock was tried out for hunting. However, this was unsuccessful to the extent that the horse threw off its rider and thus was not safe to ride at all. At this point the plaintiff made the decision to have Brockagh Rock put down.

8. On 18 July 2013 Mr. Chris Rea, a veterinary surgeon, clinically examined Brockagh Rock. X-rays were carried out on 26 July 2013 which, according to Mr. Rea, showed "a degree of impinging processes in particular T15 through T17...there is evidence of scleroses on the cranial and caudal borders of the affected process." Mr. Rea examined the x-rays taken on 11 January 2013 in the course of the pre-purchase examination and concluded that the said changes were present at that time.

**The claim**

9. The Civil Bill was issued on 9 October 2014 claiming damages for negligence and/or breach of contract. Essentially the plaintiff's claim was that the defendant had been negligent and in breach of duty and/or and in breach of contract in carrying out the pre-purchase examination on 11 January 2013 in that he failed to detect and/or identify the defects in Brockagh Rock's spine that were present on the x-rays taken. By reason of this, it is alleged, the horse was retired from eventing and in or about November 2013 was put down "in circumstances where he was suffering with ongoing back difficulties and had become unrideable". Further, the plaintiff alleged that had the defendant identified these abnormalities on the January x-rays and informed her of same she would not have purchased the horse.

10. Damages were agreed in the sum of €23,280.06.

**Liability**

11. In deciding liability in this action, be it negligence or breach of contract, two matters are central. Firstly, was there either negligence or breach of contract on the part of the defendant in reading the x-rays of January 2013. Secondly, did such breach cause the damage to Brockagh Rock which resulted in him being put down with the consequent loss to the plaintiff. I will deal with the second of these matters first.

### **Causation**

12. The plaintiff's criticism of the defendant is that he failed to detect the presence of abnormalities in Brockagh Rock's spine which she contends were present on the x-rays of January 2013. For this criticism to have substance the plaintiff must establish that the consequent injuries sustained by Brockagh Rock were caused by these spinal abnormalities. The evidence adduced by the plaintiff does not go that far.

13. Mr. Chris Rea gave evidence on behalf of the plaintiff. His evidence did not support there being a causative link between what he saw on the x-rays of January 2013 and July 2013 and his clinical findings during the examination of Brockagh Rock on 18 July 2013.

14. Dr. Sue Dyson, veterinary surgeon, was an expert called by the defendant. Dr. Dyson is a highly qualified expert having lectured and published widely on equine orthopaedics and diagnostic imaging. She is co-author of the text *Clinical Radiology of the Horse* (Wiley-Blackwell, 4th edition, 2016) and is an acknowledged expert in the area which is the subject of this claim. On the issue of causation, Dr. Dyson gave the opinion that it would be highly unlikely that the pain suffered by Brockagh Rock could be attributed to closeness of the spinous processes.

15. The evidence of both Dr. Dyson and Mr. Rea leads me to the inevitable finding that what was present on the x-rays carried out by the defendant in January 2013 was not causative of the injuries suffered by Brockagh Rock which led to him being put down. In the absence of a link between either the negligence or breach of contract complained of and the damage claimed, the plaintiff cannot succeed and her action must fail.

16. My finding on the issue of causation is sufficient to dismiss the plaintiff's action. However, as this is a claim for professional negligence I am mindful of the professional reputations of those involved. Therefore, I propose to make findings on the issue of negligence and breach of contract.

17. As I have said, the defendant is criticised for failing to identify alleged abnormalities present on the x-rays of January 2013 and consequentially not informing the plaintiff of their presence. By failing to do so, it is alleged, that he was negligent and in breach of duty and/or in breach of contract. The appropriate standard is an adoption of the well-established principles set out by the Supreme Court in *Dunne (an infant) v. the National Maternity Hospital* [1989] 1 I.R. 91. The question therefore that must be asked is:

Did the defendant act in such a way that no other veterinary surgeon, of equal experience and qualification in interpreting the spinal x-rays as part of a pre-purchase examination, would have acted, if acting with ordinary care?

An honest difference of opinion between veterinary surgeons as to the interpretation of the spinal x-rays would not, of itself, be negligence.

18. Dr. Dyson referred to a system of grading, known as the "Zimmerman scale", which is outlined in an article, *Close, impinging and overriding spinous processes in the thoracolumbar spine: The relationship between radiological and scintigraphic findings and clinical signs* (Zimmerman *et al.*, Equine Veterinary Journal, 2011) which is applied to grade abnormalities seen on spinal x-rays. (It should be noted that Dr. Dyson was a co-author of the article). The Zimmerman grading goes from zero to seven. On her reading of the x-rays, Dr. Dyson said they were well within the normal range and give them a grade of zero. This expert view is clearly very supportive of the defendant.

19. Mr. Rea was of the view that the abnormalities which he saw on the x-rays were "mild" and he would have graded them as a one on the Zimmerman scale.

20. In my view, there is no significant divergence between the evidence of Dr. Dyson and Mr. Rea on this point and would amount to no more than a "difference of opinion", as referred to in the principles stated above. This falls short of negligence and breach of duty. To my mind, the terms of the contract would encompass terms to the effect that in carrying the pre-purchase examination the defendant would apply the appropriate standards.

21. Further, to the extent that there is any material difference in the expert evidence given I would prefer the evidence of Dr. Dyson given her undoubted specialist knowledge in this particular area of veterinary science. Therefore, it follows, that I find the defendant was neither negligent nor in breach of contract in the pre-purchase examination which he carried out on Brockagh Rock in January 2013.

### **Conclusion**

22. By reason of the foregoing, I would allow the defendant's appeal and discharge the order of the Circuit Court.