| **Chattar v Rahaman** |
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| 2020 NY Slip Op 35666(U) |
| February 28, 2020 |
| Supreme Court, Bronx County |
| Docket Number: Index No. 29405/2018E |
| Judge: Norma Ruiz |
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**SUPREME COURT OF THE STATE OF NEW YORK**
**COUNTY OF BRONX, PART: 22**

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**CHATTAR, NATASHA** Index №. **0029405/2018E**

-against- Hon. **NORMA RUIZ,**

**RAHAMAN, SHEIK H** Justice Supreme Court

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The following papers numbered 1 to _____ Read on this motion, (Seq. No. **1**) for **SUMMARY JUDGEMENT DEFENDANT**, noticed on **September 16 2019**.

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|---|---|
| Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed | No(s). |
| Answering Affidavit and Exhibits | No(s). |
| Replying Affidavit and Exhibits | No(s). |

Upon the foregoing papers, it is ordered that this motion is

Decided in accordance with the decision Annexed hereto.

Motion is Respectfully Referred to Justice: _____
Dated: _____

Dated: 2/28/2020 Hon. _____
NORMA RUIZ, J.S.C.

1. CHECK ONE..... ☐ CASE DISPOSED IN ITS ENTIRETY ☐ CASE STILL ACTIVE
2. MOTION IS..... ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE..... ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE
☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX – PART 22
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NATASHA CHATTAR,

Plaintiff,

Index No. 29405/2018E

- against -

DECISION/ ORDER

SHEIK H. RAHAMAN AND MONICA RAHAMAN,

Defendants.
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**Hon. Norma Ruiz, J.S.C.**

Upon review and consideration of defendant's motion, plaintiff's cross-motion, opposition submitted hereto, and upon careful consideration, defendant's motion for summary judgment is denied, and plaintiff's cross-motion is granted in accordance with this order.

This matter arises out of a dog bite which allegedly occurred on June 7, 2018 in defendant's home. Defendants were owners of a dog named Rolie who had, on two (2) occasions prior to the date of the instant accident, bitten or nipped others. Plaintiff, who was visiting, asked for permission to pet the animal which was granted to her. While she was playing with or petting defendant's pet, she was bitten on the right side of her face by the dog, causing her serious injuries. Defendant now moves for summary judgment, arguing that plaintiff was placed on notice of Rolie's propensity to bite based upon those prior incidents where the dog bit defendant's daughter, as well as a non-party to this action. Defendants contend that because they notified plaintiff of the danger the animal posed, plaintiff therefore voluntarily brought about or subjected herself to the

attack, relying on a century's old Court of Appeals case in support of their argument (*Muller v. McKesson*, 73 N.Y. 195 [1878]). In effect, defendants argue that plaintiff coming to their home and interacting at all with their dog amounts to an assumption of risk capable of extinguishing her claim entirely.

Plaintiff cross-moves for summary judgment, relying upon the well established "dog bite" rule which imposes strict liability on animal owners where an animal had vicious propensities or the owner should have known of the same (*Carter v. Metro N. Assocs.*, 255 A.D.2d 251 [1st Dept. 1998]). Plaintiff further states that she did not approach the dog until receiving permission that it was safe to do so by Rolie's owners. Based on the record before the Court, defendant's motion must be denied. Plaintiff's motion is granted as limited to strict liability.

On a motion for summary judgment, it is the burden of the summary judgment proponent to demonstrate prima facie entitlement to judgment as a matter of law with evidence sufficient to eliminate any material issue of fact; failure to do so requires denial of the motion regardless of the sufficiency of the opposing papers (*see Alvarez v Prospect Hosp.*, 68 NY2d 320,324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Hairston v Liberty Behavioral Mgt. Corp.*, 157 AD3d 404, 405 [1st Dept 2018]; *Cole v Homesfor the Homeless Inst., Inc.*, 93 AD3d 593, 594 [1st Dept 2012]). A court's task is issue finding rather than issue determination (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395,404 [1957]). "It is also well established that courts should deny summary judgment where there is any doubt about the existence of a triable issue of fact" (*Molina v Phoenix Sound, Inc.*, 297 AD2d 595, 596 [1st Dept

2002]; see *Morris v Lenox Hill Hosp.*, 232 AD2d 184, 185 [1st Dept 1996], affd 90 NY2d 953 [1997]).

The Court of Appeals recent holding in *Rodriguez v City of New York* (31 N.Y.3d 312, 101 N.E.3d 366 [2018]) clarified the law with regard to summary judgment when questions of fact as to a plaintiff's comparative negligence exist. The Rodriguez court reaffirmed the principal that "a plaintiff's comparative negligence is [not] a complete defense to be pleaded and proven by the plaintiff, but rather is only relevant to the mitigation of plaintiffs damages and should be pleaded and proven by the defendant" *Id.* In this regard, they point out that CPLR § 1411 plainly states that "in any action to recover damages for personal injury ... the culpable conduct attributable to the claimant ... including contributory negligence or assumption of risk, shall not bar recovery, but the amount of damages otherwise recoverable shall be diminished in the proportion which the culpable conduct attributable to the claimant or decedent bears to the culpable conduct which caused the damages." Accordingly, a plaintiff does not "bear the double burden of establishing a prima facie case of defendant's liability and the absence of his or her own comparative fault" in order to be entitled to judgment (*Id. at* 14).

Here defendants oppose plaintiff's motion for summary judgment primarily by relying on plaintiff's comparative negligence in causing her injury. In doing so, these defendants fail to raise any triable issue of fact as to their own negligence in causing the accident. *Mueller* stands for the proposition where, if someone wantonly provokes an animal, plaintiff may be barred from recovery. Here, the record before the court indicates that plaintiff spent a good deal of time,

perhaps as much as an hour, playing with, petting and apparently kissing the dog prior to the accident. Under such a circumstance, the holding from *Mueller* is plainly inapplicable here.

Thus, even where there is evidence as in this case that a plaintiff knew of an animal's vicious propensities and nevertheless voluntarily brought about the injury, such culpable conduct will not serve as a bar to damages. Instead, it may serve as the basis to reduce her recovery. Accordingly, defendant's motion is denied in its entirety and plaintiff's motion is granted, limited to liability in this matter.

All counsel are directed to contact the court's court attorney - Nathaniel Chiaravalloti - at nchaiaravalloti@nycourts.gov, (cc: klebron@nycourts.gov) upon receipt of this decision to set this matter down for a conference consistent with the "Presumptive Alternative Dispute Resolution" systemwide initiative, launched by Chief Judge DiFiore and Chief Administrative Judge Lawrence Marks. Counsel are expected to appear in the part **promptly** at the appointed hour, have knowledge of the facts of the case, bring working copies of relevant medical records, have the authority to settle with access to the insurance adjuster, as well as the party, for meaningful settlement discussions. Counsel **shall refrain from covering other matters in other court rooms at the appointed hour**. Such practice will not be tolerated. The Court cannot allow one party's tardiness to impede the conference time slot for other litigants. Such lack of consideration for the Court's scheduling needs may result in **sanctions**. Per Diem attorneys **not authorized to settle** will not be permitted to appear. Any appearances by Per Diem attorneys in contravention of this rule may also result in sanctions chargeable to the attorney of record for abusing the court's limited resources.

Conference to be held on **April 13, 2020**, at 9:30am in Room 403. Failure to contact chambers for a time certain to appear before the conference date may result in **sanctions**. Movant is directed to file a notice of entry upon receipt of this order.

This constitutes the decision and order of the court.

Dated: 2/28/2020

E N T E R,

Norma Ruiz, J.S.C.