

**BETWEEN**

**AAL**

**APPLICANT**

**AND**

**AAM**

**SECOND APPLICANT**

**AND**

**ZZQ (in his capacity as trustee of BG Trust)**

**RESPONDENT**

Date of Order:

7 August 2012

Referee:

Referee Smallholme

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the claim is dismissed.**

## **Facts**

[1] On 18 April 2012 at approximately 6 pm a vehicle driven by AAL (and owned by AAL and AAM) collided with a bull owned by BG Trust on [a state highway] near [a town]. AAL and AAM claimed \$3,478.75 from BG Trust for the damage to their car.

## **Issue**

[2] The issue is whether BG Trust was negligent in allowing the bull to stray onto [a state highway].

## **Law**

[3] The relevant law is s 5 of the Animals Law Reform Act 1989, and the law of negligence. In determining whether the Trust was negligent, the Tribunal must look at the standard of care expected of a reasonable farmer in the Trust's position; the common practice in the locality in relation to fencing; the taking of other measures to prevent animals from straying onto highways in the locality, and any measures taken to warn users of the highway of the likely presence on animals on the highway.

## **Findings**

[4] Having regard to the evidence of ZZQ of BG Trust, I am satisfied that BG Trust's actions were not negligent. They were to the standard expected of a reasonably prudent farmer raising bulls. In making this finding I have had regard to the following factors:

- (i) It is common practice within the [town] area for bulls to be farmed in mobs, ranging in size from several bulls to up to 50 bulls. The mob of bulls belonging to BG Trust which escaped from its paddock consisted of 7 bulls.

- (ii) It is commonly accepted that there can be violent altercations between bulls and the risks have to be managed. However, ZZQ's evidence established there were a number of steps taken by BG Trust to minimise the likelihood of any damage arising from this possibility. These were:
- a) The mob was grazed 150 to 200 metres from [the state highway].
  - b) The fences were sound and suitable fences for cattle farming.
  - c) There was a sound and substantial steel gate to the paddock in which the bulls were held, of the second highest quality of steel and design of four available qualities.
  - d) The gate had a latch and clasp and had also been secured to the gate post with fencing wire.
  - e) ZZQ checked on the mob daily, and had checked on the mob at 3 pm on 18 April 2012.
  - f) The mob had been in farmed together for 18 months and there had been no previous incidents between the bulls in the mob. This indicated it was a settled mob unlikely to cause any difficulties. It could not be foreseen that there would be a violent altercation between any of the animals resulting in the destruction of the gate and their escape onto [the state highway].
- (iii) The violent altercation within the mob was heard by a neighbour who had immediately notified ZZQ, before he went out to round up the mob.
- (iv) ZZQ and his wife (who live 500 metres away from the paddock) immediately went to assist the neighbour after he had called them and alerted them of the bulls' escape. Therefore there was only a very short time during which the bulls could have been a hazard to traffic on [the state highway].

[5] In summary, the altercation within the mob was unexpected and their escape from the paddock was unavoidable, being the result of significant damage to the gate against a

background of no previous issues within the mob. There was nothing further that BG Trust could have done to prevent the mob from escaping the paddock.

[6] Accordingly the claim is dismissed.