

TIPS FOR EQUESTRIAN CONTRACTS

WRITE IT DOWN!

By European US Asian Equine Lawyers

IN THIS ISSUE OF HORSETIMES, EUROPEAN US ASIAN EQUINE LAWYERS (EEL) DISCUSSES SOME PRACTICAL TIPS THAT MAY PROVE TO BE USEFUL FOR HORSE OWNERS WHEN ENTERING INTO AN AGREEMENT OR DURING THE CONTRACTUAL RELATION WITH THE TRAINER, THE RIDER, AND/OR THE SELLER OF A HORSE IN EUROPE. WE COMPILED THESE TIPS BASED ON SEVERAL CASES WE HAVE RECENTLY HANDLED AND/OR REVIEWED IN THIS CONTEXT.



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Introduction

As lawyers, we often have clients come to us with a dispute that they would like to be resolved immediately. In the Equine business where a lot of agreements are concluded verbally, this is easier said than done. When things go wrong during the term of the agreement clients do not want long legal battles; they prefer to obtain rather fast decisions. **'Fast and pragmatic solutions'** is frequently the clients' mantra. Lawyers have the same objective. In the end every lawyer wants his clients to be satisfied, especially in the Equine business where agreements involve living animals like horses. **Nobody wins in a long lasting legal battle.** The tips we are giving in this article can significantly improve and safeguard your position in the event that things go wrong with, for instance, your trainer or your rider, and might be of enormous help to your lawyers in the event that you have to go to the Court.

Waiting for the decision

If the parties cannot resolve the dispute without court intervention, then the relative position of the parties remains the same until a court can decide the case on the merits. It may sound very unjust to some clients, but unfortunately this the legal framework Equine lawyers operate in. Equine law is a part of private law and, unfortunately, there are no separate proceedings regarding horses unless parties agree to arbitration where a fast decision is possible. Additionally, horses involve a lot of emotions and horse cases can be compared with divorce proceedings. All this can take very long and in some cases may get very expensive. Most of the **European legal systems** provide for instruments for obtaining fast decisions like injunction orders (for instance the so-called short law suit in the Netherlands "kort geding" etc.). In these proceedings, the evidence presented by the parties is vitally important for the judge to give a decision. As parties wish a fast decision, there is no time for the judge to do the fact finding. The judge must be sure he is granting a preliminary decision that shall be upheld in the appeal or in the main proceedings. Parties need also to demonstrate the urgency for injunction. In horse cases involving living animals this is not problematic.

Importance of evidence and simple choices to be made

Many times we advise our client to use written contracts. We do, however, understand that a lot of dealings in the business are concluded verbally. Understanding this, we recommend our clients to at least confirm in writing the essentials of the agreement they have concluded.

Ensuring the identity of the contracting parties

It is always very important to **clarify in writing the identity of the contracting parties** and their capacity. It seems self-evident but still it can go wrong quite frequently. We would like to illustrate the relevance of recording the identity of the parties and their capacity in the agreement with an example of a real legal case.

EEL recently represented in court a famous Polish breeder who brought his horse (Polish Warmblood mare) to the Netherlands to train it and to have it competing in the showjumping competitions here. As the Polish breeder did not speak Dutch, he was assisted by a friend of his, a Dutch citizen living in Poland, also dealing in horses. This man represented him later in the contacts with the trainer. As the Polish breeder did not have a Euro bank account in Poland he asked another friend who had an account to pay the training and stabling fees per month to the stable. The payment transfers included only the name of the horse. Only later, when things started to go wrong the friend of the breeder included the name of the breeder on the transfer with the addition "owner".

The Polish breeder had a lot of bad luck as the trainer with the son of a Dutch friend who acted as intermediary refused to give him the horse back. The son and the father were quarrelling for years after the divorce of the father (Dutch intermediary) from the mother. The trainer and the son saw the qualities of the mare, an excellent showjumper. They came up with an idea that the son of the friend (Dutch intermediary) would have been given the horse by his father. Interestingly, the Dutch intermediary (the father) has denied the gift (to the son) and he had at no point in time been the owner of the horse in Poland. The studbook and the breeders association confirmed

that the Polish breeder and not the Dutch intermediary was the sole owner in accordance with Polish law.

Additionally, the gift in Poland would have had to be formalized in the form of a notarial deed and, obviously, this was never accomplished. Despite all this, the Dutch court denied the request for an injunction of the Polish breeder. Losing the injunction proceedings though does not mean that the Polish breeder lost in the end. **Thanks to EEL**, the Polish public prosecutor started an investigation into the matter and against the Dutch trainer and his friend and decided to charge them with fraud. If sentenced by the criminal court in Poland, the Dutch trainer and his friend will face their liability for the financial loss of the Polish breeder. The only downside in this case is that the Polish breeder will not have the mare back as he does not want to wait for the result of the main proceedings in the Netherlands. When a final decision would come, then the horse will be already much older and in terms of value much less valuable (above fourteen years old).

An important lesson to learn here is that all this trouble might have been avoided if there was any kind of **written evidence** that it was obvious to the Dutch trainer that the Polish breeder was the owner of the horse. He should have had a written contract with the trainer regarding the terms and conditions of the training and stabling or at least confirmed in writing who was the owner of the mare and who would pay the bills on his behalf. ⁽¹⁾



*Bezoek- en postadres Oisterwijk:
De Balbian Versterlaan 2-4
5061 JC Oisterwijk
T: 0031 (0)13 511 44 20*

*Bezoekadres De Bary Amstredam
De Herengracht 450-454
1017 CA Amsterdam
T: 0031 (0)20 214 91 86
E: info@schelstraete.nl*