PATRICIA GIACALONE *v.* HOUSING AUTHORITY OF THE TOWN OF WALLINGFORD
(SC 18669)

Rogers, C. J., and Norcott, Palmer, Zarella, McLachlan, Eveleigh and Harper, Js.*

Argued February 10—officially released September 18, 2012

Michael F. O'Connor, for the appellant (defendant).

Marc J. Ubaldi, for the appellee (plaintiff).

Opinion

HARPER, J. The sole issue in this certified appeal is whether a landlord may be held liable, under a common-law theory of premises liability, for injuries sustained by a tenant after being bitten by a dog owned by a fellow tenant and kept on premises owned by the common landlord, when the landlord knew of the dog's dangerous propensities, but did not have direct care of, or control over, the dog. The defendant, the housing authority of the town of Wallingford, appeals, upon our grant of certification, from the judgment of the Appellate Court reversing the judgment of the trial court following its decision granting the defendant's motion to strike a complaint brought by the plaintiff, Patricia Giacalone, seeking to recover damages for such injuries. *Giacalone* v. *Housing Authority*, 122 Conn. App. 120, 131, 998 A.2d 222 (2010). We conclude that a landlord's common-law duty to alleviate known dangers includes dangers posed by vicious dogs, and, accordingly, we affirm the Appellate Court's judgment.

The record reveals the following undisputed facts and procedural history. In accordance with General Statutes § 8-67,[1] the plaintiff timely commenced a negligence action against the defendant. The complaint alleges that the plaintiff, a tenant of the defendant's residing at 44 Louis Circle in Wallingford, sustained injuries and other harm after being bitten by a dog at or near 14 Tremper Drive in Wallingford, a nearby property of which the defendant is also the landlord. The complaint further alleges that the defendant was aware that the attacking dog was dangerous and aggressive, and that the plaintiff's injuries resulted from the defendant's negligence in the face of that knowledge. Specifically, the complaint alleges that the defendant was negligent in failing, inter alia: to remove the dog from the property or otherwise enforce a lease provision prohibiting tenants from keeping dogs without permission; to ensure that the dog was removed from the premises following the defendant's issuance of an order, two years prior to the attack, instructing the dog's owners to remove the dog; to keep the plaintiff safe from dog attacks on the premises; and to warn the plaintiff of the presence of a dangerous dog.

In response to the complaint, the defendant filed a motion to strike pursuant to Practice Book § 10-39, contending that the plaintiff had failed to plead the necessary elements to sustain a cause of action for liability arising from a dog bite because the complaint did not allege that the defendant was the dog's owner or keeper. The trial court granted the defendant's motion, concluding that only the owner or keeper of a dog may be held liable for any injuries the animal causes. Thereafter, the court rendered judgment for the defendant, from which the plaintiff appealed to the Appellate Court. That court reversed the trial court's judgment

and remanded the case for further proceedings; id., 126; reasoning that, although a cause of action historically had been unavailable against a defendant who was not the dog's owner or keeper, this court's decision in *Auster* v. *Norwalk United Methodist Church*, 286 Conn. 152, 165, 943 A.2d 391 (2008), recognized a broader theory of common-law liability. *Giacalone* v. *Housing Authority*, supra, 125–26. We thereafter granted the defendant's petition for certification to appeal to this court, limited to the following question: "Did the Appellate Court properly determine that, pursuant to *Auster* . . . the defendant could be held liable as a result of a dog bite from a dog that was owned and kept by a tenant of the [defendant]?" *Giacalone* v. *Housing Authority*, 298 Conn. 906, 907, 3 A.3d 69 (2010). We answer that question in the affirmative.

The defendant contends on appeal that, notwithstanding this court's decision in *Auster*, only the owner or keeper of a dog may be held liable for injuries caused by that dog. The defendant further asserts that the present case is factually distinguishable from *Auster* because the defendant in that case exercised some control over the dangerous dog. We are not persuaded.

We begin by recounting the standard governing appellate review of a trial court's decision to grant a motion to strike. "A motion to strike challenges the legal sufficiency of a pleading . . . and, consequently, requires no factual findings by the trial court. As a result, our review of the [trial] court's ruling is plenary. . . . We take the facts to be those alleged in the complaint that has been stricken and we construe the complaint in the manner most favorable to sustaining its legal sufficiency. . . . [I]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . Thus, we assume the truth of both the specific factual allegations and any facts fairly provable thereunder. In doing so, moreover, we read the allegations broadly . . . rather than narrowly." (Internal quotation marks omitted.) *Sturm* v. *Harb Development, LLC*, 298 Conn. 124, 130, 2 A.3d 859 (2010).

Before turning to the central issue of this appeal—that is, the proper interpretation of this court's opinion in *Auster*—we briefly outline the rules of liability pertaining to animal attacks that predate that case. Under the common law of Connecticut, one who keeps a wild animal does so at the peril of being held strictly liable for any harm it causes, but "[i]f one keeps a domestic animal having neither mischievous nor vicious propensities, he will not be liable if the animal trespass[es] and do[es] injury." *Bischoff* v. *Cheney*, 89 Conn. 1, 4, 92 A. 660 (1914). As suggested by the qualification to this proposition, the rule that the owner of a domestic animal is not responsible for the harm caused by that animal does not apply if the animal is known to be dangerous: "If the domestic animal belongs to a species

naturally inclined to do mischief or be vicious, *or if it be in fact vicious*, and the owner have knowledge, actual or constructive, of such propensity, it is his duty to use reasonable care to restrain the animal in such manner as to prevent its doing injury, and when he permits the animal to go at large or to trespass, he fails in his duty, and hence is liable for injury done by the trespassing animal." (Emphasis added.) Id.;[2] see also *Baldwin* v. *Ensign*, 49 Conn. 113, 117–18 (1881) ("It is the duty of a man who owns a vicious animal to give notice of his propensity or to restrain him; his omission to do so is negligence which makes him liable for the consequences. If the animal is not accustomed to do mischief and is where he rightfully belongs and does an injury, there is no negligence and no liability."). Thus, under Connecticut common law, knowledge of a domestic animal's vicious propensity imposes a duty on the owner to restrain that animal, and failure to do so is treated as negligence, triggering liability for damage caused by the animal.

This common-law rule has been modified substantially as it pertains to dogs. Specifically, General Statutes § 22-357 imposes strict liability on the "owner or keeper" of a dog for harm caused by the dog, with limited exceptions.[3] "[The] principal purpose and effect [of § 22-357] was to abrogate the common-law doctrine of scienter as applied to damage by dogs to persons and property, so that liability of the owner or keeper became no longer dependent upon his knowledge of the dog's ferocity or mischievous propensity; literally construed the statute would impose an obligation on him to pay for any and all damage the dog may do of its own volition." *Granniss* v. *Weber*, 107 Conn. 622, 625, 141 A. 877 (1928).

The common-law duty to restrain—and its replacement with a strict liability rule with respect to dogs—does not, however, exhaust the range of common-law theories of liability applicable to animal bites. This unremarkable fact is exemplified by *Williams* v. *Milner Hotels Co.*, 130 Conn. 507, 509, 36 A.2d 20 (1944), in which the plaintiff brought a negligence action against the owner of a hotel with a known rat problem after he was bitten by a rat while staying there. The innkeeper's liability was grounded not in the absurd premise that he had a duty to restrain the offending rat, but, rather, in a general rule of premises liability, namely, that "[a]n innkeeper is required to use reasonable care to keep his inn in a reasonably safe condition for his invitees." Id., 511; see also *Pettway* v. *Turbana Corp.*, Superior Court, judicial district of Fairfield, Docket No. FBT-CV-10-6008870-S (September 14, 2011) (denying summary judgment on premises liability claim arising from spider bite when issue of material fact existed regarding whether defendant was on notice of presence of spiders).

With these considerations in mind, we turn to our decision in *Auster* v. *Norwalk United Methodist Church*, supra, 286 Conn. 152. In that case, the plaintiff, who was bitten by a dog owned by an employee of the defendant church, brought an action seeking damages under § 22-357, the strict liability dog bite statute. Id., 153–54. We concluded that the plaintiff could not prevail under § 22-357 because "there was no evidence that the [church] exerted control over [the] dog in a manner similar to that of an owner," and, therefore, "the plaintiff failed to establish that the [church] was a keeper of the dog," as required to trigger liability under the statute. Id., 164–65. We then proceeded, however, to clarify the scope of our holding: "This is not to say, of course, that the [church] may not have been negligent in failing to take reasonable precautions to protect against the attack that occurred . . . particularly in view of the fact that [the] dog previously had bitten a church employee. We conclude only that the evidence was insufficient to hold the [church] strictly liable to the plaintiff as a keeper of the dog under § 22-357. On retrial, the plaintiff will have the opportunity to establish her common-law negligence claim against the [church]." Id., 165. It is this comment regarding the availability of a common-law remedy that is at issue in the present case.

Upon review, we see nothing novel or unclear in this passage from *Auster*, which merely stated that the failure of one of the plaintiff's theories of liability, which was based on the strict liability imposed on the owner or keeper of a dog under § 22-357, did not preclude the plaintiff from potentially prevailing on a theory of common-law liability. Specifically, we observed that the defendant church may have been "negligent in failing to take reasonable precautions to protect against the attack . . . ." Id. This statement in no way inaugurated a broader principle of common-law liability than had existed previously. Rather, we merely nodded to the uncontroversial fact that ordinary—indeed, hoary—principles of common-law liability could be brought to bear on the question of whether the church, as the landlord, could be held liable in negligence for failing to protect against the dog attack in that case. Those same principles apply equally to the present case.

As a matter of well settled common law, "[i]t is, of course, the duty of a landlord to use reasonable care to keep in a reasonably safe condition the parts of the premises over which he reserves control. . . . The ultimate test of the duty is to be found in the reasonable foreseeability of harm resulting from a failure to exercise reasonable care to keep the premises reasonably safe." (Citations omitted.) *Noebel* v. *Housing Authority*, 146 Conn. 197, 200, 148 A.2d 766 (1959). The prevailing common-law conception of the dangerous conditions implicated in this duty, moreover, certainly is capacious enough readily to encompass threats from animals,

including known vicious dogs. The scope of the term "conditions" is well illustrated by the dangerous animals in *Williams*, in which an innkeeper was obligated, once placed on notice, to take measures to combat encroaching rats to maintain safe conditions at an inn. *Williams* v. *Milner Hotels Co.*, supra, 130 Conn. 511. By the same reasoning, a landlord, in exercising the closely analogous duty to alleviate dangerous conditions in areas of a premises over which it retains control, must take reasonable steps to alleviate the dangerous condition created by the presence of a dog with known vicious tendencies in the common areas of the property.

More fundamentally, a vicious dog may qualify as a dangerous condition under the traditional, common use of this term because this court has long recognized that a landlord's common-law obligation to alleviate known dangers exists independent of the specific source of that danger. As the court observed in *Reardon* v. *Shimelman*, 102 Conn. 383, 388, 128 A. 705 (1925), with respect to "[t]he duty of the landlord being to exercise reasonable care to prevent the occurrence of defective or dangerous conditions in the common approaches, the fact that a particular danger arose from the fall of snow or the freezing of ice can afford no ground of distinction. Indeed, the causes which are at work to produce it are no more natural causes than are those which, more slowly, bring about the decay of wood or the rusting of iron. To set apart this particular source of danger is to create a distinction without a sound difference." Whether a dangerous condition is created by rats, snow, rotting wood or vicious dogs, these differing facts present no fundamental ground of distinction. What defines the landlord's duty is the obligation to take reasonable measures to ensure that the *space* over which it exercises dominion is safe from dangers, and a landlord may incur liability by failing to do so.[4]

We note, finally, that our conclusion that the traditional common-law duty of landlords to keep common areas in a reasonably safe condition applies to dangers posed by known dangerous dogs accords with the identical conclusion reached by courts in numerous other jurisdictions. See, e.g., *Fouts ex rel. Jensen* v. *Mason*, 592 N.W.2d 33, 40 (Iowa 1999) ("When the landlord knows or has reason to know of the existing dangerous condition, the landlord—to avoid liability—must act to protect those using the common area. . . . [H]ere, although she may not have had control over the dog, [the landlord] knew or had reason to know that the dog posed a danger to those in the common backyard. She therefore had a duty to take reasonable precautions to protect those lawfully in the common area." [Citations omitted.]); *Gentle* v. *Pine Valley Apartments*, 631 So. 2d 928, 934 (Ala. 1994) ("We hold that the presence of a tenant's vicious dog in areas shared by other tenants constitutes a 'dangerous condition' and that a landlord must exercise reasonable care to prevent injuries from

such a dangerous condition. In so holding, we do no more than apply ordinary negligence principles, analogizing this particular condition to a variety of comparable dangers traditionally triggering the duty of due care."); *Linebaugh ex rel. Linebaugh* v. *Hyndman*, 213 N.J. Super. 117, 121–22, 516 A.2d 638 (App. Div. 1986) ("In our view, [a]n abnormally [vicious] domestic animal is like an artificial [dangerous] condition on the property. . . . Where a landlord, either by his affirmative consent or by his failure to take curative measures, permits another to harbor such an animal in those areas in which he retains control, he is liable to his tenants and others lawfully on the premises for the injuries that result. Consistent with the landlord's obligation to maintain the premises in a reasonably safe condition, a landlord is obliged to take reasonable measures to protect other tenants and their invitees from harm which a vicious dog is capable of inflicting. . . . We stress that our holding here lies well within traditional principles of negligence law." [Citations omitted; internal quotation marks omitted.]); *Siegel* v. *1536–46 St. John's Place Corp.*, 184 Misc. 1053, 1054–55, 57 N.Y.S.2d 473 (1945) (A landlord's duty to keep common areas in a reasonably safe condition "extended to the exclusion of known vicious animals from frequenting thereabout. An action based on [the] same is grounded on negligence . . . regardless of the fact that the corporate defendant was neither an owner or harborer of said dog. The evidence indicates prior notice to [the] defendant's officer of the dog's presence in and about the public halls and its trend toward viciousness. Such owners had control of the premises with power to expel the dog and its owner as well. It follows that liability ensued." [Citation omitted.]).

The judgment of the Appellate Court is affirmed.

In this opinion ROGERS, C. J., and NORCOTT, PALMER and EVELEIGH, Js., concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

This case was scheduled to be argued before a panel of this court consisting of Chief Justice Rogers and Justices Norcott, Palmer, Zarella, McLachlan, Eveleigh and Harper. Although Justice McLachlan was not present when the case was argued before the court, he read the record and briefs and listened to a recording of oral argument prior to participating in this decision.

[1] General Statutes § 8-67 provides: "Any person injured in person or property within boundaries of property owned or controlled by an authority, for which injury such authority is or may be liable, may bring an action within two years after the cause of action therefor arose to recover damages from such authority, provided written notice of the intention to commence such action and of the time when and the place where the damages were incurred or sustained has been filed with the chairman or the secretary of the authority within six months after the cause of action therefor arose."

[2] Thus, although "[a] cat is not of a species of domestic animals naturally inclined to mischief, such as, for example, cattle, whose instinct is to rove, and whose practice is to eat and trample growing crops. The cat's disposition is kindly and docile, and by nature it is one of the most tame and harmless of all domestic animals. . . . If, however, the cat be of a species having, or in fact of, a mischievous or vicious disposition, or its owner knows this propensity, and then permits the cat to go at large or trespass, he will be liable for the damage done by it resulting from the trespass." *Bischoff* v.

Cheney, supra, 89 Conn. 5; see also *Allen* v. *Cox*, 285 Conn. 603, 617, 942 A.2d 296 (2008) ("when a cat has a propensity to attack other cats, knowledge of that propensity may render the owner liable for injuries to people that foreseeably result from such behavior").

[3] General Statutes § 22-357 provides: "If any dog does any damage to either the body or property of any person, the owner or keeper, or, if the owner or keeper is a minor, the parent or guardian of such minor, shall be liable for such damage, except when such damage has been occasioned to the body or property of a person who, at the time such damage was sustained, was committing a trespass or other tort, or was teasing, tormenting or abusing such dog. If a minor, on whose behalf an action under this section is brought, was under seven years of age at the time the damage was done, it shall be presumed that such minor was not committing a trespass or other tort, or teasing, tormenting or abusing such dog, and the burden of proof thereof shall be upon the defendant in such action."

[4] We are thus unpersuaded by the defendant's contention that the absence of an allegation that the defendant exercised control over the dog that bit the plaintiff provides a meaningful basis to distinguish the present case from *Auster* for purposes of the common-law theory of liability identified in that opinion. Liability under the common-law theory discussed herein would arise not from the defendant's failure to restrain the dog from attacking—a theory of liability that, per § 22-357, applies only to a dog's owner or keeper—but, rather, from the defendant's failure to protect against the attack; it is the landlord's control over the space, not its control over the potential danger, that gives rise to liability.

Conversely, the present case is readily distinguished from *Stokes* v. *Lyddy*, 75 Conn. App. 252, 815 A.2d 263 (2003), on which both the defendant and the trial court have relied for the proposition that common-law negligence liability extends only to the owners or keepers of dogs. In *Stokes*, a case in which the plaintiff was bitten by a dog on a public sidewalk and subsequently brought an action against the landlords of the dog's owner, the Appellate Court rejected the plaintiff's premises liability theory on the grounds that "[t]he plaintiff admits that the attack occurred away from the leased property. Likewise, the plaintiff fails to provide evidence that the attack occurred within any common area under the defendants' control. The plaintiff admits that the attack occurred away from the leased property, on a public sidewalk. Additionally, the plaintiff fails to provide evidence that the attack occurred within any common area under the defendants' control. Therefore, under the theory of premises liability—that a landlord has a duty to maintain property he controls in a reasonably safe manner—the defendants owed no duty to the plaintiff." Id., 261–62. In the present case, the plaintiff alleged that the attack occurred on property owned by the defendant, and the complaint, though not specific, is consistent with the attack occurring on a part of the property under the defendant's control. More fundamentally, the quoted passage from *Stokes* makes clear that the Appellate Court's reasoning regarding the limits on common-law liability for dog bites does not extend to abrogating the common-law duty of landlords to keep common areas reasonably safe, including from dangerous dogs. *Stokes*, that is to say, provides no support for the notion that a landlord who does not keep or own a dog is therefore immune from liability if the dog harms a tenant, even if the landlord knew of the danger posed by the dog, failed to take measures to alleviate the danger, and an attack subsequently occurred in the portion of the premises over which the landlord maintains control.