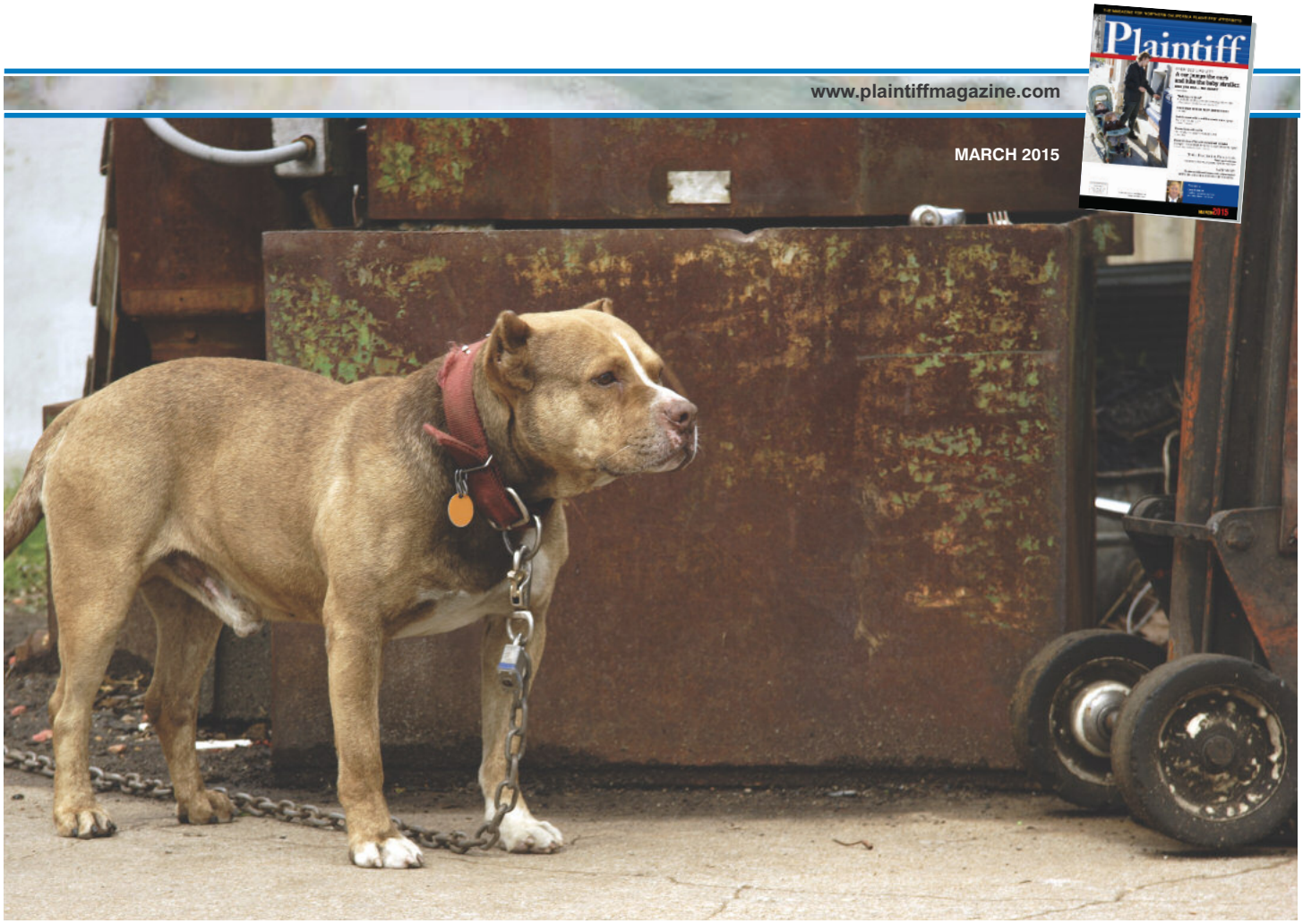

"Bad dog, no bone!"

Landlord's liability when a tenant's dog bites a visitor is based on negligence principles, not strict liability

By Mary Catherine Wiederhold and Robert Smith

Most attorneys know that a tenant, like anyone else, is responsible for his or her dog's bites. Few tenants, however, have adequate insurance or other assets to compensate your client for her injuries. Another source of compensation that attorneys should explore is the tenant's landlord, who will often have insurance or adequate assets to compensate your client. This article discusses the landlord's liability for a tenant's dog bite.

Strict liability for dog bites

In 1931, the California Legislature departed from the common law rule applied to injuries caused by domestic animals, and made dog owners strictly liable for their dogs' bites. (Civ. Code, § 3342.) At common law, an owner was not liable for injury caused by his or her animal unless the owner had knowledge of the animal's vicious propensity. Under Civil Code section 3342, a dog owner is strictly liable for bites from their animal: "The owner of any dog is liable for the damages suffered by any person who is bitten by the dog while in a public place or lawfully in a private place, including the property of the owner of the dog, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness." (Civ. Code, § 3342, subd. (a).) The statute makes an exception for police officers using dogs to assist them in their duties. (Civ. Code, § 3342, subd. (b).) It is also not necessary that a dog's bite break the skin in order to impose liability – a bite on the person's clothing is sufficient to trigger strict liability under the statute. (*Johnson v. McMahan* (1998) 68 Cal.App.4th 173, 174.)

Common law strict liability

"A common law strict liability cause of action may also be maintained if the owner of a domestic animal that bites or injures another person knew or had reason to know of the animal's vicious propensities." (*Priebe v. Nelson* (2006) 39 Cal.4th 1112, 1115.) "If [defendant] knew or should have known of his dog's vicious propensities and failed to inform [plaintiff] of such facts, he could be found to

have exposed [plaintiff] to an unknown risk and thereby be held strictly liable at common law for her injuries. Under such circumstances, the defense of primary assumption of risk would not bar [plaintiff's] claim since she could not be found to have assumed a risk of which she did not know." (*Id.* at pp. 1115-1116.)

Even a dog's excessive exuberance can result in strict liability. "If the possessor knows that his dog has the playful habit of jumping up on visitors, he will be liable without negligence when the dog jumps on a visitor, knocks him down and breaks his hip." (*Drake v. Dean* (1993) 15 Cal.App.4th 915, 922, internal quotations omitted.) In that case, an older woman was knocked down by a 65-pound pit bull when she entered the property to hand out religious material. She broke her hip and suffered lacerations.

Landlord liability for tenant's dog

While the strict liability provision of section 3342 on its face applies only to a dog's owner, a landlord may still be liable for a tenant's dog's bite under general principles of premises liability. As explained below, residential landlords may be liable if they have knowledge of the dog's vicious propensities and the ability to control the animal's presence at the leased property. Commercial landlords are obligated to conduct reasonable inspections for dangerous conditions, which include tenant's vicious dogs.

• ***Landlord found to have liability***

Under common-law principles, a landlord's duty to third persons injured on the landlord's property hinged on the person's status. The landlord had a higher duty to an invitee (one invited onto the property for business purposes). However, the landlord had no duty to a licensee, such as a social guest at the property present with the tenant's permission, nor did the landlord have any duty to a trespasser. Under the modern rule, however, both landlord and tenant are bound by the duty in Civil Code section 1714, subdivision (a) to use "ordinary care or skill in the management of his or her property or person."

The question, of course, is what degree of care is owed by a landlord to control his or her tenant's animals. A landlord's liability depends upon familiar elements of duty, breach of duty, causation and damages. "[N]egligence may be predicated on the characteristics of the animal which, although not abnormal to its class, create a foreseeable risk of harm, As to those characteristics, the owner has a duty to anticipate the harm and to exercise ordinary care to prevent the harm." (*Drake v. Dean* (1993) 15 Cal.App.4th 915, 929; see also Civ. Code, § 1708.) Under some circumstances, a landlord can be held negligent when a tenant's dog bites a person. For example, the landlord might have been taking care of the dog, might have failed to make repairs to a gate or fence, or may simply permit the animal to be present on the premises despite knowledge of its propensity for biting. Courts will generally find a higher degree of care owed to minor child tenants, because they are more likely to lack the capacity and experience to avoid risks like petting or trying to play with a strange dog. "It is beyond dispute that traditional tort principles impose on landlords a duty to exercise due care for the resident's [child's] safety in those areas under their control." (*Amos v. Alpha Property Mgmt.* (1999) 73 Cal.App.4th 895, 898.)

Courts have found liability where the tenant's dog bit someone and the landlord had actual knowledge of the dog's viciousness prior to the attack. (*Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 514.) In *Uccello*, the court reversed the granting of a motion for nonsuit after the plaintiff's opening statement where the plaintiff's opening statement stated that the evidence would show that the landlord had actual knowledge of a vicious dog belonging to a tenant family. (*Id.* at pp. 507-509.) The Court, however, limited the landlord's liability to situations in which the landlord had the right to prevent the presence of the animal on the premises. (*Id.* at pp. 511-512.) The Court apparently relied on a lease provision that allowed the landlord-defendant in *Uccello* to terminate the lease on two weeks' notice. "To permit a landlord to sit idly by in the face of the known danger to others must be deemed to be socially and legally unacceptable." (*Uccello*, *supra*, at p. 512.)

Given that a landlord's liability for a tenant's dog's bite centers on the landlord's knowledge of the animal's vicious nature and ability to control the animal's presence, attorneys should explore both of these issues carefully. As in *Uccello*, attorneys should carefully examine a lease for provisions concerning the tenant's right to have pets on the leased premises and the landlord's ability to terminate the lease without cause. Even without these provisions, however, a landlord may always terminate a lease when the tenant is "maintaining, committing, or permitting the existence of a nuisance" on the leased property. (Code Civ. Proc., § 1161, subd. (4).) A nuisance is "anything which is injurious to health . . . or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property . . . ." (Civ. Code, § 3479.) One could argue that a tenant's vicious dog is a nuisance, giving the landlord the ability to terminate the lease and control the animal's presence. Attorneys should note, however, that establishing nuisance requires more than a single act, and likely requires a pattern of conduct. (See *Beck Development Co., Inc. v. Southern Pacific Transp. Co.* (1996) 44 Cal.App.4th 1160; see also *Ford v. Grand Union Co.* (N.Y. 1935) 197 N.E. 266, 268.) Attorneys should carefully explore and detail the animal's history at the premises, as well as the landlord's knowledge of any prior incidents involving the animal.

The landlord's liability for a tenant's dog's bites may even extend beyond the rental property in some instances.

(*Donchin v. Guerrero* (1995) 34 Cal.App.4th 1832, 1838.) In *Donchin*, the Court refined the *Uccello* court's holding to require a two-step analysis in determining the landlord's liability. First, the plaintiff must establish that the landlord had actual knowledge of the dog's vicious nature. Second, the plaintiff must show that the landlord could have, by use of ordinary care, prevented the harm to the plaintiff. (*Id.* at pp. 1838-1839.) Importantly, the court also held that a landlord's knowledge may be established by indirect evidence, such as a parcel carrier's testimony as to the dog's viciousness and the fact that the landlord collected rent every month at the property. (*Id.* at p. 1839.)

The threshold for commercial landlord liability is somewhat lower, given that commercial landlords have greater rights of access to leased premises and an obligation to conduct reasonable inspections for dangerous conditions. In *Portillo v. Aiassa*, the court affirmed a verdict finding that although a landlord did not have actual knowledge of the tenant's dog's viciousness, the landlord could have learned of the problem with a reasonable inspection. (27 Cal.App.4th 1128, 1134-1135.) In that case, a tenant's guard dog bit a delivery person who delivered beer to the tenant's business. (*Id.* at p. 1132.) The animal's presence at the premises and viciousness were well established, although the landlord claimed that he had seen the dog interacting with the tenant's children and the dog did not appear vicious. (*Ibid.*) The court drew a distinction between commercial and residential landlords, basing its holding on the fact that "[a] lessor who leases property for a purpose involving the admission of the public is under a duty to see that it is safe for the purposes intended, and to exercise reasonable care to inspect and repair the premises . . . ." (*Id.* at p. 1134.) In a commercial context, attorneys should attempt to ascertain the landlord's inspection policies, whether the landlord adhered to them, and the animal's prior history at the premises, in addition to the landlord's actual knowledge of the animal's viciousness.

• ***Landlord found not to have liability***

Courts are reluctant to extend liability to a landlord when it is shown that he or she had no knowledge of the animal's vicious nature, given that the landlord's liability rests on general negligence principles rather than strict liability. For example, a condominium owner and owners' association have no liability when a tenant's dog injures another resident and the owner and management have no notice of the dog's propensity for injuring third parties. In that case, a small dog encountered an elderly tenant, knocked her down, and caused many injuries. (*Chee v. Amanda Goldt Property Mgmt.* (2006) 143 Cal.App.4th 1360; see also *Yuzon v. Collins* (2004) 116 Cal.App.4th 149.)

In another case, a bank that became a landlord by way of foreclosure owed no duty to a third party injured by dogs on the property while the possessors of the property were contesting the bank's unlawful detainer proceedings and the bank lacked knowledge of the dogs' viciousness and the ability to control the animals' presence on the property. (*Martinez v. Bank of America* (2000) 82 Cal.App.4th 883, 890-894.)

A court has also held that a plaintiff did not establish that an owner of a rental property knew that her tenant owned a 100-pound German Shepherd when it attacked a cable company field engineer. (*Lundy v. California Realty* (1985) 170 Cal.App.3d 813.) In that case, the tenants were allowed to have a dog as part of the lease agreement, but the landlord argued that she never saw the dog, never went to the property, and had received no complaints about the dog. Given the holding in *Lundy*, it appears that landlords may be absolved of liability if the tenant's dog bites a third party while the landlord is attempting to evict the tenant from the premises or otherwise taking reasonable steps to eliminate the animal's presence.

Conclusion

If your client is bitten by a tenant's dog, investigate the landlord's liability. Consider especially the landlord's knowledge of the animal and ability to control the tenant's possession of the animal. Given that a landlord can always evict a tenant for maintaining a nuisance, there is a decent chance that the landlord's property insurance will have to pay compensation for your client's injuries caused by the tenant's dog.

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