

# When things go wrong and your rider takes off with your horses...

**I**n this edition of Horse International we would like to discuss a recent case that was dealt with by Schelstraete Equine Lawyers (Schelstraete) and decided by the Court of Appeal in Arnhem, the Netherlands in favour of the client of Schelstraete. The plot of this case revolves around a relation between three gentlemen from the Middle-East who via the UK ended up in an long-lasting litigation in

the Netherlands. The characters are: the prince (a well-respected member of one of the ruling families in the Middle-East) owning an equestrian facility near London, his son (owner of the horses) and a jumping rider from the same country in the Middle-East who worked for the prince and competed the horses of the son. In the article below we will discuss the case and will give you some recommendations on how to avoid similar problems as in the case at hand.

## **What was it all about?**

At some point the business relation between the prince and the rider derails. The prince is

not satisfied with the rider's work anymore as the rider, in the prince's opinion, seems to be rather enjoying life in the UK instead of delivering proper services to the prince and his son. In spite of the fact that the rider has top of the bill jumping horses at his disposal, their results with the rider are at most mediocre. The prince decides to stop paying the rider's bills and tells him to improve the service. The rider is outraged by this and overnight he takes his own horses and the horses of the son and embarks the ferry from England to mainland Europe. His journey ends in the Netherlands as Schelstraete traces him down and by Court order arrests the horses on





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Dutch soil. Because the horses were seized in the Netherlands, they could not be moved abroad until the case was decided. It should be noted that in a case like this, under Dutch law it would be of course possible to file for an injunction in order to release the horses but in exchange there should be a bank guarantee or another form of security put in place. This option was also discussed. The Dutch judge can derive his jurisdiction in a situation like this based on the place where the seized property is situated. So, even though all three gentlemen had nothing to do with the Netherlands, they were subject to Dutch jurisdiction. It should also be noted that Schelstraete succeeded at Court in appointing a custodian (a well-known Dutch jumping rider) who was entrusted with training and competing the horses during the time the litigation was pending. In doing so, the horses were properly taken care of and their value did not diminish but improved for the benefit of all the parties involved.

### Right of retention (jus retentionis)

One may ask why on earth the rider would take the horses and leave abroad. What were the motives of the rider to leave the UK? This is not entirely clear and has not been clearly established by the Court. The explanation the rider gave was that he was to compete with the horses in the Netherlands. The results showed, however, that he had only competed with his own horses and not with the horses of the son. We will get back to the relevance of this finding later. It is also possible that he might have thought that moving the horses to the Netherlands would drag the matter on for a little bit, and in time and after the dust settled, he would get his money. He was however, wrong about this. For the prince and the son, his conduct was not only illegal but also meant an insult and a sign of disloyalty. The answer to this question may further partially lie in the right of retention (possessory lien). This right is known to most modern systems, and originates from the Roman law under which the creditor had a so-called jus retentionis to hold the object until a totally unrelated debt was paid. The right of retention is being defined under Dutch law as 'the right of a creditor, granted to him in situations specified by law, to withhold the performance of his obligation to return a movable or immovable thing to his debtor until his debt-claim has been fully satisfied'. Similar definitions can be found in other civil law and common law systems across the globe.

Transponding the right of retention to our case, the rider invoked that the prince had a debt of a considerable amount of money, almost £200.000, and had to pay it before the horses would be released.

### When can the right of retention be invoked and against whom?

Speaking in abstract terms the rider was right about the nature of the right of retention (possessory lien). If one has a claim against another party and at the same time has that party's things (assets) in one's possession then he may exercise the right of retention on this property until the debt is paid or decided by the Court. The rider was however wrong about the party against whom he could exercise this right. He was under contract with the prince. The prince was the party who allegedly had a debt to pay. The prince was however not the owner of the horses but the son. The son, however, had nothing to do with the argument between the prince and the rider. Because the legal relation between the prince and the rider was originating from the UK and the right of retention is an accessory right that is derived from that relation, the Court of Appeal had to judge the matter pursuant to the laws of England and Wales. With regards to the English law it was established in the proceedings: 'A common law lien (...) is a type of security that arises from lawful possession of another person's property. It arises by operation of law as a remedy for breach of the contract under which the property was delivered into their possession. It gives the holder of the lien the right to retain possession of that property until after their claims under the contract are satisfied. A lien is the right of a contracting-party to take possession of a specific asset of the other contracting party, in case the contract is not performed according to its terms.' And this is where it all went wrong for the rider. As you may recall at the beginning of this article we mentioned that the rider was arguing that he was en route to the Netherlands to compete with the horses, implying that he was still under contract with the prince and was training and riding the prince's son's horses. If such had been the case, then the rider could have possibly been able to exercise the right of retention. But in our case, because he had not competed with the sons' horses at said competition in the Netherlands, the Court of Appeal established that the rider was not entitled to a right of retention (and he was not in the lawful possession of the horse at the point in time) and therefore committed an

unlawful infringement of the property rights of the son by taking the horses from the UK without his knowledge and having them stabled in the Netherlands. The rider is liable for the damages suffered by the son as the result of this infringement.

### Important lessons to learn

The people involved in the equestrian business tend to have a very traditional approach to how to do business. It is definitely common to meet people who still feel like any deal in the horse business should be made on a 'handshake'. Despite the increasing complexity of the world around them, people still do business in the manner it has been done for decades, if not for ages. The notion that putting things in writing is a sign you do not trust the other party is still very much alive in the horse business. The problems that the prince and the son faced in the case at hand could have easily been prevented by a simple stipulation in a written document stating that under no circumstances (lack of payment whatsoever) the rider had the right of retention. So the important lesson to learn is to think about this clause when putting things on paper with your rider, your trainer or the owner of the stables where your horse is boarded. <



This article was written by mr. L.M. Schelstraete and mr. V. Zitman.

If you have any questions and/or comments after reading this article, we would be happy to hear from you. You can also contact us for all equine-law related questions or matters. Please contact us via [info@europeanequinelawyers.com](mailto:info@europeanequinelawyers.com) or by telephone +31-(0)135114420.

