

Quito v Weems

2024 NY Slip Op 32793(U)

August 7, 2024

Supreme Court, New York County

Docket Number: Index No. 160196/2021

Judge: Lori S. Sattler

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LORI S. SATTLER PART 02M

Justice

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ROSA M. QUITO

Plaintiff,

- v -

TAYLOR WEEMS,

Defendant.

-----X

INDEX NO. 160196/2021

MOTION DATE 11/15/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion to/for JUDGMENT – SUMMARY

In this personal injury action involving a dog bite, Defendant Taylor Weems ("Defendant") moves for summary judgment dismissing the action. Plaintiff Rosa M. Quito ("Plaintiff") opposes the motion.

This case centers around Ellie, a rescue dog that was boarded at Pup Culture, a dog day care and boarding establishment located in Tribeca, New York. Plaintiff was an employee at Pup Culture. Defendant is Ellie's owner. On March 11, 2021, Ellie was brought in for boarding. Ellie allegedly bit Plaintiff the following day.

Prior to boarding a dog, Pup Culture requires a temperament evaluation. Ellie was brought in on March 11, 2021 and was evaluated for six hours and passed the evaluation (NYSCEF Doc. No. 27). Diane Chasijuan, the manager at Pup Culture for nine years, states that Ellie did not show an aggressive temperament at the evaluation. Since no behavioral issues were found, Ellie was accepted for boarding.

Plaintiff had worked at Pup Culture for two years at the time of the incident and acknowledges that she was trained to work with dogs (NYSCEF Doc. No. 23, Plaintiff EBT at

20; 44, lines 6-11). She claims that she had not seen Ellie before March 12, that none of her coworkers had reported that Ellie was aggressive to her, and that she did not know whether Ellie had a history of aggressive behavior (*id.* at 50, lines 6-17). Plaintiff states that she only saw Ellie on March 12 and that Ellie showed her teeth, first when she put food in Ellie's crate early in the morning, and then when she reached into the crate with both hands to put Ellie's leash on, at which point Ellie bit her (*id.* at 39, lines 3-6; 41, lines 7-16). Plaintiff did not report the first alleged incident of aggression when feeding although she claims that she was trained to report aggressive behavior, she believed that to mean only barking (*id.* at 43, lines 2-11; 44, lines 21-25; 44 lines 2-18).

In connection with boarding Ellie at Pup Culture, Defendant completed a questionnaire in which she was asked to describe Ellie's behavior around other dogs and new people (NYSCEF Doc. No. 26). Defendant stated that Ellie "gets anxious at first" and that she was "[a]nxious and nervous" around new people. When asked if Ellie had ever bitten or tried to attack another dog, Defendant answered "She has nipped at dogs/humans when over stimulated in the past. Not frequently and it's more of an anxious thing. She's been boarded in the past and they did not have any issues at all as well and she has never nipped at the vet when she is there." When asked what she meant by nipping, Defendant testified that Ellie "never made any contact with another human being" (NYSCEF Doc. No. 24, Defendant EBT at 41, lines 12-13). When asked if Ellie growled when nipping Defendant indicated "No. Like it is really just a -I guess more of like a small bark is really the sound, yeah" (*id.* at 42, lines 3-5).

Defendant submits two affidavits in support of her motion. The first, by Pup Culture Inc.'s manager Diana Chasijuan, states that employees are required to report when a dog acts in an unusual manner and that Plaintiff did not report Ellie's purported first incident of showing her

teeth despite her training (NYSCEF Doc. No. 27, Chasijuan aff ¶ 10). Chasijuan further attests that Ellie’s behavior was not unusual for a dog in boarding who is anxious (*id.* ¶ 12). Lastly, she states that Ellie displayed no vicious tendencies during her six-hour pre-boarding evaluation and appeared to interact well with employees (*id.* ¶¶ 14-15).

Defendant also submits the affidavit of Emily Levine DVM, a Doctor of Veterinary Medicine with a sub-specialty in Animal Behavior (NYSCEF Doc. No. 29, Levine aff). Dr. Levine has 24 years of experience in the veterinary field and is the owner and lead clinician of the Animal Behavior Clinic of New Jersey and Instinct Dog Behavior and Training of Englewood New Jersey. Dr. Levine attests that she evaluated Ellie on September 5, 2023, and reviewed her veterinary records (*id.* ¶ 4). She opined that Ellie “did not possess any signs, traits or behavioral characteristics of vicious propensities that rendered her dangerous to human beings at the time of the alleged occurrence” (*id.* ¶ 18). She further found that Ellie’s reaction to being approached while caged by someone with two hands to affix a leash and collar was normal and expected behavior and that Plaintiff’s actions could be viewed as threatening to a dog (*id.*).

On a motion for summary judgment, a movant must make prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). After the movant makes this showing, “the burden shifts to the party opposing the motion . . . to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact” such that trial of the action is required (*id.*). The Court must view the facts “in the light most favorable to the non-moving party” (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]).

It is well established that “[a]n owner is liable for the harm a domestic animal causes if the owner knew or should have known of its vicious propensities” (*DeCollibus v Schimmel*, 212 AD3d 555, 556 [1st Dept 2023], citing *Collier v Zambito*, 1 NY3d 444, 446 [2004]). A defendant’s summary judgment motion is properly granted where the defendant meets their initial burden of establishing that they did not know of any vicious propensity in their dog and no triable issues of fact are raised (*Doerr v Goldsmith*, 25 NY3d 1114, 1116 [2015]).

Here, Defendant, who still owns Ellie, has met her initial burden that she did not know of any vicious propensities for Ellie. Her uncontroverted testimony establishes that, prior to the incident at issue here, Ellie had never bitten any other dog or human, including herself (Defendant EBT at 44-45). The record also shows that Ellie was evaluated by Pup Culture for over six hours and was found to be suitable for boarding with no vicious propensities (NYSCEF Doc. No. 26). Ellie’s veterinary records for 2019, 2021, and 2022 make no reference to any behavioral issues (NYSCEF Doc. No. 30). Lastly, a veterinarian with a specialization in animal behavior also found Ellie to be free of vicious propensities based on her own observations and a review of Ellie’s veterinary records (Levine aff ¶¶ 10-11, 18).

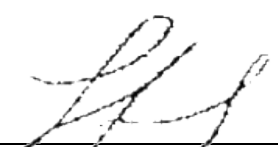
In opposition, Plaintiff fails to meet her burden of demonstrating that there are issues of fact. She submits only her own affidavit stating that she had bitten and describing Ellie’s behavior that day. She states that she never met Ellie prior to the day she was bitten and therefore would have been unable to ascertain what Ellie’s propensities were. During discovery, she did not have Ellie examined and submits nothing else in opposition to the motion other than her own medical records. Therefore, the Court finds that Plaintiff does not meet her burden of establishing that issues of fact remain, and the motion is granted in its entirety.

Accordingly, it is hereby:

ORDERED that Defendant's motion for summary judgment is granted; and it is further
ORDERED that this action is dismissed.

8/7/2024

DATE



LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE