

Action De Pauperie - dog owners beware, no fault is required for liability

Liability without fault, also known as 'strict liability', denotes a form of liability without an intentional or negligent action on the part of the wrongdoer. The *actio de pauperie* is an example of strict liability: although the domestic animal is the cause of the damage, the owner bears the sole responsibility for the damage caused by the animal.[\[1\]](#)

As outlined in *Fourie v Naranjo and Another 2008 (1) SA 192 (C)*, the following four requirements have to be met in order to succeed with the *actio de pauperie*:

- ownership of the animal;
- the animal needs to be a domesticated animal;
- the animal must have acted against its nature, referred to as *contra naturam sui generis* in Latin;
- the victim must have been lawfully present at the location where the damage was inflicted.

The case of *Cloete v Van Meyer*[\[2\]](#) will be discussed briefly, as well as the case of *Carelse v City of Cape Town (Eksteen and Another as third parties)*[\[3\]](#).

In the case of *Cloete v van Meyer*, the plaintiff instituted action against the defendant arising from an attack by three Pitbull dogs. The defendant initially placed in dispute whether his dogs were in fact the dogs that attacked the plaintiff in an attempt to evade accountability. The defendant further claimed that his dogs were kept behind locked gates and if his dogs were responsible for the attack, they escaped due to the negligence of a third party and that the third party in fact took control of the dogs and not him. Negligence was denied on this basis.

The court had to consider whether the defence against *pauperian* liability could succeed, enter alia, the defence that a third party took control of the animal and by his negligent conduct, failed to prevent the animal from injuring the victim. And if the Plaintiff could establish liability in the *aquilian* action in the alternative

based on negligence.

The court concluded that the defence of *pauperian* liability failed and judgment was granted in favour of the plaintiff.

The following defences may be raised by a defendant against *pauperian* action:

- knowledge that the animal will act aggressively. In the case of *Cole v Pieterse O* [4], the plaintiff failed to show on a balance of probabilities that the dog acted *contra naturam sui generis* (the presence of the plaintiff always provoked the dog); The defendant proved that the plaintiff was aware of the fact that the dogs were easily provoked;
- provocation of the animal;
- knowledge that the animal was provoked;
- unlawful presence on the premises,
- *volenti non fit iniuria*; To succeed with this defence, the defendant must prove that the plaintiff knew of the risk of sustaining injury and voluntarily accepted such risk.

In the case of *Carelse v the City of Cape Town*, the plaintiff instituted action against the City of Cape Town, alleging that the incident was caused wrongfully and negligently and that the City owed the plaintiff a “duty of care”.

The facts of the last-mentioned matter were as follows. The plaintiff was swimming in one of the defendant’s pools when a dog viciously attacked her. The city disputed liability and contended that in the event of it being held liable, it claimed contribution from the first and second defendant, Mr Eksteen, the owner of the dog.

The court had to determine the nature of the city’s admitted legal duty and whether the city acted wrongfully and negligently. The court had to decide whether the employees of the defendant acted in the course and scope of their employment and whether the third party is liable to contribute to the city.

The court held that the city breached its legal duty to the plaintiff wrongfully and negligently and was therefore liable to compensate the plaintiff for the damages the plaintiff may prove. The owner of the dog, not present when the incident occurred, was ordered to contribute 50% of the aforementioned proven damages, to the city of Cape Town.

[1] De Rebus, issue 1st February 2017

[2] Cloete v Van Meyeren (731/2017) [2018] ZAECPEHC 72

[3] Carelse v City of Cape Town (Eksteen and Another as third parties) 2019 2 All SA 125 (WCC).

[4] Cole v Pieterse N.O (11599/12) [2013] HC 394