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As lawyers, we often have clients come to us with a dispute that they would like to be resolved immediately. In the equine business where a lot of agreements are concluded verbally, such is easier said than done. When things go wrong during the term of the agreement clients do not want long legal battles, but they prefer to obtain rather fast decisions. Fast and pragmatic solutions sounds frequently clients' maxim. Lawyers have the same intentions. In the end every lawyer wants his clients to be satisfied. Especially in the equine business where agreements involve living animals like horses, nobody gets better off a long lasting legal battle. The hints we are giving in this article can significantly improve and safeguard your position for the event the things go wrong with for instance your trainer or your rider and be of enormous help to your lawyers in the event you have to go to the Court.

THE DECISION

If the parties cannot resolve the dispute without court intervention, then the relative position of the parties remains the same until a court can decide the case on the merits. It may sound very unjust to some clients, but unfortunately this is the legal framework equine lawyers operate in. Equine law is a part of private law and unfortunately, there are no separate proceedings regarding horses unless parties agree to arbitration where a fast decision is possible. Additionally, horses involve a lot of emotions and horse cases can be compared with divorce proceedings. All this can take very long and in some cases may get very expensive. Most of the European legal systems provide for instruments for obtaining fast decisions like injunction orders (for instance the so-called short law suit in the Netherlands "kort geding" etc.). In these proceedings, the evidence

presented by the parties is utterly important for the judge to give a decision. As parties wish a fast decision, there is no time for the judge to do the fact finding. The judge must be sure he is granting a preliminary decision that shall be upheld in the appeal or in the main proceedings. Parties need also to present the urgency for injunction. In horse cases involving living animals such is not problematic.

EVIDENCE

Many times in this column we wrote about the importance of written contracts. We though understand that a lot of dealings in the business is done verbally. Understanding such, we recommend our clients to at least confirm in writing the essentials of the agreement they have concluded.

ENSURING THE IDENTITY

It is always very important to have clarified in writing the identity of the contracting parties and their capacity. It seems self-evident but still it goes wrong quite frequently. We would like to illustrate the relevance of recording the identity of the parties and their capacity in the agreement on an example of a real legal case. EEL recently represented in court a famous Polish breeder who brought his horse to the Netherlands to train the horse (Polish warmblood mare) here and to have it competed in the showjumping competition here. As the Polish breeder did not speak Dutch, he was assisted by a friend of him, a Dutch citizen living in Poland and also dealing in horses. This man represented him later in the contacts with a the trainer. As the Polish breeder did not have a Euro bank account in Poland he asked another friend who on her turn had such an account to pay the training and stabling fees per month to the stable. The payment transfers included only the name of the horse. Only later, when things started to go wrong the friend of the breeder included the name of the breeder into it with the addition "owner". The Polish breeder had a lot of bad luck as the trainer with the son of a Dutch friend who acted a intermediary refused to give him the horse back. The son and the father were quarrelling for years after the divorce of the father (Dutch intermediary) from the mother. The trainer and the son saw the qualities of the mare, an excellent showjumper. They came up with an idea that the son of the friend (Dutch intermediary) would have got the horse donated by

his father. Interestingly, the Dutch intermediary (the father) has denied the donation (to the son) and he had at no point in time been the owner of the horse in Poland. The studbook and the breeders association confirmed that the Polish breeder and not the Dutch intermediary was the sole owner in accordance with Polish law.

Additionally, the donation in Poland would have to be done in the form of a notarial deed and obviously, such was never accomplished. Despite all this, the Dutch court denied the request for an injunction of the Polish breeder. Losing the injunction proceedings though does not mean that the Polish breeder lost in the end. Thanks to EEL, the Polish public persecutor started the investigation into the matter against the Dutch trainer and his friend and has decided to charge them with fraud. If sentenced by the criminal court in Poland, the Dutch trainer and his friend will face their liability for the financial loss of the Polish breeder. The only downside in this case is that the Polish breeder will not have the mare back as he does not want to wait for the result of the main proceedings in the Netherlands. When a final decision would come, then the horse will be already much older and in terms of value much less valuable (above fourteen years old). An important lesson to learn here is that all this trouble might have been avoided if there was any kind of written evidence that it was obvious to the Dutch trainer that the Polish breeder was the owner of the horse. He should have had a written contract with the trainer regarding the terms and conditions of the training and stabling or at least confirm in writing who was the owner of the mare and who would pay the bills on his behalf.

THE RIGHT OF RETENTION

A written contract may be also very important when it comes to the right of retention. The right of retention is commonly known across civil law systems and is the right to withhold or detain the property of another, in respect of any debt which happens to be due by the proprietor to the person who has the custody.

CASE OF LADY FORBES

Many of our readership may recall the case of Lady Giorgina Forbes and her horses that played some years ago. Lady Forbes got into a dispute with her amazon who refused to release the horses in a dispute with Forbes that emerged at the start of the year and allegedly centered on the payment of

tax on winnings. The amazon could have done such based on the right of retention. In the end the amazon released the horses but Lady Forbes had to put a bank guarantee of EUR 300.000,- in the matter. Needless to say, such a situation might be very unpleasant for the owner. Normally, the Court would have to establish whether there is a claim before it would decide whether the trainer would have the right to exercise its right of retention. Thinking backwards what Lady Forbes should have done was to stipulate that the right of retention was excluded.

PRACTICAL IMPLICATIONS

Across Europe it is possible to exclude the right of retention in a contract. Therefore to avoid unpleasant situations, we advise to incorporate such a provision into the training agreement. It is just a straight forward provision to incorporate into the contract, but it can make a whole lot of difference when problems occur during the term of the agreement and when a fast decision needs to be obtained. A contractual exclusion of the right of retention would normally have to be considered sufficient to obtain an injunction order to have the horse released. Important lesson here is to exclude the right of retention in the contract, not only with regards to the horses but also to their passports. Many tend to forget that the passports are very important. Within the EU, no horse can be held or transported without a valid passport. ■

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