

LEGAL AND VETERINARY JOURNAL

LEGAL DUTIES AND LIABILITY OF AN ARENA CONSTRUCTOR AND ARENA REQUIREMENTS



Mr. L.M. Schelstraete

Active in the fields of company law and equine law. Within the equine law practice, Luc Schelstraete provides services to Dutch yet often also foreign equine businesses, riders, horse owners and equine authorities.

For the horse owners and riders performance and soundness of their horses are extremely important. Needless to say, performance and soundness can be influenced by many factors. Along with the training and the management of the horse the equally important factor is the quality of the arena, and more in particular of its surface. In this context it has to be noted that there is a growing worldwide demand for high quality equine arena surfaces for training and competition and consequently the number of constructors and products available has increased dramatically in recent years. There is a lot of choice when it comes to surfaces and their manufactures and the correct choice cannot be underestimated. This is also why we would like to discuss in this edition of Horse International a recent case decided by the Court of Oost-Brabant in Den Bosch, the Netherlands. In this international case between a Dutch high level showjumping stable and a Belgian constructor of arena showgrounds the Court clearly ruled what can be expected from the constructor and his product. The Court ruled that the constructor of a surface has a duty to warn the principal of any

inadequacies in the construction or work that is assigned to him as far as these are known to him or reasonably should have been known to him when entering into the construction contract. In our article we will also refer to the Equine Surfaces White Paper that is accessible via the FEI website and which provides clear guidelines as to the question what should be assessed and decided when a new arena (depending on the discipline) is going to be built or a surface is going to be delivered.¹

THE CASE

The Dutch stable, a client of European Equine Lawyers, entrusted a company from Belgium with constructing and delivery of showjumping surface for a showjumping arena consisting of a well-functioning drainage system and a grass layer. The Belgian constructor visited the location in the South of the Netherlands and made an assessment on the project. Afterwards they sent their proposal. The Belgian constructor advised to remove the top layer of the existing arena in order to put various draining layers and subsequently to

re-install the previous top layer. The Dutch stable accepted this proposal and granted the project to the Belgian constructor that on her turn started with the project. After the delivery it turned out that the surface did not recover quickly enough from average rainfalls, which basically led to long periods during which the arena could not be used. The water kept simply gathering on the surface despite the installation of the drainage system.

LITTLE OPTIONS

The Dutch stable adopted the view towards the Belgian constructor that the surface has not fulfilled its reasonable criteria and expectations as the water kept on gathering on the surface and the arena could not be used for longer periods of time for showjumping. The Belgian constructor contested this point of view and declined any liability for the reported problem. The Dutch stable had thus very little options and started litigation against the Belgian constructor. In the meantime the Dutch stable requested an expert to assess the surface. This expert concluded that both the drainage system and the top layer were not working properly and were not in conformity with the norm NOCNSF-KNHS 2-15.1 This norm sets out the criteria which the ground of a horse arena needs to fulfill. This norm is applied both by the Royal Dutch Equine Sport Federation (KNHS) and the National Olympic Committee in the Netherlands. In the Court proceedings, the Court appointed its own – impartial -expert. The

court expert partially agreed with the expert of the Dutch stable. The expert concluded that not the drainage system was malfunctioning but the top layer of the showground. This top layer that the Belgian constructor proposed to reinstall had an improper composition due to which the water kept gathering on the surface. The reinstalling and maintaining of the old top layer was therefore in the opinion of the

expert an error. The Dutch stable adopted the view that given the contractual context the Belgian constructor should have reasonably warned her when providing her proposal that the top layer would not work properly together with the drainage system and therefore that de facto nothing would change after the activities on the site were carried out. The Belgian constructor should have advised the Dutch stable to replace the top layer as well to avoid later negative effects and problems with the arena ground.

GIVE WARNING

The Dutch stable invoked Article 7:754 of the Dutch Civil Code which determines: (Duty of the constructor to give a warning.): *The constructor must, not only at the moment on which he enters into the construction agreement but also during the performance of this agreement, warn the principal of any inadequacies in the construction or work that is assigned to him as far as these are known to him or reasonably should*

‘There is a lot of choice when it comes to surfaces and their manufactures and the correct choice cannot be underestimated.’

have been known to him. The same applies in case of defects or the unsuitability of things which are coming from the principal, including the land on which the principal lets others perform the work, as well as in case of errors or shortcomings in plans, drawings, designs, calculations, specifications, estimations or implementing regulations which are supplied by the principal.



Photo: Remco Veurink/BCM

PROPOSED CONSTRUCTION

The Belgian constructor is in the end a professional when it comes to the construction of ground arenas so he should have known whether the whole structure (the drainage system and the previous top layer) would be working properly once the proposed construction works have been carried out. On 13 January 2016 the Court ruled that indeed the Belgian constructor should have warned the Dutch Stable about possible inadequacies of the proposed

construction. In this sense the Belgian constructor violated his duty to give a warning meaning that he defaulted under the construction agreement. Such a default leads to liability for the damages suffered by the Dutch stable and these are in this case evident. The construction did not only not improve the performance of the arena, but led also to a considerable increase in costs and in the end was useless. It would have been different if the Belgian constructor had informed from the very beginning that also the top layer

was to be replaced by a new one with a proper composition. In the pending litigation parties will be disputing the liability of the Belgian constructor and the damages suffered by the Dutch stable.

WHITE PAPER

At the introduction of this article we already referred to the Equine Surfaces White Paper. We advise our readership to note its content. This paper is interesting as it sets out the approach that should be adopted while developing and

building an equine showground in order to ensure optimal performance and soundness of the horse. While discussing performance and soundness the paper clearly divides between external and internal factors that might influence them. The surface of a showground is one of the external factors. Engaging a party to construct an arena showground, various decisions should be made: discipline, the sort of the materials to be used, the norm that the surface should fulfill, the geographical factors (like in this case it is obvious that countries like Belgium and the Netherlands have to do with frequent and sometimes heavy rainfalls) etc. Discussing all these issues is relevant. The more information is exchanged and the more specified such is, the better it is for the client of a constructor. The contractor will then have to – based on his expertise – include such in his assessment and proposal and hopefully come to the right conclusions. Otherwise he might have a legal problem. Many horses in the world suffers injuries these days. Only seldom owners attribute such to the quality of the surface whereas law gives various possibilities in terms of the liability of the constructor which are certainly worth exploring. ■

¹ <http://www.fei.org/system/files/Equine%20Surfaces%20White%20Paper.pdf>

Piotr M. Wawrzyniak
Practicing
lawyer at
Schelstraete
Advocaten in
Tilburg
(Netherlands)



If you have any questions and/or comments after reading this article, we would be happy to hear from you. You can also contact us for all equine-law related questions or matters. Please contact us by e-mail via info@europeanequinelawyers.com or telephone on +31-(0)135114420.

