

Dog owners beware: litigation bites too!

Having a dog in your house not only brings enjoyment but also security to your home. In South Africa, due to high crime rates, many, if not most, have guard dogs such as Pitbull's and Rottweilers. Sadly, there have been several dog attacks in recent years, which have left victims in critical condition. Some attacks have also led to deaths. The obvious recourse in law would be for such a victim to claim damages from the owner of the dog.

In terms of the South African law of delict a dog owner may be held vicariously liable (the claimant does not have to prove negligence or intent by the dog owner) for the injuries suffered by the victim. The damages a victim would be entitled to claim from a dog owner includes but are not limited to (i) past and future loss of income, (ii) medical expenses, (iii) general damages and (iv) pain and suffering. Victims would require the services of a personal injury lawyer to sue the dog owner and the latter one to defend the matter. The litigation can be very expensive for both.

The scope of 'dog bite matters' is broad. This newsletter confines itself to the requirements for a possible successful claim against a dog owner, possible defences available to dog owners and a brief discussion of *Green v Naidoo* 2006 ZAGPHC 56 ("Green case").

In the *Green* case the face of a four-year-old girl, playing in the backyard garden of her sister's boyfriend's house, was bitten by a dog. The father of the four-year-old then proceeded to institute action against the owners of the dog, the Naidoo's. In their defence the Naidoo's alleged that the four-year-old pulled a scab off the dog's nose while it was eating. They averred that the dog was responding to such "attack" and "antagonism" and was therefore not acting contrary to its nature. On the other hand, the father alleged that a four-year-old is incapable of performing an act which is wrongful or unlawful.

The Court concluded that legal capacity does not have to be established by the Naidoo's for them to raise the defence of provocation. The underlying issue is that an act was performed. When provoked, a dog does not distinguish between whether the actor is legally competent or not. Having analysed the evidence, the court accepted the version of provocation presented by the Naidoo's.

It is evident from the Green case that defences such as provocation can be utilised in order to curb liability on the part of a dog owner. Furthermore, the case provides us with a clear understanding and examination of the history of the dog. Its conduct around people (guests) also has to be examined for purposes of establishing liability. If it is proved that the dog had previous conduct of attacking 'guest' or acting out of the ordinary, an owner's liability scale will be lifted to his detriment. This could make the dog attack foreseeable and give the victim a further potential delictual cause of action based on the owner's negligence.

Insofar as the requirements for a successful claim and the defences afforded to dog owners, the list is not exhaustive.

Requirements for a successful claim

- a) The person being sued must be the dog owner.
- b) The animal must be a domesticated animal (this by implication excludes wild animals).
- c) The animal must have acted contrary to its nature (than what would be expected from it).
- d) The victim must have had the right to enter into such property. If a person did not have permission to enter such said premises, the claim might not be successful. However, there are exceptions to this requirement.

Defences available to a dog owner

- a) Guilty conduct on the part of the victim (provocation, teasing animal by for ex. throwing stones).
- b) Guilty conduct on the part of a third party (for instance, where another person but the victim provoked a dog which led to the attack).
- c) Provocation by another animal.
- d) Consent to prejudice (for example, where a person is bitten by a dog but was pre-warned against the dog - a court has to find that the injured person tacitly consented to the prejudice).

From the abovementioned discussion it is clear that dog owners should take precautionary measures prior to receiving visitors at their homes. A visitor, who provokes a dog, would do so at his peril. Through a plethora of case law our courts have emphasised the importance of dog owners having adequate and appropriate dog warning signs at visible sites at their homes. Insofar as dog owners would want to prevent such incidents from tapping into their financial pockets, it is advisable that they obtain personal liability insurance to cover any unfortunate circumstances such as a dog bite and damages to property caused by their dogs. A failure to do so would potentially leave one with empty pockets.

Rego Marakalla