SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa

Justice

JENNIFER WHEELER WINBORNE,

Plaintiff,

-against-

HOLLY STANLEY D/B/A BAYRIDGE SHOW STABLES,

Defendant.

DECISION, ORDER AND JUDGMENT AFTER INQUEST

Index No. 50989/18

The defendant is in default in this action. A judgment of default was granted by decision and order of September 5, 2018 in which this inquest was scheduled. The plaintiff, Jennifer Wheeler Winborne, testified as follows: She is from Springtown, Texas. She breeds, raises and trains "hunter ponies". On or about September 1, 2011, for $5,000.00, she purchased a stallion pony called Gayfield's Way Too Cool ("Cool"). He produced "very trainable kid-friendly ponies."

In or about February 2016 Plaintiff leased Cool to Defendant for one year, which was then extended for a second year. Defendant testified that she leased Cool from the plaintiff in order to start a breeding program for offer to the public. After the two years of leasing Cool expired, Plaintiff "wanted him home". In or about March of 2018 she asked for his health papers so she could get Cool transported to her farm in Texas on a horse trailer. Plaintiff then learned that Cool was unwell. She found a veterinarian at Rhinebeck Equine, LLP and on or about March 16, 2018 she had Cool brought there for examination, care and medical treatment. However, on or about April 3, 2018 Cool had to be euthanized.

Per Exhibit 2 in evidence, the plaintiff incurred $9,109.07 in total expenses for Cool's care and treatment at Rhinebeck Equine, LLP. Pursuant to Exhibit 3 in evidence, Plaintiff incurred $2,500.00 for Cool's cremation at Connecticut Horse Cremation, LLC in Killingsworth, Connecticut.

The parties' contract in evidence as Plaintiff's Exhibit 8 provided as follows: Cool's value was $5,000.00. He was being leased by Plaintiff to Defendant for breeding purposes for the term February 15, 2016 through August 1, 2016. There was no monetary fee for the lease. Instead, Defendant was entitled to five breedings per season with no stud fee charge. The defendant was to provide Cool with "suitable breeding facilities, proper feed, sufficient water, medical and veterinary

care as required, in a manner consistent with quality horse care practices industry wide." Pursuant to paragraph 8 of the lease, the defendant was to bear "any and all risks of loss from the death of or any harm to the Stallion only if any such event is caused by the lessee..." However, since Defendant defaulted in the action, the question of negligence or fault is not now before this court. At the end of paragraph 11 of the lease, the defendant indicated she wanted to lease Cool again for the 2017 season. Although the court was not provided with a signed copy of the Stallion Lease Agreement both parties acknowledged that this was their agreement and consented to it being entered into evidence.

The plaintiff seeks damages for her expenses for Cool's veterinary care, for the purchase price of Cool (Cool's value), for lost earnings as a result of Cool's death and for her pain and suffering.

Plaintiff claims Defendant breached her contractual obligations to care for Cool and that her negligent care resulted in his illness and death. The defendant offered testimony to dispute this but failed to do so by answering the complaint. Defendant has not moved to vacate the default. Therefore, the issues of liability and any testimony in that regard cannot be considered by the court.

Plaintiff currently has nine of Cool's offspring, two that she purchased, "Keep It Cool" and "Be Cool", which are now nine and fifteen years old respectively. The other seven are five years old or younger. Plaintiff testified that she also had four more between the ages of five and nine. She testified that she usually bred two ponies per year from Cool. By way of example of lost earnings, plaintiff had admitted into evidence a lease for "Keep It Cool" from December 12, 2016 to December 12, 2017 for $35,000.00. She testified that "Keep it Cool" is now on lease for a year for $20,000.00.

Plaintiff also testified that because she doesn't have Cool she has to pay for an outside stud fee of $1,000.00 per pony and about $400.00 for each artificial insemination. She claims that Cool was 21 years old and fertile and speculates that she lost years of leasing Cool's foals and at least five years of breeding and that foals are worth $2,500.00 to $5000.00 for weanlings and yearlings, $5000.00 to $10,000.000 for two to three year olds, and $10,000.00 to $25,000.00 for four year olds and up, and more for performance ponies with show records. However, Plaintiff agreed with Defendant that much of this is speculation because there are no guarantees with breeding, training or showing.

Plaintiff offered photos as evidence of Cool's condition when he got to Defendant's farm and in the days leading to the end of his life. She became visibly upset and seeks an award for emotional pain and suffering.

On cross-examination, the plaintiff acknowledged that it takes two years or more to train a pony for shows, that she has no actual proof of lost earnings, that she did not stand Cool to the public for stud fees, and only made money from his ponies that she trained to be show/performance ponies.

Plaintiff testified that the ponies' value is based upon the ability to promote them, that she raises one to two per year and shows them "in hand" which means pre-training. She testified that she did not sell young stock (under three years old) and that she has about five of Cool's ponies now that are considered young stock.

Pursuant to the contract Defendant was entitled to five breedings per season over the two seasons during which she leased Cool. The defendant testified that they could not collect semen from Cool during the first year so there was no money from that in year one. In year two she said they were only able to use two doses to impregnate outside mares and that this was not sufficient for her pursuant to the contract. In the first year, she was only able to use Cool as a "live cover stallion" which means that the mare is brought to the stallion to be impregnated. In year one she got three foals as a result of live cover and in year two she got four foals as a result of live cover. Defendant testified that most people do not want to transport their mares, and instead want the semen shipped to them.

Based upon all of the foregoing, it is hereby

ORDERED that Plaintiff is entitled to a judgment against the defendant to include her out-of-pocket expenses for the value of Cool, his veterinary care and his cremation in the sums of $5,000.00, $9,109.07, and $2,500.00, respectively, less the $4,600.00 Plaintiff acknowledged she raised through contributions for Cool's care, for a net total of $12,009.07. It is further

ORDERED that Plaintiff's claim for emotional pain and suffering due to the loss of companionship of Cool must be denied. New York does not recognize a cause of action for such pain and suffering nor is an animal's value as a companion recoverable as damages, but only its value as personal property. See, for example, Johnson v. Douglas, 187 Misc.2d 509 (Sup.Ct., Nassau Cty 2001); Mercurio v. Weber, 2003 WL 21497325 (District Court, Nassau County 2003). It is further

ORDERED that Plaintiff is entitled to $22,500.00 for the average cost of replacement of foals for a period of two years. Plaintiff testified she had Cool produce two foals per year. Defendant acknowledged that she was able to have Cool produce three foals the first year and four foals the second year. The sum awarded reflects a modest production of foals and is based on Plaintiff's experience with Cool since 2011 reflecting what Cool would have produced for Plaintiff over a two year period and what their value would have been during those years. The balance of the fees sought by Plaintiff, including for producing show ponies and earnings as a result of those, are based purely on speculation and, as Plaintiff agreed, there are no guarantees of this type.
Accordingly, it is

ORDERED that Plaintiff is entitled to a total judgment in the sum of $34,509.07 with interest at the statutory rate from the date of commencement of this action, April 11, 2018, and shall have execution thereon.

The foregoing constitutes the decision and order of the Court.

Dated: October 18, 2018
Poughkeepsie, New York

ENTER:

MARIA G. ROSA, J.S.C.

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Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.