

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

1039

CA 14-00100

PRESENT: SMITH, J.P., PERADOTTO, VALENTINO, WHALEN, AND DEJOSEPH, JJ.

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CHERYL DOBINSKI, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

GEORGE O. LOCKHART AND MILAGROS LOCKHART,  
DEFENDANTS-APPELLANTS.

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WALSH, ROBERTS & GRACE, BUFFALO (MARK P. DELLA POSTA OF COUNSEL), FOR  
DEFENDANTS-APPELLANTS.

DENNIS J. BISCHOF, LLC, WILLIAMSVILLE (DENNIS J. BISCHOF OF COUNSEL),  
FOR PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Diane Y. Devlin, J.), entered November 15, 2013. The order denied the motion of defendants for summary judgment dismissing the amended complaint.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the motion is granted, and the amended complaint is dismissed.

Memorandum: Plaintiff commenced this action seeking damages for injuries she sustained when she collided with a dog owned by defendants while riding her bicycle in front of defendants' house. We agree with defendants that Supreme Court erred in denying their motion seeking summary judgment dismissing the amended complaint. Here, defendants met their initial burden by establishing that they lacked actual or constructive knowledge that the dog had a propensity to interfere with traffic (*see Myers v MacCrea*, 61 AD3d 1385, 1386; *see also Smith v Reilly*, 17 NY3d 895, 896; *Buicko v Neto*, 112 AD3d 1046, 1046-1047). In opposition to the motion, plaintiff failed to raise a triable issue of fact in that respect (*see Buicko*, 112 AD3d at 1047; *Myers*, 61 AD3d at 1386; *see generally Zuckerman v City of New York*, 49 NY2d 557, 562). We therefore reverse the order, grant defendants' motion, and dismiss the amended complaint.

Entered: October 3, 2014

Frances E. Cafarell  
Clerk of the Court