

Is a Property Owner Liable For Dog Bites? **by Dale S. Alberstone, Esq.**

To be more precise, the issue is whether a property owner is liable for a canine attack which occurs on the owner's property from a dog owned by someone else? As with so many areas of law, the answer is "it depends."

The matter was dealt with in detail in the August 28, 2008 decision of the California Court of Appeal in Salinas v. Martin. There, the property owner maintained a house located in the town of Richmond, California. During 2005, he embarked upon a remodeling project that included construction of a new foundation.

The owner hired a general contractor for the project who, in turn, hired an employee to work on the construction under the general contractor's supervision for a period of about 4 months. With the owner's approval, the contractor and employee stored equipment and materials in the backyard and garage of the residence. The employee was given permission by the owner to enter the yard at any time to retrieve equipment or materials he stored there.

The owner also hired two laborers to perform weeding and gardening work on the premises. Those landscapers had two dogs, namely a pit bull terrier and a smaller pit bull/labrador mix. The owner agreed that the landscapers could keep their dogs loose in the fenced backyard. According to the owner's declaration, the canines appeared tame and friendly, and he never saw them attack, bite or appear aggressive with anyone.

The general contractor expressed a different view, in that he testified that he saw a ferocious looking pit bull in the landscapers' "very dilapidated looking" van (parked adjacent to the residence) and that he communicated his fear to the property owner that the pit bull, which had been trained as a guard dog, should not be at the job site. Evidently, the general contractor told the owner that the pit bull was dangerous and would attack someone.

During the construction, the employee who worked for the general contractor, called the contractor and advised that the employee needed to retrieve wood planks for scaffolding that were stored on the property. In accordance with the consent previously given by the property owner, the contractor advised the employee to pickup whatever he needed.

That same day, the property owner had specifically given the landscapers permission to let their dogs roam in the backyard of the residence.

The property owner left the house before the employee arrived and was gone for about four or five hours. He was not advised that the employee intended to visit the residence that day. The employee, who had never seen the dogs at the residence before, entered the backyard through a 12-inch gap in the fencing.

As you might guess, soon thereafter the pit bull attacked the contractor's employee in the yard. As the employee ran away, the pit bull continued to repeatedly bite him until the employee was able to jump onto a car parked in the driveway.

The case ultimately made its way before the California Court of Appeal which summarized the applicable “dog bite” laws. The balance of this article will paraphrase those laws, as explained by the Appellate Court.

As a general rule, an individual owes a duty of ordinary care not to cause an unreasonable risk of harm to others. However, a landowner has an affirmative duty to exercise ordinary care to keep his premises in a reasonably safe condition and, to discharge that obligation he must inspect them or take other proper means to ascertain their condition. If, by the exercise of reasonable care, he would have discovered a dangerous condition, he will be liable for having failed to abate it. However, in the context of a landlord and tenant, before a landlord may be liable for a third party’s injury due to a dangerous condition on the land, the injured party must show that the landlord had actual knowledge of the dangerous condition or, at least, the dangerous condition was foreseeable to the landlord.

Consistent with that rule, 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.

Conversely, it is well established that a landlord does not owe a duty of care to protect the third person from his or her tenant’s dog unless the landlord has actual knowledge of the dog’s dangerous propensities and the ability to control or prevent the harm.

Further, a landlord is under no duty to inspect the premises for the purpose of discovering the existence of a tenant’s dangerous animal. It is only when the landlord has actual knowledge of the animal, coupled with the right to have it removed from the premises, will a landlord be liable for a dog attack.

Thus, a landlord will ordinarily not be liable for the first incident of a dog bite by one of his tenant’s dogs. However, in the Salinas case, the facts were different than the typical landlord/tenant situation.

There, the property owner was not an absentee landlord with limited access to the property. He did not surrender his possessory interest in the property in any way, as does a landlord. In fact, the property owner continued to control the premises, at least intermittently, while the construction proceeded.

Further, the dog owner was not the property owner’s tenant who had sole possessory rights associated with the property. Instead, the owner was a temporary invitee who was performing landscaping services.

Further, unlike tenants, the gardener was neither vested with exclusive possession of the property, nor was he entitled to keep his dog on the property without the express permission granted by the landowner.

Thus, the Court found that the essential foundation that underlies the carefully and limited

circumscribed duty imposed upon landlords (i.e. the restraint upon the landlord's right to engage in intrusive oversight or control of the tenant's use of the property) was absent in the Salinas case. Thus, the Court of Appeal found that the landowner could be liable for the dog attack of the injured employee. Had the owner of the dog been a tenant and the landlord typically absent from the premises, the result would have likely been different.

One other issue was raised by the Court and is one which readers of this column may have already pondered. That is, wouldn't the owner of the dog be liable for the dog bite? The answer is, of course, an emphatic "yes." Thus, while the dog owners' responsibility for the attack might be primary, the landowner was sued because, obviously, he was likely to be the one with more money, deep pockets and applicable insurance.

The lesson to be learned by this new case is that if a landlord acquires knowledge that his tenant is harboring a vicious dog, or one which has a dangerous propensity to attack a person, the landlord should attempt to cause the tenant to remove the canine from the premises. The landlord may accomplish that in a variety of ways, such as by a verbal request to the tenant, a written request or demand, or by serving a formal 3-day notice that the tenant is creating a nuisance or otherwise violating a condition in the rental agreement. If the tenant does not then follow the landlord's directive, the owner should confer an eviction lawyer to pursue an unlawful detainer.

Incidentally, while I am a real estate attorney, my office does not handle evictions. The directory of the AOA magazine lists a number of eviction specialists. I wish you all the best in dealing with dog issues.

Dale Alberstone is a prominent real estate attorney who has practiced real property and business law for the past 32 years. He has been appointed to periodically serve as a judge pro tem of the Los Angeles Superior Court and is a former arbitrator for the American Arbitration Association. He also testifies as an expert witness for and against other attorneys who have been accused of legal malpractice.

Mr. Alberstone has been awarded an AV rating from Mardindale-Hubbell, which is a registered certification of Reed Elsevier Properties, Inc. An AV rating reflects an attorney who has reached the heights of professional excellence and is recognized for the highest levels of skill and integrity.

The foregoing discussion is intended as a general overview of the law and may not apply to the reader's particular case. Readers are cautioned to consult an advisor of their own selection with respect to any particular situation.

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