

Case Note

Barking up the wrong tree – County Court of Victoria finds dog attack not sufficiently connected with Insured’s business

Victorian WorkCover Authority v A.T.S. Towing Service Pty Ltd (ACN 054 744 204) & Ors [2023] VCC 2010

Background

Aaron Butler (**the plaintiff**) sued Linkback (VIC) Pty Ltd (**the Insured**), ATS Touring Service (**ATS**) and Mr Steven Mavro, for injuries sustained in a dog attack on 4 April 2016.

The attack occurred on a property located at 380 Hume Highway (**the premises**). The premises were owned by the Insured. Part of the premises was leased to Dahlsens Buildings Centres Pty Ltd (**Dahlsens**), a company operating a hardware business. The remainder of the premises was occupied by ATS and another company called Truck Wreck Pty Ltd (**Truck Wreck**), under a “licence at will”.

The dog was purchased by the Insured as a guard dog for ATS and Truck Wreck. On 4 April 2016, the dog escaped the ATS/Truck Wreck land and ventured onto the highway, where the plaintiff was working. The plaintiff, being followed by the dog, entered the Dahlsens’ land, where he was attacked.

The end result was that the Insured’s negligent act or omission (failure to secure the dog) occurred on the ATS/Truck Wreck land, but the attack occurred on the Dahlsens’ land.

Insurance policy

The Insured held a general liability insurance policy with Certain Underwriters of Lloyd’s of London (Lloyd’s). Crucially, the policy schedule described the insured business as “Property Owner tenanted as Timber & Hardware Sales”.

The focus of the dispute in this case was whether the policy provided insurance coverage for the dog attack.

Ownership of ATS/Truck Wreck land not covered by policy

Lloyd’s argued the policy only covered the part of the premises leased by Dahlsens, being land tenanted as “Timber & Hardware Sales”. The Insured argued that the policy was intended to cover all land at the premises, including the land used by ATS/Truck Wreck.

The Court decided that the Insured was only covered for occurrences, for which it was liable as owner of the land leased to Dahlsens. The Court found there was no reason why the policy would limit the description of the Insured's business to land tenanted as timber and hardware sales, if the intention was to cover the entire premises. The Court also determined that there was no ambiguity in the description to warrant a deviation from its plain meaning.

Additionally, the Court noted that the principle of *contra proferentum* could not assist the Insured in this case, because the business description was suggested by the broker, as agent for the Insured.

Incidental guard dog services to Dahlsens not connected to Insured's business

The Insured then argued that, because the dog barked if someone entered the Dahlsens' land, the dog also provided guard dog services to Dahlsens. Therefore, the attack had the requisite connection to the Insured's business.

The Court determined that the attack was not in connection with the Insured's business. The incidental provision of guard dog services to Dahlsens was not enough to establish a connection between the attack and the Insured's business as property owner of the Dahlsens' land. The Court noted that there would have been a connection, if the cause of the dog's escape was the Insured's failure to maintain the fence separating the Dahlsens' land from the ATS/Truck Wreck land. However, in this case, the dog escaped the ATS/Truck Wreck land and subsequently entered the Dahlsens' land from the highway.

Therefore, the policy did not provide insurance coverage for the dog attack.

Implications

This case highlights the importance of establishing a connection between the Insured's liability and its business, as defined in the insurance policy. It was not enough that the attack occurred on the Dahlsens' land when, in fact, the Insured's liability was incurred in its capacity as owner of the ATS/Truck Wreck land. Importantly, the connection between the Insured's business and the liability incurred must be more than "incidental".

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