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New York Court of Appeals Reaffirms Strict Liability in Domestic Animal Cases

New York's highest court recently reaffirmed that liability in domestic animal cases can be premised solely upon a theory of strict liability, and not negligence, by demonstrating that the owner knew or should have known of the animal's vicious propensities.

In *Petrone v. Fernandez*, the plaintiff, a mail carrier, was attempting to deliver mail to the defendants' home when she saw an unrestrained dog in the front yard. Plaintiff immediately turned around and attempted to return to her vehicle, at which point she alleged that the dog began to chase her. When plaintiff attempted to jump through the open window of her vehicle, she allegedly injured her finger. The dog did not bite the plaintiff and apparently made no contact whatsoever with her.

The plaintiff commenced an action against both the owner of the house and the dog's owner, alleging two causes of action, the first based on the defendants' supposed knowledge of the dog's vicious propensities and the second sounding in negligence. The negligence cause of action was premised on an alleged violation of the local leash law, which prohibits a person from allowing a dog in his or her control or possession to be in "any open or unfenced area abutting on a public place unless the dog is effectively restrained by a leash or other restraint not more than six feet long."

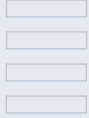
Supreme Court dismissed both causes of action against the defendants finding that the defendants did not have knowledge of the dog's vicious propensities and that the dog's alleged conduct that resulted in plaintiff's injuries was neither vicious nor reasonably foreseeable. The Court also held that the mere fact that the dog was unrestrained was not enough to raise a triable issue of fact finding that liability cannot be premised solely upon the defendants' failure to leash the dog.

The Appellate Division, Second Department reversed and reinstated the negligence cause of action against the dog's owner, holding that a dog owner may be held liable based on an alleged violation of a local leash law irregardless of the dog's vicious propensities or lack thereof. The issue was certified to the Court of Appeals, which concluded that the Second Department's holding was improper.

The Court of Appeals began by reaffirming its prior decisions in *Collier v. Zambito*, 1 N.Y.3d 444 (2004) and *Bard v. Jahnke*, 6 N.Y.3d 592 (2006) that when harm is caused by a domestic animal, the dog owner's liability is determined solely by the rule of strict liability where the owner knows or should have known of the animal's vicious propensities. The Court added that "just last year we unanimously affirmed an Appellate Division decision rejecting the notion that a negligence cause of action

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survives *Collier and Bard*.” The Court found that violation of the local leash law is irrelevant to the inquiry because negligence is no longer a basis for imposing liability against a domestic animal owner. Consequently, the plaintiff’s negligence cause of action was properly dismissed.

Judge Pigott issued a short concurrence to express his disagreement with the outright rejection of negligence as a basis for imposing liability against an animal owner. However, because he believed that the majority in *Bard* “intended to restrict liability for animal-induced injuries to circumstances where there is strict liability” he was constrained to concur with the majority in this case.

This most recent decision from the Court of Appeals further cements the rule that strict liability is the only theory upon which an owner of a domestic animal may be found liable. ■

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