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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

TATEVIK HARUTYUNYAN, Plaintiff and Appellant, v. BURBANK FOURSQUARE CHURCH, Defendant and Respondent.	B282020 (Los Angeles County Super. Ct. No. BC585074)

APPEAL from a judgment of the Superior Court of Los Angeles County, Patricia Nieto, Judge. Affirmed.

Law Offices of Ted B. Wacker, Ted B. Wacker and Whitney Daniel Bertch for Plaintiff and Appellant.

Martin Moreno; Pettit Kohn Ingrassia Lutz & Dolin, Grant D. Waterkotte and Tristan A. Mullis for Defendant and Respondent.

Plaintiff Tatevik Harutyunyan was bitten by a dog housed with the tenant of defendant, the International Church of the Foursquare Gospel. Defendant moved for summary judgment contending, among other things, that it owed no duty of care to plaintiff because it had no prior knowledge of the dog's presence on the leased premises or of the dog's vicious nature. The trial court granted defendant's motion and entered judgment for defendant. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Plaintiff's injury

In August 2014, as plaintiff was walking her dog in the alley adjacent to East Providencia Avenue, she was bitten by a dog named Smokey who was staying with defendant's tenants, Maria Teresa Sanchez and Abraham Mateos. The tenants, who are not parties to this appeal, leased a small house located on defendant's property, off of East Providencia Avenue, near the alley that runs behind the church. Surrounded by an ivy-covered chain-link fence, the leased house is only visible from the alley. The month-to-month lease commenced in late 2013 or early 2014.

Plaintiff's complaint against defendant alleged that the church owed plaintiff a duty to exercise reasonable care in the maintenance, control, operation, and management of the premises, and to keep it in a reasonably safe condition. This duty included using reasonable care to discover any unsafe condition, and to repair or to give warning of anything that could reasonably be expected to harm plaintiff, such as dogs on the premises, and to keep any such dogs from escaping the premises.

II. Defendant's summary judgment motion

Defendant moved for summary judgment on the ground it owed no duty of care to plaintiff because, among other things, defendant had no knowledge that the dog was housed on the premises or of its vicious tendencies.

Through the authenticating declaration of its attorney Tristan A. Mullis, defendant presented evidence of the following undisputed facts. Defendant entered into an agreement under which the tenants would reside in the house on church property and provide approximately eight days of handyman services to defendant per month in lieu of cash rental payments.

Pastor William Calderwood inspected the house one week before the tenants moved in, and once during the week they took possession. Neither Pastor Calderwood nor any other of defendant's employees entered the house after that time. There is no allegation that the tenants ever discussed the possibility of keeping a dog on the leased premises.

In April 2014, the tenants took Smokey in on a short-term basis until a permanent home could be found for the animal.

Plaintiff did not dispute defendant's fact No. 25 that Pastor "Calderwood . . . had neither seen, heard, nor been advised of the Dog before the attack." Nor did plaintiff dispute fact No. 26, that "[n]o member of Defendant's staff visited the Home when the Dog was present or observed the Dog at any time." Pastor Calderwood testified in deposition that he first learned of Smokey's existence on church property after plaintiff was attacked. Tenant Mateos testified he did not disclose the dog's presence in the house until after the attack. Smokey had not previously broken out of the fence at the house, or broken free of tenant Sanchez's control.

In opposition, plaintiff cited Pastor Calderwood's deposition testimony about where he parked and walked on the property to dispute his lack of knowledge of Smokey's existence. However, the pastor actually testified that he rarely parked in the lot near the tenant's house; he usually parked near his office on the other side of the church property from the leased premises. The pastor walked down East Providencia Avenue once every other week. Plaintiff additionally submitted the statements of the church's neighbors, Cheri DeNick and Marsha Fukida, who walked their pets in the alley behind the leased premises and described witnessing Smokey bark and snarl. DeNick, who could hear the dog from East Providencia Avenue, also described an event that occurred before the incident, in which Smokey lunged at her and frightened her.

The trial court granted defendant's summary judgment motion finding no triable issues of material fact that defendant did not know of the dog's presence on the property or of the dog's vicious propensities. Plaintiff timely appealed.

DISCUSSION

I. Standard of review

A trial court properly grants summary judgment when "there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).)

The defendant moving for summary judgment bears the initial burden to show the action has no merit, that is, "one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c,

subds. (a), (p)(2).) " 'Once the defendant meets this initial burden of production, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of material fact. [Citation.] . . . [Citation.] We review the trial court's ruling on a summary judgment motion de novo, liberally construing the evidence in favor of the party opposing the motion and resolving all doubts about the evidence in favor of the opponent. [Citation.] We consider all of the evidence the parties offered in connection with the motion, except that which the court properly excluded.' " (*Delgadillo v. Television Center, Inc.* (2018) 20 Cal.App.5th 1078, 1085.)[1]

II. Duty of care

The existence of a duty of care is a question of law (*Cody F. v. Falletti* (2001) 92 Cal.App.4th 1232, 1240) to be reviewed de novo on appeal. (*Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 770.)

"Under California law, a landlord owes a duty of care to his tenant's invitees to prevent injury from the tenant's vicious dog when the landlord has 'actual knowledge' of the dog's vicious nature in time to protect against the dangerous condition on his property." (*Yuzon v. Collins* (2004) 116 Cal.App.4th 149, 152,

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[1] Plaintiff argues that the trial court improperly weighed the evidence. She quotes from the ruling in which the court stated that plaintiff's additional evidence did not "persuade" the court that defendant had actual knowledge of the dog. We infer from the court's use of the word "persuade" that it was expressing its conclusion that plaintiff's additional evidence did not point to an actual conflict in the evidence.

citing *Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 507 (*Uccello*).)

Consequently, " ' "a duty of care may not be imposed on a landlord without proof that he knew of the dog *and* its dangerous propensities. Because the harboring of pets is such an important part of our way of life and because the exclusive possession of rented premises normally is vested in the tenant, . . . *actual* knowledge and not mere constructive knowledge is required. For this reason . . . a landlord is under no duty to inspect the premises for the purpose of discovering the existence of a tenant's dangerous animal; *only when the landlord has actual knowledge of the animal, coupled with the right to have it removed from the premises, does a duty of care arise*." ' " (*Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1369–1370, second italics added.)

Actual knowledge may be shown by either direct or circumstantial evidence, and the defendant's "denial of such knowledge will not, per se, prevent liability." (*Uccello*, *supra*, 44 Cal.App.3d at p. 514, fn. 4.) "[A]ctual knowledge can be inferred from the circumstances only if, in the light of the evidence, such inference is *not based on speculation or conjecture*. Only where the circumstances are such that the defendant 'must have known' and not 'should have known' will an inference of actual knowledge be permitted." (*Ibid.*, italics added.)

Here, plaintiff did not dispute defendant's fact Nos. 25 and 26 that neither Pastor Calderwood nor anyone else from the church knew about Smokey's presence on the leased premises until after the attack. Pastor Calderwood also testified that he never heard a dog bark or saw dog feces. Tenant Mateos did not disclose the dog's presence in the house until after the incident.

As a matter of law, therefore, defendant owed no duty of care to plaintiff because it did not have actual knowledge of Smokey's presence on the leased premises.

To create a dispute, plaintiff points to Pastor Calderwood's deposition testimony that he would walk on East Providencia Avenue once every other week, and that he parked in the church parking lot near the leased premises. Plaintiff argues that a "[r]easonable inference suggests" that Pastor Calderwood "must have known, at a minimum, of the dog's presence." To the contrary, the pastor walked down the street—not down the alley from which the leased premises was visible through the ivy-covered fence—and normally parked on the opposite side of the property from the leased house. These facts do not tend to suggest the pastor was aware of the dog or to give rise to any reasonable inference that the pastor must have known of the dog's presence, particularly because the pastor testified that he never heard or saw evidence that a dog was on the premises. To conclude otherwise requires pure speculation.

Salinas v. Martin (2008) 166 Cal.App.4th 404, on which plaintiff relies, is inapposite. Unlike here, the defendant in *Salinas* did not lease the property to the dog owners, but rather continued to control the premises, and then actually gave "*express consent*" to keep the dogs loose in the backyard. (*Id.* at pp. 408, 409, 416, italics added.)

Next, analogizing to *Donchin v. Guerrero* (1995) 34 Cal.App.4th 1832, plaintiff contends that she created a triable issue of fact about whether defendant had actual knowledge of the dog's presence and dangerous propensities because she "impugned" Pastor Calderwood's credibility with DeNick's and Fukida's declarations. But, the evidence of the *Donchin*

defendant's knowledge came from his own contradictory statements. (*Id.* at pp. 1840–1841.) There, the defendant first unequivocally denied knowing the two Rottweilers in question existed and denied giving permission for them to be housed on his property. (*Id.* at p. 1841.) He then executed a declaration denying that the dogs had vicious propensities. (*Ibid.*) The *Donchin* court explained, "Just as a criminal defendant's false exculpatory statement is evidence of his consciousness of guilt, a civil defendant's false exculpatory statement can be evidence of his consciousness of liability and casts doubt on his denial of knowledge affecting his liability." (*Ibid.*) In contrast, plaintiff here does not rely on any contradictory statements made by Pastor Calderwood that would suggest his consciousness of liability. Instead, plaintiff cites the declarations of DeNick and Fukida about what *those women saw*. Neither declaration discusses, let alone contradicts, any of Pastor Calderwood's statements about what *he* did and did not see or know.[2]

Plaintiff further contends that defendant "retained control over the premises along with the concomitant right and ability to remove the dog from the premises." For this proposition, plaintiff relies on the fact that the tenants rented on a month-to-month

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[2] Plaintiff also challenges Pastor Calderwood's credibility based on evidence that conflicts with his statements about when the dog was removed from the property *after the attack*. Hence, plaintiff argues, none of the pastor's testimony should be believed. This testimony does not impeach Pastor Calderwood's credibility. Plaintiff's own separate statement *did not dispute* the facts that "[*n*]o *member of Defendant's staff* visited the Home when the Dog was present *or observed the Dog at any time*" or that Pastor Calderwood "had neither seen, heard, nor been advised of the Dog before the attack." (Italics added.)

lease, with the result that every time defendant renewed the lease, it had a right of entry and could have remedied the defect. Plaintiff argues that defendant had the power each time the tenancy renewed to inspect the house and to discover the dog's presence.

However, even when the premises is leased on a month-to-month basis, "the obligation to inspect arises 'only if [the landowner] had some reason to know there was a need for such action.' [Citation.] The month-to-month tenancy may have given the [landowners] the right and the ability to cure a condition by terminating the lease on proper notice, but *only if they knew about the condition or had some reason to know inspection was necessary*." (*Garcia v. Holt* (2015) 242 Cal.App.4th 600, 605, italics added.) Plaintiff here did not dispute that defendant had no actual knowledge of Smokey's presence such that an inspection would have been necessary. The mere fact that the leased premises is located on the same property as the church does not alter this result.

Finally, plaintiff points to factual disputes about whether Smokey had vicious propensities. However, as there is no dispute about the material fact that defendant had no actual knowledge of the dog's existence on the property, defendant is entitled to summary judgment regardless of whether there is a dispute about the animal's nature. (*Christina C. v. County of Orange* (2013) 220 Cal.App.4th 1371, 1379.)

The trial court properly ruled that defendant owed no duty to plaintiff as a matter of law because there was no triable issue about defendant's actual knowledge.

DISPOSITION

The judgment is affirmed. Burbank Foursquare Church is awarded its costs on appeal.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

LAVIN, J.