

DOCKET NO.: HHB CV-16-6033741-S : SUPERIOR COURT
 STEVEN ROBERT MADORE PPA : JUDICIAL DISTRICT OF
 COLLEEN MADORE : NEW BRITAIN
 V. :
 ISCC, LLC, ET AL. : NOVEMBER 14, 2017

MEMORANDUM OF DECISION
Defendant ISCC, LLC's Motion for Summary Judgment (No. 138.00)

This action arises from a dog bite that occurred on March 30, 2015 at an ice skating rink and recreational sports facility in Simsbury, Connecticut. The plaintiff, Steven Robert Madore ppa Colleen Madore, brought suit against the defendants ISCC, LLC ("ISCC"), the lessee and operator of the facility, and Sheri Bonawitz ("Bonawitz"), the owner of the dog, for injuries allegedly suffered by the minor plaintiff as a result of the bite.¹ ISCC moves for summary judgment as to the first count of the plaintiff's complaint on grounds that there is no genuine issue of material fact that (1) it did not owe a common-law duty to the plaintiff because it did not know of the dangerous propensities of the dog at issue and the incident did not occur in a common area of the premises; and (2) it did not owe a contractual duty to the plaintiff under its lease agreement for the premises. The plaintiff objects to the motion for summary judgment on grounds that (1) ISCC is under a contractual duty to create a recreational facility in a safe condition in all respects; and/or (2) ISCC is under a common-law duty to keep the premises reasonably safe from dangers.

DISCUSSION

I. Summary Judgment Standard

¹ ISCC subsequently filed an apportionment complaint against three additional defendants.

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“[S]ummary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.” (Internal quotation marks omitted.) *Stuart v. Freiberg*, 316 Conn. 809, 820-21, 116 A.3d 1195 (2015). “In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law.” (Internal quotation marks omitted.) *Rompney v. Safeco Ins. Co. of America*, 310 Conn. 304, 319-20, 77 A.3d 726 (2013). “Once the moving party has met its burden . . . the opposing party must present evidence that demonstrates the existence of some disputed factual issue.” (Internal quotation marks omitted.) *Ferri v. Powell–Ferri*, 317 Conn. 223, 228, 116 A.3d 297 (2015).

“[T]he issue of whether a defendant owes a duty of care is an appropriate matter for summary judgment because the question is one of law.” (Internal quotation marks omitted.) *Mozeleski v. Thomas*, 76 Conn. App. 287, 290, 818 A.2d 893, cert. denied, 264 Conn. 904, 823 A.2d 1221 (2003). “The existence of a duty is a question of law and only if such a duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand.” (Internal quotation marks omitted.) *Sic v. Nunan*, 307 Conn. 399, 407, 54 A.3d 553 (2012).

II. Undisputed Facts

The following facts are not in dispute. The minor plaintiff was bitten by a dog on March 30, 2015, when he was at the ice skating rink and recreational sports facility leased to and operated by ISCC in Simsbury, Connecticut. The dog, a six year old Shetland sheepdog named Bundles, was owned by Bonawitz. At the time of the incident, the dog was on a leash at the foot of its owner behind a fully enclosed counter area that was not open to the public and was only accessible through a closed office door upon which was posted a sign indicating that “Tournament Officials Only” were allowed in the area. The minor plaintiff’s aunt opened the door and entered the restricted area. The minor plaintiff followed his aunt through the opened door, entered the enclosed counter area, and was bitten by the dog.

ISCC was not the owner or keeper of the dog. ISCC had no knowledge of any dangerous or vicious propensities of the dog that bit the minor plaintiff. Prior to the March 30 incident, the dog had never bitten anyone or exhibited any aggressive tendencies. Dogs in general were not prohibited by ISCC from being in the premises. The dog that bit the plaintiff had been at the premises at least ten times prior to the March 30 incident, was known to be friendly, and was always on a leash. The lease agreement pursuant to which ISCC occupies the premises and operates the facility contains a clause that requires ISCC to keep the facility in a good and safe condition in all respects. The lease does not prohibit ISCC from permitting dogs in the facility.

III. Negligence

The essential elements of a negligence action are: duty, breach of that duty, causation and actual injury. *LaFlamme v. Dallessio*, 261 Conn. 247, 251, 802 A.2d 63 (2002). “Duty is a legal conclusion about relationships between individuals, made after the fact, and [is] imperative to a negligence cause of action. The nature of the duty, and the specific persons to

whom it is owed, are determined by the circumstances surrounding the conduct of the individual.” (Internal quotation marks omitted.) Id. “Liability for injuries caused by defective premises . . . does not depend on who holds legal title, but rather on who has possession and control of the property.” Id. A person in control of premises has a duty to an invitee of the premises to use reasonable care to inspect and maintain the premises and to make the premises reasonably safe, a duty to warn or guard an invitee from being injured by reason of any defects the invitee could not reasonably be expected to discover, and a duty to conduct activities on the premises in such a way so as not to injure the invitee. *Fleming v. Garnett*, 231 Conn. 77, 83-84, 646 A.2d 1308 (1994); *Merhi v. Becker*, 164 Conn. 516, 520, 325 A.2d 270 (1973); *Warren v. Stancliff*, 157 Conn. 216, 218, 251 A.2d 74 (1968).

A. Common-law Duty

As previously noted by the court in its decision denying ISCC’s motion to strike the first count of the plaintiff’s complaint,² “[t]he viability of premises liability actions brought against owners, landlords or other possessors of land arising from dog bite injuries occurring on their property has been recognized by our appellate courts. See *Giacalone v. Housing Authority*, 306 Conn. 399, 51 A.3d 352 (2012) (permitting common-law negligence claim in dog bite case against landlord who is not the owner or keeper of the dog); *Auster v. Norwalk United Methodist Church*, 286 Conn. 152, 943 A.2d 391 (2008) (remanding for new trial plaintiff’s common-law negligence claim against defendant church where visitor was bitten while on church premises by dog of church employee); and *Stokes v. Lyddy*, 75 Conn. App. 252, 815 A.2d 263 (2003) (separately addressing issues of premises liability and liability for

² See Memorandum of Decision dated February 15, 2017 and docketed at Entry No. 125.00 (“Motion to Strike Decision”).

injuries caused by animals in action against landlord by nontenant bitten by tenant's dog on public sidewalk).”

Most recently, in *Giacalone v. Housing Authority of Wallingford*, supra, 306 Conn. 407-08, our Supreme Court held that “[a]s a matter of well settled common law, it 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.... 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 [v. Milner Hotels, Co.]*, 130 Conn. 507, 511, 36 A.2d 20 (1944)], in which an innkeeper was obligated, once placed on notice to take measures to combat encroaching rats to maintain safe conditions at an inn.... 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.” (Citations omitted; internal quotation marks omitted.)

In the Motion to Strike Decision, this court held that the plaintiff's failure to allege that ISCC knew of the dangerous or vicious propensities of Bonawitz's dog did not render the complaint legally insufficient because, under this court's interpretation of the case, *Giacalone* left the door open for plaintiffs to pursue claims of common-law negligence under factual scenarios involving dogs without known vicious tendencies. ISCC renews its argument here

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