

ISHA SEN v. KOSTAS TSIONGAS (AC 40963)

Isha Sen was injured at the apartment building she resided in when she was bitten by the first-floor tenant's dog in the building's common stairway. Sen was treated at a hospital for lacerations to and numbness of her right hand caused by the attack. She subsequently sued the landlord of the apartment building alleging negligence in failing to maintain the building premises in a reasonably safe condition by allowing the tenant to keep a vicious animal, failing to investigate the dog's history and failing to enforce the "no pets" provision of the lease. The defendant sought summary judgment stating that prior to the incident he did not observe the dog engaging in vicious behavior nor was he ever informed of its vicious propensities. The plaintiff argued that the defendant knew or should have known about the dog's viciousness because: (1) the owner spoke openly about the dog being used as bait for dog fighting; (2) prior to the attack the dog scratched her husband and attempted to bite him (3) the dog bit the owner's seven year old son and; (4) the defendant testified that the dog barked at him through the window while he mowed the lawn and pulled towards him when walked on a leash. The trial court granted summary judgment in favor of the defendant ruling that the plaintiff failed to put forth any evidence that the defendant knew or should have known of the dog's vicious propensities prior to the attack. Thus, concluding that there was no issue of material fact.

The issue on appeal was whether there was a genuine issue of material fact as to whether the defendant knew or should have known that the dog had vicious propensities.

Landlords have a duty to use reasonable care to keep the premises they control in a reasonably safe condition. This duty encompasses taking reasonable steps to alleviate dangerous conditions—including dangers caused by vicious dogs. The landlord's duty applies only to reasonably foreseeable harm. Meaning that an ordinarily prudent person knowing what the

landlord knew or should have known under the circumstances would have anticipated the harm caused by the condition. The test is whether the landlord had actual or constructive knowledge of the dangerous condition. In other words, whether the landlord knew or should have known of the dangerous condition. It is negligent for a landlord to fail to alleviate a dangerous condition that they know of or should know of.

A party moving for summary judgment has the burden of showing that there is no issue of material fact and that they are entitled to judgment as a matter of law. If this burden is met the non-moving party must then demonstrate that there is an issue of material fact in order to survive summary judgment. An issue of material fact exists where a reasonable trier of facts could believe both parties' account of the events. Summary judgment is inappropriate when conflicting facts require a credibility determination.

The appellate court reversed the trial court's decision and held that a genuine issue of material fact existed as to whether the defendant knew or should have known of the dog's vicious propensities.

The court stated that although the defendant denied having knowledge of the dog's vicious propensities, the plaintiff had put forth enough facts that could lead a reasonable jury to believe that the defendant had constructive notice of the dog's vicious propensities. First, the defendant visited the apartments each week thus, was able to observe the dog. Second, the dog scratching the plaintiff's husband, biting the owner's son and the owner speaking about the dog being used as bait for dog fighting suggests that the landlord should have known the dog had aggressive tendencies. Third, the landlord admitted that he witnessed the dog bark at him through a window when he was mowing the lawn and pull towards him while on a leash. However, the defendant interpreted the barking and pulling as behavior that "all dogs" do. Thus, this case

required a jury to decide whether the defendant or plaintiff's account of the dog's behavior was more credible. Consequently, the conflicting interpretations of the dog's behavior constituted a genuine issue of material fact thwarting summary judgment.

In his concurring opinion Justice Prescott added that the breed of the dog, in this case a pit bull, ought to be considered in assessing whether the defendant had constructive notice of the dog's vicious propensities. He reasoned that the breed is a relevant consideration because numerous courts have held that pit bulls pose a greater danger than other dog breeds, many localities ban or highly regulate ownership of them and branches of the military ban pit bulls from military bases due to their vicious tendencies. Furthermore, Justice Prescott cited *Warboys* which held that pit bulls being known for violent behavior is a sufficient basis for a police officer to determine how to treat an approaching pit bull. He clarified that the breed is not determinative of constructive notice on its own but is a relevant factor to consider. Thus, he concluded that the dog being a pit bull and the evidence of its aggressive behavior put forth by the plaintiff was enough to create a genuine issue of material fact.

This case elucidates that a landlord cannot win by summary judgment by merely claiming they were unaware of a dangerous condition on their property where the plaintiff can demonstrate numerous instances that revealed the dangerous condition. This is salient because it protects the renters right to live in a safe environment from landlords who ignore warning signs of dangerous conditions by allowing the case to proceed to trial.