Sample Decisions

Knowledge of vicious propensities

"[T]here is no support in the record for a finding that defendant kept the dogs as guard dogs, and we are not convinced that the formal training that the dogs received as members of the State Police K9 unit equates with the dogs being kept as guard dogs. Nor do we find that the formal police training of the dogs constitutes either evidence of viciousness or provided defendant with notice of such (*but cf. Gannon v Conti*, 86 AD3d at 705-706). Moreover, not only is evidence of a dog's breed insufficient to demonstrate that an issue of fact exists, 'where, as here, there is no other evidence even suggesting that defendant knew or should have known of [the dogs'] allegedly vicious propensities, consideration of the dog[s'] breed is irrelevant'.... *Thurber v. Apmann,* 91 AD 3d 1257 (3d Dept. 2012).

"Evidence tending to prove that a dog has vicious propensities includes a prior attack, the dog's tendency to growl, snap, or bare its teeth, the manner in which the dog was restrained,[the fact that the dog was kept as a guard dog], and a proclivity to act in a way that puts others at risk of harm." *Ayres v. Martinez*, 74 AD 3d 1002 (2d Dept. 2010).

"[T]here is no doubt that the dog Spaz lived at the premises owned and occupied by Cornelia Reed, and that Reed exercised some degree of control by caring for the dog and making arrangements for assistance in feeding the dog, including asking the plaintiff to assist her with that chore. The fact that Cornelia Reed was not the owner of Spaz does not shield her from liability. The evidence before this Court demonstrates that Reed knew the dog was being kept on her premises, that she knew or should have known that the dog had vicious propensities, and that she had sufficient control of the premises to remove or confine the dog." *Medina v. Reed*, 2013 NY Slip Op 32485 (Suffolk Sup. Ct. 2013).

"[T]he Supreme Court should have granted that branch of the defendants' motion which was for summary judgment dismissing the first cause of action alleging common-law negligence [for personal injury from being entangled in the dog's chain, which was attached to a runner, while the dog was running around the yard], since New York does not recognize a common-law negligence cause of action to recover damages for injuries caused by a domestic animal....The Supreme Court also should have granted that branch of the defendants' motion which was for summary judgment dismissing the second cause of action sounding in strict liability. The defendants met their initial burden of demonstrating that there was no evidence that the dog, albeit excitable, overly friendly, and frisky, had aggressive or vicious propensities." *Egan v. Hom*, 74 AD 3d 1133 (2d Dept. 2010).

"[A] cause of action for ordinary negligence does not lie against the owner of the domestic animal which causes injury." *Basile v. SALKA*, 2012 NY Slip Op 30240 (Nassau Sup. Ct. 2012)

(UPS delivery person injured his foot on a metal plate on the bottom of the delivery truck when he dove into the driver's side door after running from the defendants' property when the dog started toward him.)

"The defendants established their entitlement to judgment as a matter of law by demonstrating that their dog did not have a propensity to jump up on people and that they did not have prior notice of any such propensity." *Cohen v. Kretzschmar*, 30 AD 3d 555 (2d Dept. 2006).

"Insofar as relevant here, knowledge of a dog's vicious propensities may be shown, *inter alia*, by evidence of a defendant's awareness that the dog would "growl, snap or bare its teeth...[I]t is undisputed that defendant was aware that a dog was kept on the premises by her tenant and that she could have required him to remove or confine that dog. Furthermore, contrary to defendant's contention, she failed to demonstrate as a matter of law that the dog did not have vicious tendencies, inasmuch as her own submissions established that the dog had previously growled at and tried to claw through a window to get at mail-carriers and others who came to the door ." *Faraci v. Urban*, 101 AD 3d 1753, 957 N.Y.S.2d 792 (4th Dept. 2012).

Proof that dog was bred to be aggressive and was high strung and territorial not enough to raise issue of fact re: dog's vicious propensities or owner's knowledge of same. *Wilson vs Whiteman*, 237 AD2d 814, 815 (3d Dept, 1997).

Presence of "Beware of Dog" signs standing alone are not enough to imply that dog owner knew of his dog's vicious propensities. *Altmann vs Emigrant Savings Bank*, 249 AD2d 67, 68 (1st Dept. 1998); *Frantz vs. McGonagle*, 242 AD2d 888 (4th Dept. 1997); *Arcara vs Whytas*, 219 AD2d 871, 872 (4th Dept. 1995).

"A defendant who establishes by undisputed proof that his dog had never bitten anyone before and had never bared its teeth or growled at anyone before is entitled to summary judgment." *Arcara vs Whytas*, 219 AD2d 871, 872 (4th Dept. 1995).

The fact that a dog was chained and strained on its chain and barked when people approached was held insufficient to create an inference that the dog was vicious. *Gill vs Welch*, 136 AD2d 940 (4th Dept. 1988).

"In determining whether an animal has vicious propensities, a jury may consider the nature and the result of the attack on the victim." *Lynch vs. Nacewicz*, 126 AD2d 708, 709 (2nd Dept. 1987).

"Evidence of the severity of injuries by prior victims of same dog is admissible as probative of the dog's vicious propensities and the owner's knowledge of same." *Lynch vs. Nacewicz*, 126 AD2d 708, 709 (2nd Dept. 1987).

To hold a landlord liable for a bite injury caused by a tenant's dog, the victim must prove that at the time of the initial leasing the landlord had actual knowledge of (1) the presence of the dog and (2) the dog's vicious propensity to bite humans. *Strunk v. Zoltanski*, 62 N.Y.2d 572, 468

N.E.2d 13, 479 N.Y.S.2d 175 (1984). Landlords can even be held liable for off premises attacks under the general common-law rule where the landlord has the right to remove the animal by evicting the tenant. *Strunk v. Zoltanski, supra,* 62 N.Y.2d at p. 576; *see also Cronin v. Chrosniak,* 145 App. Div. 2d 905, 906–907, 536 N.Y.S.2d 287 (1988).

Summary Judgment

If a defendant moves for summary judgment and introduces admissible evidence that indicates that defendant had no knowledge of the dog's vicious propensities, plaintiff must submit rebuttal evidence or risk having his complaint dismissed. *Luts vs Weeks*, ___AD2d___(2nd Dept, 1/31/2000); *Althoff vs Lefebvre*, 240 AD2d 604 (2nd Dept, 1997); *Smith vs Farner*, 229 AD2d 1017, 1018 (4th Dept, 1996); *Arcara vs Whytas*, 219 AD2d 871, 872 (4th Dept, 1995); *Fox vs Martin*, 174 AD2d 875, 876 (3rd Dept, 1991); *Gill vs Welch*, 136 AD2d 940 (4th Dept, 1988).

Damages

Out-of-pocket, lost wages and punitive damages were all recoverable in *Nardi vs Gonzalez*, 165 Misc2d 336, 339 (1995) (note that although this case involved a dog injuring another dog, the court stated that such damages could be recoverable in an attack on a human).

Damages of $310,000.00 were held excessive where evidence indicated that the victim was able to perform most of her household duties and work full time, and was coping with phobia of dogs by seeking counseling. *Fontecchio vs Esposito*, 108 AD2d 780, 781-782 (2nd Dept, 1985).