

**REPUBLIC OF SOUTH AFRICA  
IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**Case number: 52043/2019**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHERS JUDGES: NO  
(3) REVISED

In the matter between:

Riaan Nortje

Plaintiff

And

Pierre Van Ryneveld Vet Clinic CC

First Defendant

Dr Hester Van Zyl

Second Defendant

South African Veterinary Council

Third Defendant

*This matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and is handed down electronically by circulation to the parties' legal representatives by email and uploading it to the electronic file of this matter on Caseline. The date for hand-down is deemed to be the 10<sup>th</sup> July 2025*

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**JUDGEMENT**

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## **LEDWABA A J**

### Introduction

[1] The plaintiff is an adult male account manager who resides at 7[...] B[...] Street, Moreleta Park, Pretoria.

[2] The first defendant is the close corporation and a veterinary clinic.

[3] The second defendant is the practising veterinary doctor employed by the first defendant. She is cited as the first respondent's employee acting within the course and scope of her employment with the first defendant, alternatively in her personal capacity.

[4] The first and the second defendants are jointly and severally liable for the conduct of the second defendant. They are collectively referred to as the defendants.

[5] The third defendant governs the practice of veterinary and para-veterinary professions. It was joined in its professional capacity as the governing body to conduct an inquiry in terms of section 31 of the Veterinary and Para-Veterinary Professional Act 19 of 1982.

[6] By agreement between the plaintiff and the third defendant, the action against the third defendant was withdrawn before the start of the hearing of this matter.

[7] In terms of Rule 33(4) of the Uniform Rules, the merits and quantum were separated and the quantum postponed. This judgment is limited to the merits.

### Plaintiff's evidence

[8] The plaintiff instituted contractual, alternatively delictual claim against the defendants. This resulted from the right-hand side injuries sustained by the plaintiff's then six year old pure-bred Yorkshire Terrier female dog named Triesie ( Triesie )

[9] Triesie is the plaintiff's pet which he bought for R3800.00 and intended to use her as show dog. The plaintiff asserts that he told the defendants and first defendant's employees about this intention.

[10] He told the defendants that he has no children and regarded Triesie as his own child and the integral part of his home and family life. He has emotional attachment to Triesie.

[11] He entered into the oral, alternatively tacit agreement with the first defendant with the terms to the following effect among others:

(a) The plaintiff represented himself, alternatively he was represented by his partner Theresa Kriel when the agreement was entered into. In reply he pleads that a third party such as Theresa Kriel need not be cited as a party to the proceedings. The defendants were represented by Doctor Danny, Dr Hester Van Zyl and nurse Sister Marietjie Botha. Dr Hester Van Zyl and nurse Sister Marietjie Botha are collectively referred to as the first defendant's employees.

(b) On the 27<sup>th</sup> February 2019, the plaintiff took Triesie to the first respondent's clinic for evaluation, admission and treatment of her left rear torn cruciate ligament she sustained on the 24<sup>th</sup> February 2019.

(c) The first defendant and its employee would reasonably take care of Triesie to the extent of the reasonable vet and professional health care provider and will not intentionally or negligently injure or allow her to be injured and suffer pain. They would provide Triesie with safe, warm and hygienic sleeping quarters.

(d) The plaintiff paid R4 955.86 for the first respondent's treatment, hospitalisation and post-surgery management of Triesie.

(e) The defendants admitted Triesie as a patient and undertook to properly take care of Triesie, repair the injured ligament and not cause injuries or not allow Triesie to be injured whilst under their care and

(f) The first defendant and its employees would not cause or allow Triesie to be disfigured.

[12] On the 28<sup>th</sup> February 2019 the second defendant operated Triesie. At all material times the defendants were aware that:

- (a) The plaintiff intended Triesie to be a show dog to generate income for him.
- (b) in the event Triesie becoming disfigured she could no longer serve the purpose of a show dog and
- (c) if Triesie suffered pain, that would affect the plaintiff emotionally.

[13] In breach of material terms of the agreement and intentionally or negligently the first defendant and its employees:

- (a) Kept Triesie locked in a small outside cage in direct sunlight with no or inadequate light, ventilation, warmth and the place to urinate and defecate.
- (b) Caused Triesie to lose her weight while under the defendants' care.
- (c) Placed Triesie on or against a hot water bottle during her operation that she was burnt and felt pain and suffering.
- (d) Performed further operations and/ or medical procedures without the plaintiff's consent.
- ( e) Failed to take proper care of Triesie during the period she was under the defendant's care and ill-treated her . Triesie required assisted feeding, was unable to walk and experienced pain, discomfort and suffering.
- (f) Disfigured Triesie that she could no longer serve the purpose of a show dog.
- (g) Injured Triesie on her right-hand side with hot water bottle during medical procedure. In reply the plaintiff pleads that in the event of the finding that Triesie's injuries were not caused by hot bottle, they were nonetheless caused through the conduct and/or omission and/or negligence of the defendants.
- ( h) Negligently diagnosed and treated Triesie's burn wound and
- (i) caused Triesie to lose weight.

[14] In the alternative, the plaintiff submits that the first and the second defendants' conducts amount to the delictual conduct

[15] As a result of the breach of material terms of the agreement:

(a) The plaintiff cancelled the agreement, alternatively hereby cancels the agreement and is entitled to restitution by the defendants.

(b) The plaintiff prays that the defendants' conduct resulted in the damages in the amount of R4 955.86 which amount should be refunded,

(c) The plaintiff suffered and will in future suffer emotional trauma and shock

(d) The plaintiff prays that the defendants be declared to have contravened the provisions of the Animal Protection Act 71 of 1982 and unfit to be in charge of any animal for a period of twelve months.

(e) The plaintiff avers that he bought Triesie as a show dog for R3 800.00. Triesie stood a chance of earning the plaintiff an amount of R100 000.00 through, inter alia, shows and possible sponsorship. The plaintiff claims damages in the sum of R103 800,00

(f) Instead of visiting the first defendant's clinic on the 27<sup>th</sup> February 2019 for Triesie's operation and on the 3<sup>rd</sup> March 2019 to have stitches removed, the plaintiff :

(i) did several trips calculated to be 770 kilometres @ R3.00 per kilometre of travel:

(ii) spent hours to and from the first defendant's clinic and

(iii) incurred loss of income of R42 997.50

(g) The plaintiff will incur future medical costs for Triesie's treatment in the amount of R50 000.00

(h) The plaintiff experienced severe emotional trauma and shock and will experience further emotional trauma in the future, with damages in the amount of R250 000.00.

[16] On the 2<sup>nd</sup> March 2019, the plaintiff visited the first defendant's clinic to check on Triesie.

[17] Triesie was discharged from the first defendant's clinic on the 3<sup>rd</sup> March 2019. The plaintiff attended at the first defendant's clinic to collect her.

[18] Triesie sustained injury to her right-hand side of her body.

[19] The document from Moreletapark Animal Hospital<sup>1</sup> describe the burn as being consistent with a third degree burn wound.

[20] The plaintiff avers that the right-hand side injury resulted from the hot water bag or bottle on which or against which Triesie was placed during her operation on the 28<sup>th</sup> February 2019.

[21] The defendants aver that the water poured into the bottle used during Treisie's operation was fifty percent hot and fifty percent cold.

[22] On or about the 11<sup>th</sup> March 2019, Triesie was returned to the first defendant's clinic to have stiches removed.

[23] During the removal of stiches visit, the plaintiff was advised to ignore the swelling, bumps on Triesie and to treat that with cold and warm cloth.

[24] Triesie's quality of life deteriorated, she refused to eat, walk or defecate

[25] Around the 13<sup>th</sup> March 2019, Triesie began oozing "puss" from her right-hand skin and emitted an odour of rotting flesh.

[26] The first defendant agreed to treat Triesie's right-hand side injury without additional costs to the plaintiff.

[27] Following the plaintiff's telephone call to the clinic, the plaintiff brought Triesie to the clinic on the 14<sup>th</sup> March 2019. The defendants and the first defendant's employees shaved Triesie's entire right-hand side of her body.

[28] The plaintiff was advised that Triesie seemed to have suffered minor burn wounds on her right-hand side. He was advised that it resulted from the hot water bottle used during her operation.

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<sup>1</sup> Caselines 036-81 to 82

[29] The plaintiff was given inflammation medication and pain killer and requested to return Triesie every three to four days for follow up check-ups.

[30] On or about the 15<sup>th</sup> March 2019 and as a result of the wound rotting, oozing puss and emitting foul-smell odour, the plaintiff returned Triesie to the first defendant's clinic. He was informed that the source of smell was Triesie's breath resulting from her eating dog faeces.

[31] On or about the 17<sup>th</sup> March 2019, Triesie was returned to the first defendant's clinic for further treatment of her right-hand side injury. Part of the skin from the burnt area was removed without consulting the plaintiff.

[32] Further follow up treatments occurred on the 20<sup>th</sup> and the 22<sup>nd</sup> March 2019. Triesie's skin from the upper back and lower abdomen was stretched, stitched together to close Triesie's wound.

[33] The plaintiff was informed that Triesie's skin was physically rotting off her body and needed to be removed, failing which this posed health risk to Triesie .

[34] He was informed that the first defendant was understaffed, that what happened to Triesie was an accident and was requested to sign a form. He refused to sign the form.

[35] Triesie was taken to the first defendant's clinic for follow up check-ups and bandage changes several days during April, May and June 2019.

[36] He replied that the "complete skin" on right-hand side of Triesie's body had become necrotic, which meant that debridement had to take place. He stated that the operation was to reduce skin defects as opposed to closing the "open" area of Triesie's side.

[37] He was referred to and he explained the pictures which showed the injuries sustained by Triesie as appears on section: 036 sub pocket 3 of the caselines. The

dates on which the pictures were taken is also reflected.

[38] In reply the plaintiff denied that Triesie's injury is a result of an excusable and accepted risk following the preparation for and care of animals during the procedure. He denied that he was advised of the nature, the procedure and the risk involved.

[39] He replied that no reasonable post-surgery management and after care were provided to Triesie.

[40] He replied that the defendants fail to state how the alleged consent was given, whether orally or in writing.

[41] He replied that the defendants do not deny contravention of the cited statutory provisions.

[42] He replied that the defendants confirm the totality of attendance made by the plaintiff to the first defendant's clinic premises.

#### Defendants evidence

Dr Hester Van Zyl

[43] She is employed by the first defendant as veterinarian for the past more than sixteen years and was acting within the course and scope of her employment with the first defendant.

[44] She denies any liability in her personal capacity. She denied that she was negligent in dealing with Triesie.

[45] She was referred to Triesie's admission and consent card <sup>2</sup> and confirmed Triesie's admission date.

[46] She testified that she performed the procedure on Triesie on the 28<sup>th</sup> February

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<sup>2</sup> Caselines 036-83

2019 and referred to clinical notes on section 036-62 of the caselines.

[47] She testified that the bottle used during the operation is prepared by a nurse. The bottle is filled with 50 percent cold and 50 percent warm water because of body temperatures of small animals like Triesie which must be kept between 36- 37 degree Celsius. She said anaesthetic can drop animal body temperature and that when it falls below 34 degree Celsius it becomes dangerous. The bottle is also covered with the blanket or towel to prevent burning patient animals.

[48] She testified that the outlined process was followed when Triesie was operated and did not observe any injury on Triesie's right- hand side after the operation and until her discharge from the clinic.

[49] Referring to the clinical notes, she explained that the subjective section is mainly about what the reception at the clinic is told by the animal owner while the objective section is mainly clinical observations. She said the reception notes cannot be altered and that it explained reference to burns in Triesie's clinical notes.

[50] The defendants aver that Triesie was returned to the clinic between the 3<sup>rd</sup> and 8<sup>th</sup> March 2019 for follow up treatments with no report of any complaint. There was no correspondence between that period.

[51] In March 2019 the stitches were removed from Triesie. The plaintiff complained about sensitivity on Triesie's right-hand side. She denies having advised the plaintiff to ignore the swelling, bumps and/ or symptoms.

[52] The defendants dispute that Treisie's right-hand side injury was caused by the hot water bottle used during her operation.

[53] She replied that there existed other potential causes for Triesie's right-hand side injuries.

[54] The defendants further contend that the timing of the discovery of Triesie's injury indicates that Triesie did not sustain the right-hand side injuries during her

operation at the first defendant's clinic on the 28<sup>th</sup> February 2019.

[55] She testified that the plaintiff was advised to observe Triesie's condition and to return her in case of any change in her condition which necessitated further medical treatment.

[56] She admits that the plaintiff was advised that Treisie seemed to have suffered minor burn wounds on her right-hand side.

[57] She denies that the plaintiff was advised that Treisie's right-hand minor wounds resulted from the hot water bottle. She stated that the plaintiff was advised that the minor burn wounds possibly resulted from the hot water bottle.

[58] She admits that Triesie was returned to the first defendant's clinic on or about the 14<sup>th</sup> and the 17<sup>th</sup> March 2019.

[59] The plaintiff told her that his neighbour's son told him Triesie had sustained third degree burn wound. Without necessarily treating it as burn wound, she treated Triesie's wound in the best interest of Triesie.

[60] She testified that part of the dead skin from the burned area on Triesie's right-hand side was removed with the plaintiff's consent.

[61] She denies that the plaintiff was informed that the "complete" skin on the right – hand side of Triesie's body would need to be removed, that the skin was physically rotting off her body and that if this was not done, it could pose a serious health risk to Triesie. She testified that the plaintiff was advised to consent and did consent to a debridement of necrotic tissue to be performed on Triesie.

[62] She admits that during March 2019 a procedure was performed on Triesie. Triesie was then discharged.

[63] She testified that the procedure was performed to reduce any skin defect to Treisie's right-hand side.

[64] She denied that Triesie had lost weight and weighed 3.9kg on the date of her discharge.

[65] She admits that it was agreed that the plaintiff was to pay R4 955.86. She denies that the plaintiff is entitled to a “refund” of the said amount of R4 955.86.

[66] She stated that the plaintiff consented to and accepted liability for payment in full for the fees incurred and for treatment of Triesie.

[67] She stated that the injury suffered by Treisie is the result of excusable and accepted risk following the preparation for and care of animals during the procedure.

[68] She testified that the plaintiff was informed that although reasonable precautions are taken when administering general anaesthesia/sedation as safely as possible, there is a risk of complications or even death. The plaintiff was specifically advised of the nature of the procedure and the risks involved. The plaintiff consented to releasing the first defendant from liability regarding the treatment by signing an Admission and Consent Form on the 27<sup>th</sup> February 2019.

[69] She testified that given the circumstances, reasonable post-surgery management and after care treatment were provided to Triesie.

[70] She stated that the plaintiff consented to further operations and/or medical procedures.

Dr Abraham Carel Viljoen

[71] He is the sole member of the first defendant since 1995. He is qualified veterinarian for more than thirty years.

[72] The first defendant is registered with and is inspected by the South African Veterinary Council on regular basis.

[73] The animal kennels on the first defendant's clinic premises are designed and constructed with mortar with top concrete slab and steel doors. They are constructed in the way that they are animal friendly, they prevent the animals from escaping and the animals are not exposed to bad weather. Their entrance are facing South with their backs to the north to avoid animals directly facing the sun.

[74] He admits that the plaintiff represented himself during the conclusion of the agreement. He denies that the plaintiff was represented by Theresa Kriel as the latter is not a party to the proceedings.

[75] He gave instruction that Triesie be treated for right-hand side injury at no costs to avoid argument and confrontation with the aggressive and threatening plaintiff.

[76] He had learned that the plaintiff had told the first defendant's employees to bring their children and let him cook them.

[77] He denied that Triesie was treated without payment as an acknowledgement of liability on the first defendant's part.

[78] The first defendant's primary objective was to ensure that Triesie received proper healthcare.

Nurse Marike Botha

[79] She testified she is employed by the first defendant as a nurse.

[80] She was involved in the operation of Triesie on the 28<sup>th</sup> February 2019.

[81] She prepared the water bottles used during the operation. She put in the bottle 50% cold water and 50% warm water for the proper temperature during the operation. She checked the temperature and wrapped the bottle with the towel.

[82] She did not notice any injury on Triesie between the 28<sup>th</sup> February 2019 and

3<sup>rd</sup> March 2019.

[83] The information on the subjective section of the notes was provided by the owner of the animal, being the plaintiff.

[84] The agreed upon translation of what she wrote on the 14<sup>th</sup> March 2019 appears on section 042. The agreed translation is: *“Hot water bottle burnt her during theatre... was wrapped in a blanket. Told owner that we care a lot about her and would not intentionally do anything to hurt her. We are all people and people make mistakes . Owner is sad and upset, another veterinarian said he should report us to council. Don’t know if he really will. Bandage change every 3 days. Slbercor and jelonet.”*

[85] The plaintiff was pushing that they should write that the first defendant’s employee made the mistake that resulted in Triesie being injured on her right-hand side.

[86] The defendants do not admit liability for the injury sustained by Treisie on her right-hand side.

#### Analysis

[87] The plaintiff has instituted the claim for damages resulting from Triesie’s right-hand side injuries. This include the claim for refund of the money he paid for the treatment of Triesie.

[88] The second defendant is cited in her personal capacity in the alternative and only in the event of unsuccessful claim of vicarious liability against the first defendant for the second defendant’s conduct.

[89] The concession by the defendants that the second defendant was acting within the course and scope of employment with the first defendant settles the issue that the proceedings are only against the first defendant.

[90] The plaintiff bears the onus to prove its case on the balance of probabilities.

[91] There is dispute as to when did Triesie sustain the right-hand injuries and when were they reported to the defendants. The dispute is whether Triesie suffered injuries while under the care of the defendants and or the first defendant's employee acting within their course and scope of their employment with the first defendant.

[92] The plaintiff's version is that he was not present when Triesie was operated on the 28<sup>th</sup> February 2019. That is the date the plaintiff contends Triesie sustained the right-hand side injuries.

[93] As the only witness from the plaintiff's side, he could not testify as to what happened during Triesie's operation on the 28<sup>th</sup> February 2019.

[94] There is no direct evidence to support the plaintiff's submission that the injuries on Triesie's right -hand side were as a result of hot water bottled used during her operation on the 28<sup>th</sup> February 2019.

[95] There is no direct evidence as to how this right-hand side wounds were sustained to support the conclusion whether it was intentionally or negligently caused.

[96] The plaintiff submits that even if it is not accepted that the injuries resulted from hot water bottle, the defendants are liable for injuries sustained by Triesie during her care by the defendants.

[97] The defendants do not seriously dispute that Triesie's wounds resulted from burning. The second defendant testified that she did not necessarily treat Triesie's injuries as burn wounds.

[98] The defendants do not dispute Moreletapark Animal Hospital report that Triesie's wounds were consistent with a third degree burn wounds. The report states

that the wounds of this severity are generally extremely painful and can temporarily affect the quality of life. <sup>3</sup>

[99] It is not the defendant's case that Triesie's injuries are inconsistent with burn wounds.

[100] The defendants' evidence is that reference to burnt wounds in the clinical notes is based on the information provided by the plaintiff at the reception on Triesie's admission to the clinic.

[101] In paragraph 5.22 of the founding affidavit the plaintiff states that he was advised that Triesie seemed to have suffered minor burn wounds on her right-hand side from the hot water bottle. In response in paragraph 5.8 of their plea the defendants admit that the plaintiff was advised that Triesie seemed to have suffered minor burn wounds on her right-hand side. The defendants specifically plead that the plaintiff was advised that the minor burn wounds possibly resulted from the hot bottle.

[102] During oral evidence the second defendants responded that Triesie's right-hand wounds could have resulted from many causes.

[103] The defendants' submission is that Triesie's wounds were not noticed and reported to the clinic on the 28<sup>th</sup> February 2019, during subsequent clinic visit on the 3<sup>rd</sup> March 2019 or during the call from nurse Botha on the 8<sup>th</sup> March 2019. They say the plaintiff did not report Triesie's injuries when stitches were removed on the 11<sup>th</sup> March 2019. They say only sensitivity was noticed on the 8<sup>th</sup> and 11<sup>th</sup> March 2019.

[104] The defendants contend that the timing of the reporting of Triesie's right-hand side injuries should be taken to be an indication that they were not sustained at the first defendant's clinic.

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<sup>3</sup> Caselines 036 subpocket 7 page 036-82

[105] The plaintiff contends that Triesie's right-hand side injuries were reported to the defendants telephonically before she was brought for treatment around the 14<sup>th</sup> March 2019.

[106] The defendants say on the 14<sup>th</sup> March 2019 the plaintiff returned Triesie for the right- hand side burn wound.

[107] The defendants submit that in the light of the fact that third degree burn would have been apparent between forty -eight and seventy two hours, it is impossible that Triesie's injury was sustained during the operation of the 28<sup>th</sup> February 2019.

[108] In answer to the plaintiff's allegation in paragraph 5.29, the defendants plead in paragraph 5.13 that the plaintiff consented to the debridement of necrotic tissue to be performed on Triesie.

[109] Responding to paragraph 7.1 of the plaintiff's founding affidavit, in paragraph 7.1, the defendants plead that the right side injury suffered by Triesie was a result of an excusable and accepted risk following the preparation for and care of animals during procedure and that the plaintiff was informed that although reasonable precaution are taken when administering general anaesthesia/sedation as safely as possible, there is a risk of complications or even death. They further plead that the plaintiff was specifically advised of the nature of the procedure and the risks involved and that the plaintiff consented to releasing the first defendant from liability regarding the treatment by signing an Admission and Consent Form on the 27<sup>th</sup> February 2019.

[110] The submission that the plaintiff consented to Triesie being injured in the process of medical procedure is unsustainable.

[111] The plaintiff correctly contends that Admission and consent form expressly relates to the risk when administering general anaesthesia.

[112] The defendants plead that reasonable post-surgery management and after care was provided to Triesie . This is disputed by the plaintiff.

[113] The plaintiff disputes that he reported Triesie's right injury at the later stage as alleged by the defendants. His version is that he contacted the second defendant the night Triesie started to hyperventilate while she was sitting on his lap and took her to the clinic one day later. He pleads that the burn would occurred while the Triesie was in the defendant's care and that it can be assumed that a hot water bottle was used and did burn Triesie, alternatively the injuries were caused through the defendants' conduct and/or omission and/ or negligence.

[114] The defendants further submit that the timing of the discovery of Triesie's injury indicates that Triesie did not sustain the right-hand side injury during her operation at the first defendant's clinic on the 28<sup>th</sup> February 2019.

[115] On behalf of the defendants, it is contended that the plaintiff's version contradicts the clinical notes entries and the second defendant's evidence that Triesie presented with the burn would for the first time on the 14<sup>th</sup> March 2019.

[116] I do not think that if the plaintiff contacted the first defendant's employees, he should be blamed for the absence of that information in the clinic notes. He does not make entries in the clinical notes.

[117] It is common cause that for the period 14<sup>th</sup> March 2019 to the 12<sup>th</sup> June 2019 the defendants treated Triesie for her right side wound.

[118] The defendants' contention suggest that Triesie was injured on her right side after she was discharged from the clinic on the 13<sup>th</sup> March 2019. No basis has been laid for the suggestion that the plaintiff is attempting to implicate the defendants and the first defendant's employee for the injury that did not occur at the first defendant's clinic.

[119] The plaintiff says even during the call by nurse Botha on the 14<sup>th</sup> March 2019 the nurse admitted that they are human and prone to mistakes.

[120] The question is whether on the balance of probabilities, the plaintiff has proved that the injuries sustained by Triesie on her right-hand side were caused by

the defendants and or the first defendant's employee acting within their course and scope of their employment.

[121] The defendants contend that the plaintiff reported Triesie's injuries for the first time around March 2019 and this is an indication that the injuries were not sustained when the Triesei was operated on the 28<sup>th</sup> February 2019.

[122] The evidence indicates that on the balance of probabilities, Triesie sustained the right-side hand injury during her operation on the 28<sup>th</sup> February 2019 when her right-hand side was rested on the hot water bottle.

[123] As amended, the plaintiff's particulars of claim separate his claim into seven headings, with the seventh claim being against the third defendant. This last claim has been withdrawn by agreement between the plaintiff and the third defendant.

[124] The first claim is for the refund of R 4 955.86 paid to the first defendant for Triesie's treatment.

[125] The remedy for breach of contract is to place an aggrieved party in the position it would be had there been proper fulfilment of the terms of the contract.

[126] In terms of the agreement and as matter of common fact, the first defendant has repaired Triesie's damaged ligament.

[127] It is not the plaintiff's case that the defendants did not properly repair Triesie's left torn ligament for the treatment of which the plaintiff was charged R4 955.86.

[128] There no bases to claim the refund on the basis that the first defendant has breached the agreement in other respects. The defendants have expended resources such as medication to treat Triesie's torn ligament and should not lose such expenses on the basis of breach of contract on other basis claimable under separate headings.

[129] There is no basis for the plaintiff to be refunded for the procedure performed

on Triesie's torn ligament, even if there may be other breaches in process of the performing medical procedure.

[130] The second claim is for breach of the agreement based on the right-hand side wound sustained by Triesie. The plaintiff's claim is that Triesie has become disfigured and can no longer serve the purpose of a show dog and this resulted in the loss of income in the form of possible shows, sponsorships and endorsements.

[131] The plaintiff's claim that he has lost possible shows, sponsorships and endorsements because Triesie has been disfigured is not sustainable. It is not clear what disfigurement has Triesie suffered, in what way and to what extent did that result in the loss of sponsorships and endorsements.

[132] The defendants contend that in the absence of expert witness evidence that the second defendants did not act like a reasonable vet and the plaintiff has suffered emotional damage, the plaintiff claim's based on emotional shock should not succeed.

[133] The plaintiff testified that Treisie's right- hand injuries affected him emotionally. He testified that the injuries drained him emotionally. He said he could not sleep at night as he was thinking about the injuries.

[134] The plaintiff had tears in his eyes as he testified and I do not think that was an act of pretence. The defendants do not dispute that to the plaintiff Triesie is his child.

[135] The plaintiff contends that Triesie has suffered pain and this affected him emotionally. This heading falls under what is generally referred to as general damages.

[136] Triesie's injuries are evidenced by the pictures on section 036 subpocket 2- pages 036-8 to 036-37 and the dates on which they are taken between the 1<sup>st</sup> March and the 15<sup>th</sup> May 2019. These pictures provide the picture of the pain suffered by

Triesie and given the relationship the plaintiff has with Triesie, the emotional shock is acceptable.

[137] The plaintiff has suffered emotional shock as result of right-hand injuries sustained by Triesie.

[138] There is no bases why the plaintiff should not be compensated for this emotional shock simply because he did not produce expert evidence to support this claim.

[139] The third claim is based on travelling and attendance expenses to and from the first defendant's clinic. The plaintiff contends that he would not have suffered these costs if Triesie had not sustained the right-hand side injuries.

[140] The legal position is that the plaintiff is entitled to be placed in the position he would have been had the breach of agreement not occurred. The plaintiff is entitled to proven damages related to taking Triesie to and from the first defendant's clinic to treat her right-hand side wound.

[141] The fourth and fifth claims are against the second defendant in her personal capacity. The concession that the second defendant was acting in employment capacity means that the second defendant is not liable in her personal capacity.

[142] The sixth claim is the alternative to the breach of contract. This is delictual claim.

[143] In the light of the successful claim based on contract and to the extent that the plaintiff has been successful, there is no need to say anything further about the plaintiff's delictual claim beyond what is stated above.

[144] The plaintiff contends that the defendants have contravened the provisions of the Animal Protection Act 71 of 1982, including section 2(1)( a ), (b), (f) and (r) .

[145] Section 2 of the Animal Protection Act 71 of 1982 criminalises the conduct set

out in this section.

[146] In these proceedings, the defendants are not facing criminal charges for this court to make the sought declaratory order.

[147] The plaintiff prays that the defendants be declared to have contravened the provisions of the Animal Protection Act 71 of 1982 and unfit to be in charge of any animal for a period of twelve months as provided in section 3(1)(c) of the Animal Protection Act 71 of 1982 .

[148] This is the declaratory relief which fails for the following stated reasons.

[149] The plaintiff does not refer to the provisions which empowers a court to make such a declaration.

[150] Section 3 (1) (c) of the Animal Protection Act 71 of 1982 empowers a criminal court to declare a criminal offender convicted under this Act to be declared to be unfit to own or be in charge of any animal for a specified period.

[151] The defendants have not been criminally convicted of the contravention of Animal Protection Act 71 of 1982.

[152] Section 31 of the Veterinary and Para-Veterinary Professions Act 19 of 1982 provides for the inquiry by the third defendant. Section 31(4) provides that whenever in the course of any proceedings before any court it appears to the court that there is prima facie proof of unprofessional, improper or disgraceful conduct on any part of a registered person the court shall direct that a copy of the record of such proceedings or such portion be transmitted to the third defendant.

[153] Declaratory relieves are governed by section 21(1)(c) of the Superior Courts Act 10 of 2013. In terms of this section, a high court may, in its discretion, and at the instance of any interested person, enquire into and determine any existing, future, or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination of such right or obligation. An

applicant who seeks declaratory relief must satisfy the court that he or she is a person interested in an existing, future or contingent right or obligation. If satisfied on that point, the court must decide whether the case is a proper one for the exercise of the discretion conferred on it. The question must be examined in those two stages.<sup>4</sup>

[154] The declaratory relief involves two-stages approach in considering whether or not to grant the relief: the court must be satisfied that the applicant has an interest in an existing, future or contingent right or obligation. At this stage the focus is only upon establishing that the necessary conditions precedent for the exercise of court's discretion exist. If the court is satisfied that the condition of such condition has been proven, it has to exercise the discretion by deciding either to refuse or grant the order sought. The consideration whether to grant the order constitute the second leg of the enquiry. The declaration is discretionary.<sup>5</sup>

[155] The plaintiff has not engaged himself in the enquiries required in the declaratory proceedings. The discretionary to make the sought declaratory does not arise.

[156] Matters concerning the defendants being declared to have contravened the provisions of the Animal Protection Act 71 of 1982 and /or the Veterinary and Para-Veterinary Professions Act 19 of 1982 are misconduct related.

[157] In this case, misconduct related matters are preserved for the third defendant in the first place. The courts have been cautioned to recognise their limitations that they are ordinarily not vested with skills and expertise required for matters reserved for specifically created tribunals and should adopt appropriate deference position

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<sup>4</sup> Pasiya & Others v Lithemba Mining (Pty) & Others (2023) ZASCA 19- par 46 and 47; Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd (2005) ZASCA 50; 2005(6) SA 205 (SCA) –par 17

<sup>5</sup> Competition Commission of South Africa v Hosken Consolidated Investment Limited & Another (2019) ZACC 2; 2019(4) par 80; JT Publishing (Pty) Ltd v Minister of Safety and Security (1996) ZACC 23; 1997(3) SA 514(CC); 1996(12) BCLR 1599; Mashisane v Mhlauli (2023) ZASCA 176-par 17; Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd (2005) ZASCA 50; (2005)(6) SA 205(SCA) – para 16 and 17

when invited to deal with such matters.<sup>6</sup> The courts are required to recognize their limitation.<sup>7</sup>

[158] Where the constitution or valid legislation has entrusted specific powers and function to a particular branch of government, courts may not usurp that power or function by making a decision of their own preference. The function of the court is not to make decisions reserved for or within the domain of other branches of government but to ensure that the concerned branch of government exercises that authority within the bounds of its authority. This will be in policy based issues.<sup>8</sup>

[159] Making prima facie finding referred to in section 31 of the Act should have the basis. This hearing was conduct to determine whether the plaintiff has proved its case against the defendants on the balance of probabilities and not to form any prima facie unprofessional conduct by the defendants to be referred to the third defendant. The proceedings against the third defendant for the relieves under section 31 of the Veterinary and Para-Veterinary Professional Act 19 of 1982 was by agreement withdrawn, but this does not prevent the plaintiff to proceed with misconduct proceedings if so advised. In any event, this Act allows the plaintiff to pursue alleged misconduct claim to be dealt with by the third defendant, again if so advised.

[160] Both the plaintiff and first defendant have obtained some level pf in their respective cases.

[161] Each party should pay its own costs.

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<sup>6</sup> Trencon Construction (Pty)Ltd v Industrial Development Corporation of SA Ltd & Another 2015(5) SA 245(CC); (2015) ZACC 22( Trengo) - par 90.

<sup>7</sup> Gauteng Gambling Board v Silverstar Development Ltd & Others 2005(4) SA 67(SCA); (2005) 2 ZASCA 19 (Gauteng Board) – par 29; Minister of Environmental Affairs & Others v Phambili Fisheries (Pty) Ltd: Minister of Environmental Affairs & Tourism & Others v Bato Star Fishing (Pty) Ltd 2003(6) SA 407(SCA) – par 47-50 (Phambili); Bato Star Fishing (Pty)Ltd v Minister of Environmental Affairs & Others 2004(4) SA 490(CC) ( Bato) at par 46-49.

<sup>8</sup> International Trade Administration Commission v SCAW SA 2012(4) SA 618(CC)

## **Order**

[162] The claim for the refund of R 4 955.86 fails and is dismissed.

[163] The claim for the alleged loss of income based on Triesie being a show dog and receiving sponsorships and endorsements fails and is dismissed.

[164] The claim for emotional shock succeeds and the first defendant is ordered to pay the proved damages.

[165] The claim for travelling and related costs succeeds and the first defendant is ordered to pay the proved loss.

[166] Each party is ordered to its own costs.

**LEDWABA LGP**  
**ACTING JUDGE OF THE HIGH COURT, PRETORIA**

Date of hearing: 17 February 2025

9-11 April 2025

Date of judgment: 10 July 2025

### **APPEARANCES:**

Counsels for Plaintiff: M Coetsee

Plaintiff's Attorneys: Elliot Attorneys

Counsels for First and Second Defendants : CR Dames

First and Second Defendants' Attorneys: Cheadle Thompson & Haysom Inc

C/O Kriek Wassenaar & Venter

Pretoria

Counsel for Third Defendant: No heads of arguments

Third Respondent's Attorneys: RIC Martins Attorneys  
Pretoria