

Animal Welfare Law and Policy news roundup

Case Summaries

(1) HEYTHROP ZOOLOGICAL GARDENS LIMITED (t/a AMAZING ANIMALS) & (2) JAMES SPENCER CLUBB v CAPTIVE ANIMALS PROTECTION SOCIETY [2016] EWHC 1370 (Ch)

Parties

Heythrop Zoological Gardens Limited (trading as “Amazing Animals”) provides animals to the film and television industry including lions, sloths, monkeys, tigers and other creatures.

The Captive Animals Protection Society (“CAPS”) is a campaigning charity which aims to stop the exploitation of animals, particularly in circuses, zoos and in the exotic pets trade.

Facts

Heythrop’s Zoo is closed to the public, but it has open days. Investigators for CAPS visited the zoo in September 2015. They took photographs and videos along with numerous other members of the public.

The photographs (along with some taken by a member of the public in 2013 and some from a person described as a “whistleblower” who was an ex-employee of Heythrop)

were used by CAPS in articles which were posted on the internet in February 2016. The images showed animals being used for entertainment. CAPS described what is shown as animals being made to perform tricks in public. CAPS also said that the images showed the inhumane conditions in which some of the animals were kept and also showed some of them exhibiting stereotypical behaviours, such as waving their heads from side to side, which were consistent with being kept in inhumane conditions.

CAPS’ articles led to comment in the wider press. There was an article in the Daily Mail and an article in The Times newspaper which referred to the photographs.

Claim

Heythrop sued and sought an interim injunction based on three causes of action:

First cause of action – breach of contract

On the basis that part of the ticket contract stated (via a Code of Conduct – allegedly displayed prominently at the entrance gate (this was strongly disputed by CAPS)) that photographs may only be used for personal use, may not be uploaded to the internet and not used for any commercial or financial gain without Heythrop’s permission.

Second cause of action - breach of confidence

On the basis that the photographs were to be regarded, in all the circumstances, as embodying confidential information.

Third cause of action - breach of “non-property” performance rights

Heythrop argued that the animal show was a “performance” under s.180 of the Copyright, Designs and Patents Act 1988 in which performer’s rights subsisted. It submitted that that right was breached under s.182 of that Act because the performance was filmed without Mr. Clubb’s (the animal’s handler during the performance) consent.

Decision

Mr Justice Burss found that there was not a sufficient likelihood that Heythrop would obtain a final injunction at trial based on any of

“**Heythrop Zoological Gardens Limited (trading as “Amazing Animals”) provides animals to the film and television industry**”

these causes of action to justify the interference with journalistic freedom of speech which an interim injunction would involve.

In reaching that decision he stated that:

- the likelihood that the court would finally restrain publication of the images was severely undermined because, save for the whistleblower images, all the images were matters which the public could see on the open days and were all images of a similar nature to those which already appeared on the internet and referenced Heythrop;
- even if a claim based on contract or confidence was successful the remedy would be likely to be damages;
- with regards to the whistleblower images, the only cause of action was breach of confidence but those particular images had the strongest public interest defence in any event since they related to alleged inhumane treatment of a polar bear and the conditions in which it was kept; and
- as regards the claim based on performer's rights, given the journalistic nature of the publication, CAPS clearly had an arguable fair dealing defence.

MARZAN -v- RSPCA [2016] EWHC 993

Background

The appellants, Mr and Mrs Mazan, were convicted at Bradford Magistrates' Court on 12th March 2015 of seven offences under the Animal Welfare Act 2006 relating to their failure to provide proper treatment for 13 Red Setter dogs. They received concurrent sentences of 6 months' imprisonment for each offence (one of these convictions was overturned on appeal and the remaining sentences reduced to 4 months' for each offence).

The prosecution case depended on evidence obtained from a search of Mr and Mrs Mazan's home carried out by a police officer (PS Green) in January 2014. The Mazans were not at home at the time and PS Green forced entry to the premises relying on the power under section 17(1)(e) of the Police and Criminal Evidence Act 1984 to enter and search any premises for the purpose of "saving life or limb or preventing serious damage to property".

On appealing their convictions Mr and Mrs Mazan applied to exclude the evidence obtained from the search, arguing that the entry was unlawful. The Crown Court rejected that argument after hearing evidence from PS Green; ruling that PS Green genuinely believed that dogs kept on the premises were at imminent risk of death and hence there was a danger of serious damage to property. The court further concluded that that belief was based on reasonable grounds and that, in those circumstances, the entry and search of the premises were lawful.

Appeal in this case

Following on from the above the High Court was asked, in this appeal by case, to decide whether PS Green unlawfully entered the appellants' home on 15th January 2014.

In order to answer this over-arching question the High Court was asked for its response to three 'sub-questions' by the Crown Court, namely:

- 1) Did PS Green, on the facts of the case, make an unlawful entry under section 17(1)(e) of the Police and Criminal Evidence Act 1984 such that any evidence obtained therefrom was inadmissible?
- 2) Did PS Green genuinely believe that it was necessary for her to enter the premises to prevent serious damage to property (in this case dogs)?
- 3) If PS Green did hold such a

genuine belief, was that belief based on reasonable grounds?

Decision

Mr Justice Leggatt explains early on in his judgment that the appellants' case faced a "major difficulty" in that the grounds on which a decision of the Crown Court may be questioned on an appeal to the High Court by case stated are limited to arguments that the decision was (i) wrong in law; or (ii) in excess of jurisdiction and that, in this case, the Crown Court undoubtedly had jurisdiction to decide whether the entry to the premises was lawful and had also considered the correct questions in law.

As a result of this and despite admitting to having "very grave doubts" as to the accuracy of PS Green's evidence and in particular, whether she had exaggerated it in order to suggest that she feared that the dogs within the property were at imminent risk of death (and therefore "serious damage" for the purposes of question (2) above), Mr Justice Leggatt concluded that:

- it was impossible to say that there was no evidence before the Crown Court which was capable of supporting the conclusion that PS Green genuinely and reasonably believed that it was necessary to enter in order to prevent serious damage to property; and
- he could not say that the findings made by the Crown Court were

“dogs kept on the premises were at imminent risk of death and hence there was a danger of serious damage to property”

findings which no reasonable fact-finding tribunal, which heard the evidence given in the Crown Court, could have reached.

Following on from these findings he duly dismissed the appeal.

George Pennington Solicitor

ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY OF ANIMALS v (1) CRAIGE McCORMICK (2) NATHAN BAKER (3) BENJAMIN LUSCOMBE (4) CRAIG FORD (5) ALEX SALT [2016] EWHC 928

Background

This was an appeal by way of case (following the initial ruling of District Judge Kevin Gray) as to the meaning of “*animal fighting*” within s.8 of the Animal Welfare Act 2006 (“**the Act**”) in the context of a prosecution by the RSPCA against various individuals said to be members of a group known as the “Devon Destroyers”.

The RSPCA said the group used dogs (mainly lurchers) to sniff out and pursue deer, badgers and rabbits before they were 'torn to pieces' and that the dogs were sometimes injured during "fights" with wild animals.

There was no direct evidence that any of this alleged activity had taken place, rather the prosecution case rested on Facebook posts and text messages, together with photographs and items discovered upon the execution of search warrants.

The District Judge cleared all five of the defendants after ruling that, even if what the RSPCA claimed was true, it could not be viewed as animal fighting as section 8 of the Act was "aimed at organised and controlled animal fights, such as dog fights", which involve restraint or control of animals by humans.

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Appeal

The RSPCA, through its appeal, sought clarity of interpretation on the range of factual scenarios in which an animal fighting prosecution might be brought under section 8 of the Act.

In doing so, it argued that:

- the distinction between traditional hunting and animal fighting for the purpose of section 8 of the Act was important as a matter of principle; and
- that the nuisance at the centre of the prosecution of the so called ‘Devon Destroyers’ must have been contemplated by Parliament when it introduced into the Act the definition of animal fighting that it did.

Notwithstanding these arguments it also emphasised that its intention was not to attempt to enlarge the ambit of the Act to encompass offences committed in the context of traditional (now illegal) hunting, but rather to ensure that it was able to prosecute in a range of factual circumstances where the purpose of the individuals involved (as alleged in this case) was to procure a fight involving animals.

In the light of this appeal the questions for the Court were:

- 1) Was the District Judge correct in deciding that in order for an offence of animal fighting to be committed contrary to section 8 of the Act as defined by section 8(7) thereof, that the other animal, with which a protected animal (i.e. a domesticated animal) is placed, has to be the subject of some control or restraint by some

person or persons connected with that activity or some other artificial constraint so that its ability to escape is prevented?

- 2) Was the District Judge correct in considering that Section 8 of the Act is aimed at organised and controlled animal fights, such as dog fights, which invariably involve money?

Decision

Mrs Justice Carr’s responses to these questions were as follows:

- 1) The District Judge was correct in deciding (by reference to and on the basis of the assumed facts) that in order for an offence of animal fighting to be committed contrary to section 8 of the Act as defined by section 8(7) thereof, that the other animal, with which a protected animal is placed, had to be the subject of some control or restraint by some person or persons connected with that activity or some other artificial constraint so that its ability to escape is prevented;
- 2) The District Judge was correct in considering that the tenet of section 8 of the Act was aimed at organised and controlled animal fights, such as dog fights (although in so far as he held that money had invariably to be involved for there to be an offence under section 8 of the Act, she found that he was incorrect).