

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12167
C/cb

_____AD3d_____

Submitted - September 5, 2006

HOWARD MILLER, J.P.
DAVID S. RITTER
ROBERT A. SPOLZINO
MARK C. DILLON, JJ.

2005-09359

DECISION & ORDER

Emma Longstreet, respondent, v Nelson Peltz,
appellant.

(Index No. 13775/03)

Eustace & Marquez, White Plains, N.Y. (Diane C. Miceli of counsel), for appellant.

Oxman, Tulis, Kirkpatrick, Whyatt & Geiger, LLP, White Plains, N.Y. (Gregory J. Spaun of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Westchester County (Bellantoni, J.), entered September 14, 2005, which denied his motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the motion is granted.

The plaintiff, a nanny for the defendant's child, allegedly was injured when she was bitten by the defendant's dog. In support of his motion for summary judgment dismissing the complaint, the defendant made a prima facie showing of entitlement to judgment as a matter of law by demonstrating that the dog neither had "vicious propensities" nor "behave[d] in a manner that . . . reflects a proclivity to act in a way that puts others at risk of harm" (*Bard v Jahnke*, 6 NY3d 592, 597). In opposition, the plaintiff failed to raise a triable issue of fact (*see Collier v Zambito*, 1 NY3d 444; *Vitrella v Rodrigues*, 11 AD3d 287; *Blackstone v Hayward*, 304 AD2d 941; *Sers v Manasia*, 280 AD2d 539, 540). Accordingly, the Supreme Court should have granted the defendant's motion for summary judgment dismissing the complaint. In light of this determination, we need not address

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the issues raised in connection with the defendant's workers' compensation defense.

MILLER, J.P., RITTER, SPOLZINO and DILLON, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court