IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2012HCV04021

BETWEEN	**ALRICK KNIGHT**	**CLAIMANT**
AND	**V.&M. IMPORT & EXPORT COMPANY LIMITED**	**DEFENDANT**

Mr. Aon Stewart and Miss Ashley Ximines, instructed by Knight Junor Samuels for the claimant

Miss Laurel Gregg for the defendant

Heard : April 19, 2023, April 20, 2023, May 12, 2023, November 16, 2023, and January 30, 2026

IN OPEN COURT

Negligence - Personal Injury - Liability for dogs based on a breach of duty of care - Whether the defendant owed the claimant a duty of care in relation to dog(s) on its premises – Whether the claimant was a trespasser - quantum of damages Whether Reply contains new causes of action not pleaded in the particulars of claim-application to amend claim form and particulars of claim after close of claimant's case - CPR 8.9(1), 10.9

CORAM: JARRETT, J

[1] I must sincerely apologise, at the very outset, for the delay in delivering this decision. With a very heavy docket and unforeseen responsibilities and

circumstances, it was simply not possible to deliver this judgment sooner. Nevertheless, I take full responsibility for the delay and apologise to the parties and to counsel.

Introduction

[2] In its current iteration, this is a claim in which Alrick Knight (the claimant), alleges that he suffered injuries from being attacked by two pit bull dogs on August 29, 2010, when he lawfully visited premises of V & M Import & Export Company Limited (the defendant), at the invitation of its Transport Manager. He says that he suffered the dog bite injuries due to the defendant's negligence. The claimant's allegation is that the defendant breached the duty owed to him by failing to properly restrain and/or confine the dogs and by permitting them to run loose. The defendant denies the claim and says that the claimant was a trespasser on its property on August 29, 2010, when he was bitten by a dog placed there to secure the premises. The defendant also alleges that the claimant was contributory negligent in that he failed to take care of his own safety by ignoring signs on the property warning of the dog's presence.

[3] At the close of the evidence, I ordered the parties to file written closing submissions. I have carefully considered and am grateful for those filed by the defendant. No written closing submissions were filed by the claimant.

The claim

[4] In his particulars of claim, the claimant pleads that he is a maintenance contractor of Mandeville in the parish of Manchester, and that the defendant is a company with registered offices also in Manchester. On or about August 29, 2010, the claimant visited the defendant's premises to prepare a trailer for export at the invitation of the defendant's Transport Manager, Mr L. Goldbourne (Mr Goldbourne), who was employed to the defendant. On Mr Goldbourne's instructions, he proceeded to change the oil on the defendant's forklift and went to the gate of the defendant's premises to retrieve a bucket to do so. While still on

the defendant's premises, he heard footsteps, and upon turning around he was attacked by two vicious pitbull dogs. It is alleged that due to the defendant's negligence, the claimant sustained serious dog bite injuries to multiple areas of his body. It is further alleged that the defendant breached the duty owned to the claimant by failing to properly restrain and/or confine the dogs and by allowing them to run loose. The claimant pleads that as a result, he suffered personal injuries, trauma, pain and suffering.

[5] The claimant was born on September 19, 1955. The particulars of injuries pleaded are:

i. Deep 4 x 4 cm gaping wound to anteromedial aspect of right elbow with loss of muscle.

ii. Ragged wound to right upper lip with loss of tissue;

iii. Small swelling with abrasion to the left side of the forehead;

iv. 3cm linear abrasion to right chest wall and other small abrasions;

v. 2cm abrasion to right upper thigh;

vi. Multiple puncture wounds to anterior aspect of the right thigh;

vii. 5x4cm bite mark to the anterior aspect of the right thigh;

viii. Two (2) 1cm wounds to the medial aspect of left leg;

ix. 1cm laceration to the dorsum of the left 3rd finger;

x. Abrasions to right upper back; and

xi. Puncture wound to left thumb.

[6] Special damages are alleged to be $362,998.57, comprising the costs of prescription amounting to $5,998.57; the cost for a medical report of $1,000; loss of earnings of $320,000.00 and transportation costs of $36,000.00.

[7] As originally filed, there was a second defendant, Vincent Miller, against whom the claim was discontinued in June 2018. The allegation against Vincent Miller was that he was the director/owner of the defendant and that the dogs in question were owned by him and under his control. It was also alleged that Vincent Miller knew or should have known of the vicious propensities of the dogs and that he had a duty to restrain and/or confine them.

The defence

[8] In its defence, the defendant denies that on August 29, 2010, the claimant was lawfully on its premises to prepare a trailer for export at the invitation of Mr Goldbourne, and that Mr Goldbourne had instructed him to change the oil in its forklift. The defendant further denies that Mr Goldbourne was employed to it as Transportation Manager or that he was its employee. It is alleged that Mr Goldbourne was an independent contractor who was used by the defendant to provide trucking and/or haulage services to get its agricultural produce from its premises in Manchester, to shipping terminals in Kingston. Such services were only required during weekdays.

[9] It is further pleaded that the claimant trespassed on the defendant's premises and had no lawful business there. It is denied that the claimant went to retrieve a bucket to use in changing the oil in the forklift, and that that was when he was attacked by two pitbull dogs. There was only one pitbull dog on the premises, and it was fastened by a long leash at the back gate of the premises. On August 29, 2010, the defendant's premises was properly fenced and there were notices on the fence warning the public to: "beware of dogs". There were also notices restricting the public to certain parts of the premises. The claimant ignored the warnings and went into a restricted area where the "dog" was. The allegation that the defendant was

negligent is denied, and it is alleged that any injuries received by the claimant were due to his own reckless behaviour and his disregard for his own safety.

[10] It is pleaded in the alternative that the claimant was contributory negligent. The particulars of which are stated to be that he: a) failed to heed the warnings of the presence of "dogs"; b) failed to heed the warning restricting access to authorised persons only; c) entered the premises without authorisation or invitation from the defendant; d) failed to take any or any proper precautions or to take reasonable care to safeguard himself from attacks from the dog and: e) failed to heed the presence of the dog. It is pleaded further still, that with full knowledge of the risk or injury to himself, the claimant accepted such risk and is therefore estopped from making the claim. No admission is made to the particulars of injury and special damages and there is a denial that the claimant is entitled to any damages as claimed or at all.

The reply and amended pleadings

[11] The claimant filed a reply to the defence, in which it is reiterated that Mr Goldbourne was employed to the defendant; no or no adequate fencing and warning signs were on the defendant's premises; the premises were not safe, and the claimant did not appreciate that there was a risk associated with being there. He claims further that the defendant is not only negligent but in breach of its statutory duties pursuant to the **Occupiers Liability Act** and the **Dogs (Liability for Injuries By) Act**.

[12] At the close of the claimant's case on April 19, 2023, it was observed by the court that the reply contained allegations of breach of statutory duties which had not been previously pleaded in either the claim form or the particulars of claim. It was also observed that the claim was discontinued against a second defendant in June 2018, but the pleadings before the court did not reflect that fact. After a short adjournment, the claimant applied orally to amend his statement of case and presented the court with an amended Claim Form and Amended Particulars of

Claim, which had been filed on April 20, 2023, to include allegations of breach of duty under the Occupiers **Liability Act**, and under the **Dogs (Liability of Attack) Act.** The parties were given an opportunity to prepare written submissions in relation to these issues and the trial adjourned to facilitate those submissions.

[13] On November 16, 2023, in an oral judgment, I refused to allow the amended pleadings, struck out aspects of the reply which included the aforesaid new allegations that had not previously been pleaded, and ordered costs to the defendant. The reasons for my decision which were orally given on November 16, 2023, are summarised below.

[14] **CPR 8.7(1)(a)** stipulates that a claim from must include a short description of the nature of the claim. **CPR 8.9(1)** requires that a claimant must include in the claim form or in the particulars of claim, a statement of all the facts on which he relies. **CPR 8.9A** provides that a claimant may not rely on any allegation or factual argument not set out in the particulars of claim**,** but which could have been set out there, unless the court gives permission.

[15] **CPR 10.9 (1)** states that a claimant may file a reply within 14 days of service of the defence and **CPR 10.9(4)** stipulates that no further statement of case may be filed or served except in accordance with **CPR 18** which deals with ancillary claims, and **CPR 34,** which deals with requests for information.

[16] Under the CPR, a reply to a defence is optional. A claimant who does not file a reply is therefore not taken to admit matters raised in the defence. The fact that the CPR requires a claimant to set out in his claim form and particulars of claim, a statement of all the facts on which he relies, and makes filing a reply optional, with no further statement of case being allowed other than an ancillary claim or a request for information, lead me to the view, that all causes of actions must be included in the claim form or the particulars of claim and not in the reply. Any new claim or cause of action must be added by way of an amendment to the particulars of claim. Were it otherwise, it would be contrary to the overriding objective of

dealing with cases justly. If a claimant were allowed to add a new claim in his reply, it would make **CPR 8.7(1)(a)** and **8.9(1)** meaningless. A defendant would not be able to file a rejoinder, based on **CPR 10.9(4).** Furthermore, a claimant would be able to add a new claim to his pleadings without needing to amend his claim.

[17] In my view, paragraph 9 of the reply in responding to the allegation of contributory negligence made in the defence, not only denied the allegation but introduced for the first time, two new causes of action. One is a breach of duty under the **Occupiers Liability Act**, and the other is a breach of duty under **the Dogs (Liability for Injuries By) Act.** Neither of these breaches of duty were alleged in the claim form or the particulars of claim. These two new causes of action continued to be pleaded in paragraph 10 of the reply.

[18] The reply to contributory negligence ought to have been limited to a reply to the allegations raised in the defence. But instead, the claimant raised new allegations of the defendant breaching statutory duties. I therefore found that these pleadings in the reply were not permissible

[19] The amended claim form and amended particulars of claim, were filed by the claimant without the court's permission, at the close of the claimant's case. Counsel for the claimant, Miss Ximines conceded that if her oral application to amend the pleadings was to be granted, the defendant would be entitled to file an amended defence, and that the trial would necessarily be adjourned.

[20] The amendment sought to introduce an allegation that the defendant was in breach of the **Occupiers Liability Act** and the **Dogs (Liability for Attacks) Act.** It also sought to introduce an entirely new "Particulars of Negligence and/or Breach of Statutory Duty". Remarkably, the proposed amendment, relied on the **Dogs (Liability for Attacks) Act** which was passed into law on December 23, 2020, and which repealed the **Dogs (Liability for Injuries By) Act.** The obvious difficulty with this is that the **Dogs (Liability for Attacks) Act** was not law when the dog attack allegedly occurred on August 29, 2010, and there is nothing in that Act, on

a true construction of it, that suggests that parliament intended it to have retrospective effect. The 2020 legislation, therefore, could not be used as a basis to ground any amendment to the claim. Consequently, I refused the amendment to add a breach of duty under the **Dogs (Liability for Attacks) Act.**

[21] Amendments introducing new causes of action are permissible after the limitation period has expired if the new cause of action arises out of the same or substantially the same facts as those already pleaded. But, in considering whether to grant permission to amend, the court in the exercise of its discretion must consider the overriding objective, ordinary case management principles, as well as whether the amendment will cause any injustice to the defendant. (See for example, **Jamaica Railway Corporation v Mark Azan**).

[22] Counsel for the claimant has correctly argued that a claim for breach of the **Occupiers Liability Act** arises out of the same facts as those currently pleaded. However, to amend the claim at the point in the trial where the claimant has closed his case, where allowing the amendment would necessitate the defendant filing an amended defence, with perhaps even supplemental or additional witness statements, and result in an adjournment of the trial, would, in my view, cause prejudice to the defendant and result in the court's and the defendant's resources being wasted.

[23] The defendant has had to contend with this claim since 2012. The trial dates were vacated once before by order of Thomas J on November 30, 2018. This means the claim will continue to be like the Sword of Damocles over the defendant's head for a longer time yet. The claimant has been dilatory in his application to amend his claim. It ought to have been recognised long before the close of his case, that there were deficiencies with the pleadings. Not even the discontinuance against the 2nd defendant in June 2018, spurred the claimant into action. No evidence was presented to account for the claimant's dilatory conduct. When weighing the prejudice to the defendant, the delays on the part of the claimant, the effect of the amendment on the continuation and completion of the trial and the potential value

of the amendment to the claimant, I came down on the side of denying the amendment to include a breach of duty under the **Occupiers Liability Act**.

The evidence

The claimant

Alrick Knight

[24] The claimant's witness statement stood as his evidence in chief, and it was amplified with the court's permission. He is a mechanic and truck driver. According to him, on Friday August 27, 2010, Mr Goldbourne called him and he went that night to the defendant and helped with the packing of yams. The following Saturday night at 10:30 pm, Mr Goldbourne called again and asked him to assist with packing yams. He also said that the claimant's wife could come with him as she would likely get a job with the defendant. Sunday would be her training, and he would pick them up at 8:30 am on Sunday, August 29. The claimant said he understood from his conversation with Mr Goldbourne, that he would be required to pack yams along with other persons as well as change the oil in a forklift.

[25] According to the claimant on August 29, 2010, he brought his wife along with him to work with the defendant and that Mr Goldbourne picked them up from their house at 8:30 am and took them to the packing house located at the defendant. He says that he was inside packing yams with his wife and another worker called "Nine-Mile" when Mr Winston Miller joined them and helped with the packing. About 10 minutes later, Mr Goldbourne called and asked him if he was ready to change the oil in the forklift. He told Mr Goldbourne to let that stay until the following day as he was wearing new clothes, but Mr Goldbourne said it had to be done that day. He asked Mr Goldbourne what he was to drain the oil into, and he said he was to look by the back gate and use one of the empty buckets.

[26] When he went to the back gate, he saw a dog chain on the gate, he then heard something coming behind him, and when he turned around, he saw two pit bull

dogs. One was black and white in colour, and the other was only white. Mr Goldbourne told him that the dogs are usually chained under the container which is on the compound. The dogs jumped on him, the smaller one grabbed his foot, while the bigger one grabbed his lip. He was bitten by the dogs and fought back. Shorty, the dog's handler who was using a power wash a few meters away, ran to his rescue. There were no warning signs when he got bitten by the dogs. However, a few days after the incident, the defendant put up warning signs.

[27] Immediately after the incident, Mr Goldbourne and his wife placed him inside Mr Goldbourne's 6-wheel truck and he was taken to the Mandeville Regional Hospital. At the hospital he received stitches, 4 rabies injections, a prescription for medication and a letter to take to the Chest Hospital to do surgery on his mouth. He went home in a lot of pain which made it impossible for him to sleep. He had to eat soft foods for about 3 weeks due to the injury to his lips and gums and the stitches in his mouth. Due to the medications he was taking, he could not have alcohol and drink with his friends. He visited the Chest Hospital to see Dr Logan every Wednesday for about 2 months. These visits required him to use taxi services. He is now unable to rest his hand for more than 5 minutes without feeling numbness and pain. He has medical reports from Dr. Nadine Williams (Dr Williams) and Dr Leighton Logan (Dr Logan), and he incurred transportation expenses totalling $ 41,000.00; prescription expenses totalling $ 5,998.00, and expenses of $1,000.00 from the Mandeville Regional Hospital.

[28] Commenting on the evidence of Mr Goldbourne, the claimant said he had no reason to take breakfast to his wife as they both had breakfast at home and she was in Mr Goldbourne's truck along with him on the morning of August 29, 2010. When they arrived at the defendant factory, it was not Mr Goldbourne who opened the gate but Mr Barrow, and Mr Goldbourne drove in and parked at the front of the building, then they all came out of his vehicle and went into the factory. The dogs were not chained to the back gate, he went to the gate, looked through it and saw debris, empty paint pans and pieces of board. There was a piece of chain on the gate with a hook through the lock tower. There was no padlock on the gate and no

dog tied to the gate. He said that a lock tower is: “the circle the lock would go through”. It was Shorty who saw what happened, ran towards him and shouted the dogs’ name. He said “Sheila”, the small one ran off, while Shorty hung unto the bigger one. He saw his wife running towards him. Shortly afterwards, he saw the truck that Mr Goldbourne drives, coming towards him. He was at the back gate looking around for something to drain the oil in, as that is what Mr Goldbourne had told him to do, and that is what he told Mr Goldbourne when they were on the way to the hospital.

[29] According to the claimant, Mr Goldbourne had a blue 10-ton jack in his truck, called a bottle jack which could lift the forklift. The engine for the forklift holds only 4 quarts, and he was looking for a gallon size bucket, in which to the drain the oil.

[30] Commenting on the evidence of Mr Winston Miller, the claimant said Mr Miller was packing yams in the warehouse when Mr Goldbourne called him to change the oil in the forklift. He was “basically helping” Mr Goldbourne pack yams which was for the benefit of the defendant. He was to be paid only for changing the oil in the forklift. On August 27, 2010, he was on the premises helping Mr Miller and his employees pack yams. On August 29, 2010, he was in the restricted area at the request of Mr Goldbourne, an agent of the defendant. He was not a trespasser, and he saw no warning signs on that day.

[31] On cross examination, the claimant said that he did not really want to change the oil on August 29, 2010, as he was wearing a new shirt. He said the forklift was a small one and not as heavy as a car, he could lift it with a jack and drain the oil from beneath it. He said Mr Goldbourne had not asked him before that day, to change the oil in the forklift. When he went to look for a bucket to change the oil, he saw the electrician working on the forklift. He admitted that he had not seen Mr Goldbourne’s jack that day, but says it is kept in Mr Goldbourne’s truck, but he had not seen it, as he was bitten by the dogs and had not: “gotten to that point yet”.

[32] On further cross examination, the claimant said that there were four of them packing yams that day: Nine-Mile, Mr Barrows, he and his wife. Mr Barrows was showing his wife how to pack the yams. Mr Miller came afterwards and Mr Barrows went outside. He said he had been on the premises only once before and that was the previous Friday and, on that day, he stayed in the "front section" of the packing house. He was not aware that dogs were on the premises and that it was on his way to the hospital that Mr Goldbourne told him that the dogs are usually chained under the container. He did not see the dogs under the container and did not see any dogs on the premises that day. He saw no sign warning of dogs and did not see a chain for dogs on the gate for the 2nd section. All he saw was a piece of chain about 24 inches long with a hook on it where the lock should be. When he was reminded by cross examining counsel Miss Gregg, that in his witness statement he said he saw a dog chain on the gate, he said it was a piece of a dog chain that he saw. When asked whether having seen the chain, this would have alerted him to the presence of a dog, the claimant said he had not seen any dog on the premises since he got there, and so he thought the chain was securing the gate. He said that Mr Miller gave him $6,000.00 to pay National Chest Hospital

Sandra Knight

[33] Sandra Knight (Mrs Knight) is the claimant's wife. Her witness statement also stood as her evidence in chief and was amplified with the court's permission. She went to the defendant's premises on August 29, 2010. Mr Goldbourne picked her up, along with her husband, and took them there. When they got there, they waited until Mr Barrows came and opened the gate. Mr Goldbourne then drove them in and parked the vehicle, after which all of them got out of the vehicle. Mr Barrows, the supervisor responsible for the packing of goods, allowed Mr Goldbourne, Nine-Mile, her husband and herself to begin packing. That was when she learnt to pack the yams with saw dust and to put them in the pallet. Mr Barrows was the one teaching her.

[34] She went outside for some water to drink and while there, she saw Mr Goldbourne heading towards the company van. Based on what he told her, she understood that her husband had been attacked by dogs. She saw her husband bleeding, with blood everywhere, and she could see his ligaments coming out of his hand. Mr Goldbourne helped her put her husband in the truck and they rushed him to the hospital. After treatment at the Mandeville Regional Hospital, he was transferred to the National Chest Hospital for plastic surgery to be done on his mouth. The following morning on her way to work, she got a lift from Mr Miller who told her that her husband was to go to Christiana where he has a doctor. She said she refused that suggestion and asked him for taxi fare to take her husband to the National Chest Hospital. Mr Miller gave her $6,000.00, and at some time later, she received a further $6,000.00 from him. After he gave her the second $6,000.00, he started hiding from them.

[35] According to Mrs Knight, for several weeks she had to bathe her husband and when he initially got injured, she had to tidy him due to the pain and the wounds that he had. Her husband was unable to wear shorts after the incident due to his scars. He lost a tooth and this has affected his appearance, self-esteem and his eating.

[36] Commenting on Mr Goldbourne's witness statement, Mrs Knight denied that she was working for the defendant prior to August 29, 2010. According to her, there was no sign on the defendant's premises warning of the presence of dogs. She also denied that Mr Goldbourne parked the vehicle behind the warehouse. She said it was parked at the front.

[37] In commenting on the witness statement of Mr Miller, Mrs Knight said that he was packing yams on Sunday August 29, 2010. She said that Mr Goldbourne came and called her husband, and he went to him, leaving her and Mr Miller in the factory. Mr Miller was responsible for weighing as no ordinary person can do that. According to her, Mr Goldbourne promised her work and he gave her work. He is part of the defendant company. He came, picked them up, Mr Barrows let them in,

and this must have been authorised. After her husband got bitten up, she went back to the defendant to work for about two to three weeks.

[38] On cross examination, Mrs Knight said she did not see any sign warning of the presence of dogs. The sign she saw said “No unauthorised person” and that was on the fence when you go inside.

The medical evidence

[39] Dr William’s medical report is dated April 26, 2019. She was the doctor at the Mandeville Reginal Hospital who treated the claimant on August 29, 2010. The particulars of injuries pleaded in the claim and referred to in paragraph 5 of this judgment, are those outlined by Dr Williams in her report. She diagnosed the claimant with multiple injuries to face, upper and lower limbs and chest, secondary to dog bites. Medications administered were tetanus toxoid, as a prophylaxis against tetanus, Voltaren for pain, and the antibiotic, Augmentin as a prophylaxis against infection. She states that the claimant’s multiple wounds were cleaned, sutured and dressed.

[40] In terms of his prognosis, Dr Williams reports that the claimant was discharged home on additional antibiotics and pain medications and was referred to the Plastic Surgery Clinic at the National Chest Hospital for further management of “the ragged wound to the upper lip, as it could not be closed due to the loss of tissue. She reports further, that the claimant was to receive daily dressing of the mouth wound in the interim, along with the regular dressing of his other wounds.

[41] Dr Logan is a consultant, plastic reconstructive surgeon. In his report dated April 17, 2019, he says that he examined the claimant on September 13, 2018. The claimant’s antecedent history being that he was bitten by “a pit-bulldog” on August 28, 2010, and received emergency care at the Mandeville Regional Hospital. He reports that the injuries noted were extensive and there were “irregular injuries to the right upper lip and the medial epicondyle region of the right elbow”, for which reconstructive surgery was required. Surgery was performed at the National Chest

Hospital and the claimant's recovery uneventful. At the time of the report, Dr Logan says there is literally no visible scarring on the upper lip and there is minimal scaring on the right elbow.

The defendant

Winston Miller (Mr Miller)

[42] Mr Miller in his witness statement which stood as his evidence in chief, said he is a businessman of Spur Tree District in the parish of Manchester. He said that the defendant is a limited liability company which conducts business in Williamsfield in the parish. He, and his two daughters were its directors. In 2010, the defendant exported yams to the United States of America. It employed about 30 temporary workers who work two to three days most weeks. The work includes washing the yams with chemicals and boxing them for export. The defendant contracted haulage contractors to take the finished product to Kingston for fumigation and export.

[43] The defendant's Williamsfield premises is about five and a half acres in size and is divided into three sections. The first section is about a quarter acre and there is a building to the right with two offices, a reception area and a bathroom. Parking and the entry to the front of the warehouse are in this section. A fence made of iron mesh and aluminium sheeting separates the first section from the second section. On the fence is a gate for vehicular traffic and one beside it for pedestrians. This fence extends from the perimeter fence to the side of the warehouse. Access to the warehouse is by a grilled glass door or through a large opening into the warehouse, which is protected by a shutter and a large, meshed gate. The warehouse and the "shed like area" where the washing and drying of yams take place, is in the second section which is about two acres in size. This section is really the working area on the premises. At the back of this section near the gate, there was a metal container which was positioned on blocks, thus creating a space underneath it.

[44] Mr Miller said that the third section of the premises is divided from the second section by a fence made of aluminium sheeting and iron mesh and entry is gained through a gate and a door. This section is about three and a quarter acres in size, and is an empty lot used to store steel, sand, cement, new and used lumber, new and used batteries, new and used wheels, truck rims, two air compressors, two trailer heads and two box body trucks. There is about an eight-foot perimeter fence around the entire property, and to enter the premises, one must go through a huge iron gate of about ten feet high at the front. A sign warning of dogs is on the perimeter fence.

[45] According to Mr Miller, all visitors entering the premises are required to go to the reception area and are not permitted into the second section. He said that there is a sign clearly posted on the aluminium fence which states that no unauthorised persons are permitted beyond that point, and there is also a sign warning of dogs. To enter this section, permission is required from the office or from him, if he is there, and on August 29, 2010, he was the only person capable of giving permission and neither the claimant nor anyone else asked him for permission.

[46] Persons who operate the forklift are employees of the defendant and no one else. The oil is rarely changed and when that is to be done, an employee of the defendant would take it to a mechanical shop where there is a pit. The oil chamber under the bottom of the forklift can only be accessed from underneath, using a pit. Haulage contractors used by the defendant are independent contractors. At the time, the main contractor was Mr Goldbourne, who got drivers to deliver the goods. He had no authority over the defendant's property, could not ask anyone to change the oil in the forklift or invite persons onto the defendant's premises to prepare trailer heads for export. The defendant's business operates from Mondays to Fridays, the workers are there during those days, and if necessary, work overtime on the weekends.

[47] On Sunday August 29, 2010, the defendant was not open for business, but there were about ten workers on the premises making preparation for the arrival of

deliveries that were expected on Monday morning. They were getting old yams boxed and put away and there was to be a shipment on Thursday. He was in the warehouse with the workers. A guard dog was on a long leash and was tied to the back gate, which divided the second section from the third section. Shorty was the dog's handler, and he was on the premises. The dog was a fairly new addition to the premises. Where the dog was located, no one would have any cause to go there. The dog was needed as additional security, because since 2008, the defendant had suffered from a spate of thefts on the weekends.

[48] While he was in the warehouse, he saw a pickup truck racing at a high speed from where the dog was and drove through the second gate. He was standing at the back of the warehouse and recognised the truck and Mr Goldbourne. He was not expecting Mr Goldbourne on the premises. He was baffled that the claimant was on the premises and particularly that he was in the restricted area. The claimant was not a worker or contractor for the defendant; he had no business there and was not permitted in the restricted area. He trespassed on the premises of the defendant and chose to ignore the warning advising of the "dogs" and not to proceed beyond the signs and into the restricted area.

[49] On cross examination Mr Miller denied that there were two dogs on the premises. He said there was only one and it was securing the two rear sections of the property. He denied that the dog had access to the two rear sections. He said the dog had a leash which was about 5 feet long, and the sign warning of the dog, could be seen by anyone who enters through the first gate. He denied seeing the claimant on the premises on August 29, 2010. When asked whether he had seen Mr Goldbourne on the premises on August 29, 2010, he said he did not. When he was shown his witness statement in which he said that he had recognised Mr Goldbourne racing in a pickup truck from the gate where the dog was, he admitted to seeing Mr Goldbourne on that day. When it was suggested to him that he was not being truthful when he first said he had not seen Mr Goldbourne, Mr Miller said he did not see Mr Goldbourne but recognised his truck.

[50] Mr Miller admitted that Mrs Knight was working in the warehouse on August 29, 2010, but said that from his recollection, that was not her first day. When asked if Mr Goldbourne was head of transportation at the defendant company, he answered "yes". He admitted that it was Mr Goldbourne's responsibility to get drivers for trailers and that he would not need his authority to have third parties access the property. Mr Miller said however, that Mr Goldbourne did not have the authority to direct staff to change the oil in the forklift and did not have the authority to ask the claimant to do so. He admitted to providing financial assistance to the claimant after the dog bite incident on the defendant's property. He could not remember whether Mrs Knight was already on the premises when he arrived on August 29, 2010, but said that he is the person, who always accesses the property first, and opens the gate, the warehouse and the office. According to him, although Mr Goldbourne has a key, that key does not provide access to the warehouse and the office. He denied that on August 29,2010, he assisted the claimant and his wife with packing yams

Leighton Goldbourne (Mr Goldbourne)

[51] Mr Goldbourne's witness statement, as redacted due to portions of it being inadmissible, stood as his evidence in chief. He says in this witness statement that he is a contractor who employs drivers to drive trailers for his clients. He has known the claimant for twenty years, whom, he says, works: "on and off" as a truck driver: "driving for other people". He says that on Sunday, August 29, 2010, he was driving a pickup van along the Winston Jones Highway in Manchester, between 9am and 10am, when he saw the claimant walking along the highway. The claimant waved him down, said he was going to the factory to give his wife breakfast, and as he was also going to the factory, he offered him a ride. According to Mr Goldbourne, the claimant had a scandal bag in his hand.

[52] When he got to the defendant's premises, he opened the front gate with a key, given to him by Mr Miller to facilitate taking out trailers in the early hours of the morning to transport yams into Kingston. He did not have a key for anywhere else

on the premises. According to him, the defendant is usually closed on weekends, but he: “believe[s] that that weekend some overtime work was going on inside the warehouse”. He opened the gate and drove in and stopped at the front of the premises and let the claimant out of the van so he could give his wife breakfast. He says there is a fence separating the front of the premises from the middle of the premises, which one cannot see through. There is a gate on this fence for vehicles and a door for persons to walk through. There was also a sign which said: “beware of dogs”, and another which said: “no unauthorised persons beyond this point”.

[53] Mr Goldbourne said he parked the van behind the warehouse and started talking to Shorty, the janitor and dog handler, who was power washing the ground. According to him, there was a pit-bull beneath the container, at the bottom of this section of the premises. After about an hour, he heard a dog bark from the back of the premises. He looked in the direction of the barking dog and saw the claimant fighting with the chained dog tied to the fence which separated the section of the premises he was in, from the last section. The dog was tied to the fence by a padlock which was also used to close the gate. There was a container on blocks, underneath which, the dog used as his house. He jumped into his van with Shorty and drove to where the claimant was. Shorty parted the claimant and the dog, and he helped the claimant from off the ground and placed him in his van. He asked the claimant what he was doing down there, and he replied: “looking around”. He stopped at the warehouse, picked up the claimant’s wife and went to the Mandeville Regional Hospital. He paid the prescription bill of $8,000.00 and dropped the claimant home.

[54] According to Mr Goldbourne, on August 29, 2010, he did not ask the claimant to accompany him to the defendant’s premises to prepare a trailer for export. There was no trailer going out the Monday morning, and he has no business giving instructions to change the oil in the forklift. Furthermore, there is no facility on the premises to change oil, and it is impossible to do so with a bucket. According to

him he was shocked to see the claimant in the restricted area and does not know how he got there.

[55] When asked on cross examination whether he saw anyone at the gate when he arrived at the defendant's premises, Mr Goldbourne said no he did not, and that when he got to the gate, he did not see anybody until he: "went inside". He said that a few ladies were inside. When asked if anybody else was inside he said: " not that I know of, cause I didn't go inside". When asked if he is an employee of the defendant, as head of transport, he said: "yes". He said when he arrived at the front, he left the claimant there and proceeded to the second section of the premises. When asked the question: "given that Mr Knight got access to the property through you, did you ensure that he left?". Mr Goldbourne answered: "No". He said his purpose for being at the defendant on that day was to move the trailer from where it was parked.

[56] Mr Goldbourne said he did not see Mr Miller that day as he only spent one hour there and had to wait until Shorty had finished power washing the yard before he moved the trailer. According to him, during that time, he was sitting at the back of the warehouse, which is in the second section, and would have seen persons entering that section from where he was seated. He said the dog was at the bottom of that second section, about 300 meters from the back of the warehouse. The following exchange then took place between cross examining counsel and Mr Goldbourne:

> Q: Within the hour you waited on the property. Alrick Knight entered the second section and was bitten by the dog at the bottom of the property?
>
> A: Yes
>
> Q: You never told Alrick Knight to leave the property?
>
> A: No, cause I leave him at the car park.

Q: Earlier you said if anyone were to enter the second section …you would have seen them if they were there.

A: In the warehouse.

Q: No. I asked you based on where you were sitting at the back of the warehouse and if anybody wanted to enter the second section they would have to pass you.

A: Yes.

Q: Therefore, Alrick Knight would have passed you?

A: Yes.

[57] Mr Goldbourne denied that he owns a blue 10-ton jack. He said he owns a jack at his garage but not at the defendant. In answer to a question from the court, he said he did not see the claimant enter the second section of the premises.

Analysis and discussion

[58] At common law, there are special rules relating to liability for animals which place them into two categories: *mansuetae naturae,* or those tame by nature and, *ferae naturae*, those wild by nature. In relation to the former, liability arises under the *scienter* rule, where the animal had a known vicious propensity and the owner was aware of this. In relation to the latter, the owner is held strictly liable for any damage the animal causes due to its dangerous nature. However, neither the **Dogs (Liability for Injuries By) Act** (which was the law at the time the incident in this case occurred), nor these special rules relating to liability for animals, resulted in the exclusion of the common law tort of negligence, or any other tort.

[59] In **Winfield and Jolowicz on Tort 4th Edition,** at page 455, it is said that:

> "At common law a person might be liable for damage caused by an animal on one or more of three distinct grounds, namely, ordinary liability in tort, liability under the *scienter* rule and liability for cattle trespass."

[60] With respect to the liability in negligence, in **Fardon v Harcourt – Rivington (1932) 146 L.T 391 and 392,** Lord Atkin said this:

> "Quite apart from the liability imposed upon the owner of animals or the person having control of them by reason of knowledge of their propensities, there is the ordinary duty of a person to take care either that his animal or his chattel is not put to such use as is likely to injure his neighbour – the ordinary duty to take care in the cases put upon negligence".

[61] As the authors of **Markesinis and Deakin's Tort Law, 7th Edition**, put it, the special rules relating to liability for animals, did not affect the duty of the owner of an animal to take care not only when doing something with the animal but also allowing it to be in such a place as to give rise to a foreseeable risk.

[62] **Fardon v Harcourt – Rivington** was a case in which a dog left inside a parked car, excitedly broke the back glass pane of the motor vehicle in which it was left by the owner, causing injury to the eye of a passerby. The trial judge found the owner of the dog liable in negligence. This decision was overturned by the Court of Appeal, and on appeal to the House of Lords, the appeal was dismissed. The following dicta of Lord Dunedin, at page 83 of his judgment is instructive:

> "…if you negligently allow something which may become dangerous to be in a position to which the public may have access, without taking any precaution against the thing becoming dangerous, you are then liable for the consequences. The root of this liability is negligence, and what is negligence depends on the facts with which you have to deal. **If the possibility of the danger emerging is reasonably apparent, then to take no precautions is negligence; but if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a**

> **reasonable man, then there is no negligence in not having taken extraordinary precautions.**
>
> The danger we have to deal with in this case is the danger of a piece of glass being knocked by a dog out of the window of a car parked close to the pavement, and being projected so as to hurt a pedestrian. Given that a dog left for some time in a motor car may bark and jump about, would any person expect that in jumping about he would break a small window with a blow directed at such an angle as to project a fragment of the glass into the face of a passer-by on the pavement? This is such an extremely unlikely event that I do not think any man could be convicted of negligence if he did not take into account the possibility of its occurrence and provide against it either by not leaving the dog in the car or by tying it up so that it could not reach the window. **In other words, people must guard against reasonable probabilities, but they are not bound to guard against fantastic possibilities."** [Emphasis added]

[63] The present claim is one in negligence, premised on a breach of duty, which is distinct from the *scienter* rule and cattle trespass. Counsel for the defendant Miss Gregg, is therefore not on solid ground when she argues in her written closing submissions, that to succeed, the claimant must satisfy the scienter rule as the dog(s) in question fell within the category of "*mansuetae naturae*".

[64] It seems to me that to succeed, the claimant must prove on a balance of probabilities that on August 29, 2010:

a) the defendant was the owner of the dogs;

b) he was lawfully on the defendant's premises;

c) the defendant owed him a duty of care to ensure his safety while on its premises by making certain that the dogs were secured and would not cause him injury;

d) the defendant breached the duty owed to the claimant by failing to properly secure the dogs, and;

e) due to the defendant's failure to keep the dogs secure, he suffered loss and injury.

I will deal with each of these elements in turn.

Was the defendant the owner of the dog(s)?

[65] The claimant and his wife say that there were two pit bull dogs on the defendant's premises on August 29, 2010. The defendant's witnesses say that there was only one. The defendant does not deny that the pit bull dog it says was on its premises, is owned by it. It takes the very pragmatic position in its written closing submissions, that "whichever way one looks at the evidence, whether there is one or two dogs, the evidence is that the [d]efendant's dog was a part of the attack". I find the evidence of the claimant on this issue to be credible and convincing. He was very detailed in his description of the two dogs. He said "Sheila" was the name Shorty called out and the smaller dog ran away while Shorty hung onto the bigger one. He described one dog as being black and white in colour, and the other as being solely white. It is notable that the defendant's pleadings do not consistently allege that there was only one dog. In some instances, the defence makes reference to a "dog" while in others to "dogs". No attempt was made to explain this inconsistency. Furthermore, Mr Miller in his own witness statement, spoke of the claimant ignoring the sign, warning of the "dogs".

[66] Although the two medical reports relied on by the claimant say that the claimant gave a history of being bitten by "a pit bull dog", I believe that the nature and extent of the claimant's injuries, described by Dr Logan as "extensive", are consistent with the claimant's evidence that he was attacked by two and not one dog. The claimant gave evidence, for example, that the smaller dog grabbed his foot while the bigger one grabbed his lip. The medical report of Dr Williams describes a ragged wound to the right upper lip with loss of tissue and multiple injuries to his upper and lower

limbs, chest and his face. I am satisfied and find, on a balance of probabilities, that these injuries were caused by an attack on the claimant by two and not one dog.

[67] For all the foregoing reasons therefore, I find on a balance of probabilities that there were in fact two pit bull dogs on the defendant's premises on August 29, 2010, and that they were owned by the defendant.

Was the claimant lawfully on the defendant's premises?

[68] As has been seen, the defendant in its defence alleges that Mr Goldbourne was an independent contractor, and the claimant's allegation that he was the defendant's Transport Manager was expressly denied. Mr Miller in his witness statement said Mr Goldbourne had no authority over the defendant's property and could not invite persons onto the premises to prepare trailer heads for export. Yet, his evidence on cross examination was that Mr Goldbourne was the defendant's Transport Manager, and this was corroborated by Mr Goldbourne himself, when he too was cross-examined. I therefore have no difficulty in finding that Mr Goldbourne was indeed the defendant's Transport Manager.

[69] Mr Goldbourne's evidence is that on the morning of Sunday, August 29, 2010, he picked up the claimant on the highway and gave him a lift to the defendant's premises (where he was also heading), so that he could bring breakfast for his wife who was working there that day. He said he left the claimant at the front of the defendant's premises, but what he does not say is how the claimant would get access to his wife to deliver the breakfast to her. This is significant, because on the evidence of both Mr Goldbourne and Mr Miller, entry into the second section of the defendant's premises was restricted to authorised persons only.

[70] There is no evidence from the defendant, that the claimant's wife was in the front or first section of the defendant's premises when Mr Goldbourne and the claimant, arrived that morning. Therefore if, as the defendant contends, the claimant had no business on the premises and was a trespasser, and that the second section was a restricted area, someone would have had to call the claimant's wife so that she

could go to the first section to collect her breakfast from the claimant. There is no evidence that this was done. How could the claimant have left the first section of the premises, and enter the restricted second section, without being authorised to do so? Based on Mr Miller's evidence, on August 29, 2010, he was the only person who could have given permission to enter the restricted area.

[71] Mr Goldbourne said he left the claimant in the front and entered the second section. It is recalled that Mr Miller's evidence is that Mr Goldbourne had no keys for the second section. It means therefore, based on the evidence of Mr Miller, that he (Mr Miller), was the person who would have had to let Mr Goldbourne, the claimant and his wife into the second, restricted section. I, therefore, find it remarkable that Mr Miller proclaimed on cross examination, that he did not see Mr Goldbourne on the premises on August 29, 2010, but when pressed, was prepared only to say, that he recognised Mr Goldbourne's vehicle racing from the back of the second section.

[72] Mr Goldbourne's evidence is that where he sat in the warehouse, he would have seen anyone who entered the restricted second section, but he contends that he did not see the claimant. It is, however, not disputed that the claimant was in the restricted second section. Mr Goldbourne admitted that when he saw the claimant in this restricted area, he did not tell him to leave. This begs the question why not? If he left the claimant in the front, and the claimant had no business in the restricted area, as the Transportation Manager, why did he not insist that the claimant leave the restricted area? In my view, the only probable reason he did not ask the claimant to leave is because he was authorised to be there and he was let into that section by Mr Miller.

[73] According to Mr Miller, the defendant was receiving deliveries the following Monday and needed to pack up old yams as there was a shipment the following Thursday. Mr Miller's evidence on cross examination was that Mr Goldbourne did not need his authority to invite third parties unto the defendant's premises. It is not disputed that persons were on the defendant's premises on Sunday, August 29,

2010, assisting with packing up old yams in preparation for deliveries on Monday. The claimant's evidence is that he was asked by Mr Goldbourne to assist with the packing of yams on Sunday, August 29, 2010. It is not disputed that the claimant was indeed on the defendant's premise on August 29, 2010, and travelled there in Mr Goldbourne's motor vehicle. I find the claimant to be a credible witness. Miss Gregg argues that packing yams was not the claimant's line of business, however in my view, it need not be. His evidence was that he was asked to assist with the process. Whether these old yams were to be placed in a trailer for export, or were being washed and packed only, I find, on a balance of probabilities that the claimant was invited to the defendant's premises by Mr Goldbourne and that on August 29, 2010, he was allowed into the restricted second section of the premises by Mr Miller, in order to assist with one, or all of the abovementioned tasks.

[74] I also find on a balance of probabilities, that Mr Goldbourne asked the claimant to change the oil in the defendant's forklift. I disagree with Miss Gregg's submission that the fact that the claimant wore a new shirt to the premises on Sunday, August 29, 2010, ought to discredit his evidence that he was asked by Mr Goldbourne to perform this task as well as packing yams. In my view, the claimant was candid enough at trial to say, on that day, he did not want to change the oil in the forklift, and he told Mr Goldbourne to leave that task for the following Monday, but Mr Goldbourne insisted that it needed to be done. This, to my mind, is not inconsistent with the claimant knowing since the Friday, that Mr Goldbourne wanted him to change the oil in the forklift on Sunday, and his evidence that this was the only task for which he would be paid. It seems to me, from his evidence, that, come Sunday, the claimant simply did not want to perform that task, knowing full well, that this was the only bit of the work for which he would be paid that day. Furthermore, packing and/or washing yams need not necessarily soil the claimant's clothes as changing oil in a forklift would.

[75] There is no evidence that the claimant did not know how to change the oil in a forklift. He is a truck driver and mechanic. He described how changing the oil could be done without the need for a pit. As a truck driver and mechanic it is probable

that he knew just how to do so. Mr Goldbourne knew him for approximately twenty years. In my view, it is more probable than not that he would have known whether the claimant could do such a task. The claimant said there was a jack in Mr Goldbourne's truck. Mr Goldbourne said he had a jack, but not the blue 10-ton jack which the claimant described. He also said that on August 29, 2010, that jack was not in his van but was in his garage. I have found the claimant to be a credible witness, and I prefer his evidence to that of Mr Goldbourne and Mr Miller on this issue. It seems to me to be rather convenient for Mr Goldbourne to say he has a jack, but it is not the one the claimant describes and it was not in his van on the day in question but in his garage. As the owner of a van, it seems improbable that Mr Goldbourne would be driving it without the jack in it, in the event for example, that he needed it to change a flat tyre. He gave no evidence explaining how it was, that his jack happened to be in his garage, and not in his van, on August 29, 2010. Furthermore, the claimant's evidence that an electrician was working on the forklift was not challenged. It seems to me to be a reasonable inference to make, that since an electrician was working on the forklift, changing the oil was necessary, and that is why there was an insistence by Mr Goldbourne that it had to be done that day. Having regard to the evidence, I find on a balance of probabilities that there was a jack which Mr Goldbourne had in his van on August 29, 2010, which could have been used to facilitate the oil change, and that Mr Goldbourne asked the claimant to change the oil in the forklift.

[76] For all the foregoing reasons, I find that on August 29, 2010, the claimant was lawfully on the defendant's premises, and specifically, the second restricted area, and was not a trespasser.

Did the defendant owe the claimant a duty of care to ensure his safety while on its premises by making certain that the dogs were secured and would not cause him injury?

[77] It is a trite observation that the duty of care in the tort of negligence is based on the "neighbour principle". Lord Atkin famously said in **Donoghue v Stevenson [1932] AC 562,** that one must take reasonable care to avoid acts or omissions

which it can reasonably foresee would injure persons who are closely and directly affected by those acts or omissions, and therefore those persons ought to be in one's reasonable contemplation.[1]

[78] On Mr Miller's evidence, the defendant had been the victim of thieves in the past and had acquired a guard dog to deter any further theft. His evidence is that the dog was kept in the second section under a container and tied to the gate for the third section, by a 5-foot-long chain and a padlock, which also locked the gate. I have found that there were in fact two pit bull dogs on the defendant's premises on August 29, 2010. In my view, since these dogs were used as guard dogs and intended to be added security against thieves, it was clearly reasonably foreseeable that if they were not kept secured on the defendant's premises, they would likely cause harm and injury to persons, lawfully on those premises.

[79] Having found that on August 29, 2010, the claimant was on the defendant's premises lawfully by invitation of its Transport Manager, Mr Goldbourne, I further find that the defendant had a duty to ensure that the claimant was safe while there, and ought to have contemplated that since the claimant was invited onto the second restricted section where the pitbull dogs were, he would likely be injured if these dogs were not properly secured and kept out of his reach . Borrowing from the language of Lord Dunedin in **Fardon v Harcourt-Rivington**, the possibility of danger emerging was reasonably apparent and not a fantastic possibility.

Did the defendant breach the duty owned to the claimant by failing to properly secure the dogs, resulting in them being loose?

[80] Mr Miller's evidence is that the guard dog was on a 5-foot-long leash and tied to the back gate dividing the third and second sections of the defendant's property. Oddly enough, he denied in cross examination that the dog had access to the two

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[1] See a recent and in-depth discussion of the duty of care in negligence in **Lewars v Senior [2025] JMSC Civ. 11**,

rear sections But, if the dog was tied to the back gate, it would have had to have access to the second section, which is the section the claimant was in. Besides, based on Mr Goldbourne's evidence, the dog was at the bottom of the second section, which is also the section that Shorty was power washing. I frankly do not find Mr Miller's evidence in this regard, to be credible, and find, on a balance of probabilities that the two pit bull dogs were in the second section of the defendant's premises on August 29, 2010.

[81] The claimant's evidence is that he was told by Mr Goldbourne to look by the back gate, where he would find something in which to drain the oil from the forklift. Having found that Mr Goldbourne did ask the claimant to drain the oil, I find, on a balance of probabilities that he did tell the claimant that he would find something in which to drain the oil, at the back gate. Mr Goldbourne was the defendant's Transportation Manager and would know where containers are stored or kept on the premises. On his evidence, he knew the back gate, which was at the bottom of the second section, was where the dogs were located. The defendant is a limited liability company. Its actions or omissions occur through the instrumentality of human beings. Mr Goldbourne, as its Transportation Manager (and not an independent contractor as alleged in the defence), having invited the claimant unto the defendant's premises ought to have considered that the defendant's guard dogs were at the back gate, and would pose a danger to the claimant, yet he sent him there anyway. A place Mr Miller said no one would have had cause to go.

[82] Both Mr Miller and Mr Goldbourne insist that the dog was on a leash and chained to the back gate. The claimant says the two dogs were not chained. In his evidence in chief, he stated that he saw a dog chain on the gate. During cross examination he clarified that what he saw was a piece of a dog chain about 24 inches long. I do not find these statements contradictory. A partial dog chain on the gate, could still be perceived as a dog chain on the gate. The claimant had gone to and had reached the back gate, on the instructions of Mr Goldbourne. If the dogs had been chained to that gate, the claimant would have seen them as he approached the gate, they too would have seen him and started barking and lunging at him. It

seems to me that the claimant would have come well within the dogs' lunging range on a 5-foot leash. In my view, it is improbable, that the claimant could and would have reached that gate unscathed, had the dogs been chained to it as alleged by the defendant's witnesses. Counsel Miss Gregg in her written closing submissions, suggests that the defendant would not have had a pit bull roaming the premises when it had workers there. But this ignores the evidence of Mr Miller that he and the workers were inside the warehouse on August 29, 2010. I find, on a balance of probabilities, that the dogs were loose and not chained, and that when the claimant reached the back gate, they attacked him. I therefore also find on a balance of probabilities that the defendant failed in its duty of care to the claimant, to make sure that the dogs were secure and kept away from him.

Due to the defendant's failure to keep the dogs secure, did the claimant suffer loss and injury?

[83] It is not disputed that the claimant suffered dog bite injuries on August 29, 2010, while on the defendant's premises. The medical reports of Drs Williams and Logan were agreed documents and entered into evidence. The claimant's evidence of the injuries he sustained on August 29, 2010, are unchallenged. I find on a balance of probabilities that the injuries in the claimant's pleadings, which are supported by the medical evidence, are consistent with him being attacked by the two pit bull dogs which were on the defendant's premises on August 29, 2010.

The defendant's alternative pleadings

[84] As has been seen, the defendant pleads in the alternative that the claimant was contributory negligent. The allegation is that the claimant failed to heed the warning signs, failed to heed the presence of the dogs and entered the premises without authorisation and/or invitation. There is also the alternative pleading that the claimant, with full knowledge of the presence of the dogs, voluntarily took the risk of being injured by them.

[85] Mr Miller's evidence is that there was a sign warning of the presence of a dog on the perimeter fence for the premises, and he and Mr Goldbourne say that there was also such a sign on the aluminium fence separating the first section of the premises from the second section. The claimant and his wife say they saw no such signs on August 29, 2010, and that signs were installed on the premises, after the incident. It is notable that Mr Miller says the "dog" was a recent addition to the premises, but he does not say when this acquisition was made, nor when the warning signs were installed.

[86] I have found that the claimant would have had to be allowed into the second restricted area by Mr Miller, who on his evidence, was the only person on August 29, 2010, who had the authority to allow persons into that area. Mr Goldbourne, on his evidence, was positioned in the warehouse, where he would have had to see the claimant in the second section. If therefore there were these warning signs of which the defendant speaks, why were they not brought to the claimant's attention by Mr Miller and Mr Goldbourne? There is no evidence that they were. One would have thought that if those signs existed, either Mr Miller or Mr Goldbourne would have brought them to the attention of the claimant and alerted him to the presence of dogs, since he was there at the invitation of Mr Goldbourne. This is especially so, since the claimant was called out of the warehouse to go to the back gate, to look for something into which to drain the forklift oil. In the circumstances, I find on a balance of probabilities that there were no signs on the defendant's premises on August 29, 2010, warning of the presence of dogs. I have already found that the claimant was not a trespasser. I accordingly reject the defendant's argument that the claimant was contributory negligent as he failed to heed the signs warning him of the presence of dogs and that he entered the premises without authorisation or invitation.

[87] The claimant says he did not know there were dogs on the premises and that he did not see any dogs before he was attacked. This aspect of his evidence has not been impugned. I accept his evidence. No evidence has been led to support the allegation that he knew of the presence of the dogs but proceeded to the back gate

where they were anyway. It is improbable, in my view, that the claimant saw the pit bull dogs on the defendant's premises on August 29, 2010, yet proceeded nevertheless to the back gate, looking for a bucket to drain the oil from the forklift. With no evidence to support it, I reject the defendant's alternative plea that the claimant voluntarily took the risk of being injured by these dogs.

Quantum of damages

General damages

[88] In assessing the claimant's general damages, I am required to look at the nature and extent of his injuries and any consequential disabilities he may have suffered as a result. Guided by any comparable authorities which may exist, I am to determine a reasonable amount to compensate him for his nonpecuniary losses.

[89] The claimant's injuries are described by Dr Logan as extensive. I agree with and accept this description. His evidence of the pain he was in, the difficulty sleeping, the inability to eat other than soft foods for three weeks, and the plastic surgery he underwent to his mouth, are unchallenged.

[90] The claimant in **Lewars v Senior [2025] JMSC Civ. 11**, was bitten by a dog on May 16, 2016. She suffered a 4 cm. laceration over the anterior surface of her left thigh, multiple deep puncture wounds of the upper leg, with soft tissue swelling and cellulitis, erythema and edema around the wounds. She also suffered a puncture wound with laceration over her left knee, with swelling and restricted movement of that knee. The largest wound, which was on her thigh got infected, leading to tissue damage. That wound caused a laceration which was deep into the subcutaneous tissue and muscle. Due to her unsightly scarring, she was medically recommended to undergo plastic surgery. On February 28, 2025, she was awarded $**975,000.00** in general damages, which updates to **$1,031,382.27**, using the current consumer price index. In my view, the claimant presently before me has suffered more extensive injuries than those suffered by the claimant in **Lewars v Senior**. The injuries which Dr Williams reports were those pleaded and

which are recounted at paragraph 5 of this judgment, in addition to a 1.5 cm wound to the posterolateral aspect of the left leg. He has suffered injuries over his entire body, including a ragged wound to his upper lip which could not close and a deep 4x4 cm wound to the right elbow requiring plastic surgery, swelling and abrasion to left side of the forehead, 2cm abrasion to right upper thigh, 3 cm liner abrasion to the right chest wall; two (2) 1 cm wounds to the left thigh; 5 x4 cm bite marks to the right thigh; 1cm laceration to the dorsum of the left 3rd finger; a puncture wound to the left thumb; 1.5 cm wound to the posterolateral aspect of the left leg, multiple puncture wounds to the anterior aspect of the right thigh, and abrasions to the right upper back .

[91] Counsel Miss Gregg relies on the decision in **Maria Protz-Marcocchio v. Ernest Smatt, Suit No. C.L.M. 1550 of 1995.** In this case, the claimant was bitten by dogs and sustained a severe lacerated wound on the upper back of her right leg about 1 ½ inches long; puncture wounds on the outer side of the right leg and two puncture wounds on the front of the right thigh. The injuries were said to be serious as healing took a long time. The wound to the back of the right leg became infected and there was severe discoloration on the back and right side of the right leg. The claimant had significant scarring after her wounds healed and suffered from post-traumatic stress disorder arising from the incident. Plastic surgery and 6 months of therapy were recommended. In April 2002, the court awarded general damages of $ 244,770.00, which figure updates to $1,562,361.70 using the current consumer price index. Miss Gregg submits that as the claimant at bar did not suffer any mental anguish and his pain and suffering and loss of amenities were of short duration, an appropriate award to be made for general damages is $ 250,000.00

[92] I agree that there is no evidence that the present claimant suffered post-traumatic stress disorder or was otherwise affected mentally by the incident which took place on August 29, 2010. I also note that the injuries of the claimant in **Maria Protz-Marcocchio v. Ernest Smatt,** were confined to the right lower limb, unlike the claimant at bar, whose injuries were over a large portion of his body. I recognise

as well that unlike the claimant in **Maria Protz-Marcocchio v. Ernest Smatt,** there is no evidence that the present claimant was required to undergo physiotherapy.

[93] Having considered both of the above authorities, and having regard to the nature and extent of the claimant's injuries, his pain and suffering, the fact that he could not eat normally for about three weeks, was unable to socialise with his friends, and the numbness and pain he says he sometimes feels, I am of the view that a reasonable amount to award under this head for pain and suffering and loss of amenities is $1, 200,000.00.

Special damages

[94] Special damages must be specifically pleaded and proven. Prescription costs of $ 5,998. 57, the cost of $1,000.00 for a medical report from Mandeville Regional Hospital, and transportation costs of $36,000.00, have all been proven by documents which were agreed, tendered and admitted into evidence. There is, however, no evidence to support the pleaded loss of earnings of $320,000.00. No award will therefore be made for this alleged loss.

[95] There was no serious challenge to Mrs Knight's evidence that Mr Miller twice gave her $6,000.00 for transportation expenses after the incident. The claimant's evidence is that he also received $6,000.00 from Mr Miller. It is only proper that these amounts be deducted from the award of special damages. Mr Goldbourne's evidence that he paid $8,000.00 for the cost of prescription at the Mandeville Regional Hospital was not refuted by the claimant, but there is no evidence to indicate or suggest that this was paid on behalf of the defendant. I will not, therefore, deduct this sum of money, from the amount to be awarded to the claimant under this head. In the circumstances, therefore I will award special damages $24,998.57.

Conclusion

[96] This is a claim in the common law tort of negligence, a tort which has not been excluded by either the **Dogs (Liability for Injuries By) Act** (which was the law at the time of the incident in this case), or the special common law rules relating to liability for animals.

[97] The claimant has succeeded in proving, on a balance of probabilities that; a) there were two dogs on the defendant's premises on August 29, 2010 and that the defendant was the owner of these dogs; b) he was lawfully on those premises, c) the defendant owed him a duty of care to ensure his safety while on its premises, and d) that the defendant breached that duty resulting in him suffering loss and injury. The claimant is therefore, entitled to general damages based on the nature and extent of his injuries and those special damages which he has specifically pleaded and proven.

Orders

[98] In the result, I make the following orders:

a. Judgment for the claimant.

b. General damages in the sum $1, 200,000.00 are awarded to the claimant with interest of 3% per annum from January 21, 2015, to January 30, 2026.

c. Special damages in the sum of $24,998.57 are awarded to the claimant with interest of 3% per annum from August 29, 2010, to January 30, 2026.

d. Costs to the claimant to be agreed or taxed.

A Jarrett
Puisne Judge