STATE OF NEW YORK
SUPREME COURT : COUNTY OF OSWEGO

DUANE STANTON,

Plaintiff,

v.

CHRIS REINHART AND AUSTIN REINHART,

Defendants.

DECISION & ORDER
Index No.: 2021-1649

HON. ALLISON J. NELSON, AJSC

Appearances:

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BACKGROUND

Defendant Austin Reinhart, by and through his attorney, Carmen Nicolaou, Esq., of counsel to the Chartwell Law Offices, LLP, seeks summary judgement and dismissal of the verified complaint in its entirety by way of motion filed on September 25, 2023. On November 9, 2023, Plaintiff Duane Stanton, by and through his attorney, Craig Nichols, of counsel to the Nicolas Law Offices, PLLC, filed his response in opposition to the motion. Ms. Nicolaou filed a reply affirmation on November 15, 2023.

DISCUSSION

As the Court did not *direct* the annexation of the Statement of Material Facts as set forth in 22 NYCRR 202.8-g(a), the Court does not find the section applicable, and thus will render its decision based upon the merits.

Summary judgment may be granted only where there are no triable issues of fact, and the moving party is entitled to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Zuckerman v. City of New York*, 49 NY2d 557 [1980]. The motion needs to be supported by sufficient evidence in admissible form to show the material and undisputed facts

based on which judgment as a matter of law must be granted. *Winegrad v. New York University Medical Center*, 64 NY2d 851 [1985]; *Viviane Etienne Medical Care v. Country-Wide Insurance Company*, 25 NY3d 498 [2015]. This is an affirmative obligation for the moving party and the motion burden requires more than the argument that the opposing party lacks evidence to support the contested point. *Voss v. Netherlands Insurance Co.*, 22 NY3d 728 [2014]; *Yun Tung Chow v. Reckitt & Colman, Inc.*, 17 NY3d 29 [2011]; *Smalls v. AJI Industries, Inc.*, 10 NY3d 733 [2008]. In the absence of such an affirmative showing by the moving party, the motion must be denied regardless of the sufficiency of the responding papers. *Vega v. Restani Construction Corp.*, 18 NY3d 499 [2012].

Assuming that the burden on the motion has passed to the responding party, it is incumbent on that party to demonstrate by admissible evidence the questions of fact which may preclude summary judgment. *Alvarez*, 68 NY2d at 324; *Zuckerman*, 49 NY2d at 562. A responding burden is not met by conclusory or unsubstantiated allegations or the expression of hope. *Gonzalez v. 98 Mag Leasing Corp.*, 95 NY2d 124 [2000]; *Zuckerman*, 49 NY2d at 562.

The Court is charged to view evidence and inferences arising therefrom in a light most favorable to the responding party. *Haymon v. Pettit*, 9 NY3d 324 [2007]; *Fundamental Portfolio Advisors, Inc. v. Tocqueville Asset Mgt., LP*, 7 NY3d 96 [2006]. The motion should be granted unless a material triable issue of fact has been identified. *Panepinto v. New York Life Insurance Co.*, 90 NY2d 717 [1997]; *Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1978]. The function of the Court on the motion is the determination of whether a triable issue of fact exists and not one determining material fact or credibility issues. *Vega*, 18 NY3d at 505; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957].

Generally, a landlord is only liable for attacks by animals owned by a tenant if he had prior knowledge of the animal and its dangerous proclivities at the time of leasing the premises. *Strunk v. Zoltanski*, 9 NY2d 572 [1984]. However, if a landlord becomes aware that the tenant is harboring an animal with vicious propensities during the term of a lease, the landlord may be liable for an attack if he had "control of the premises or other capability to remove or confine the animal." *Cronin v. Chrosniak*, 145 AD2d 905, 906 [4th Dept. 1988], *internal citations omitted.*

Moving Defendant has made an affirmative showing that he had no knowledge of the violent propensities of his tenant's dogs prior to August 24, 2021. Plaintiff has failed to demonstrate a question of fact with regards to his knowledge beyond conclusory or unsubstantiated allegations. Thus, the Court is granting the motion for summary judgement with regards to the attack that occurred on August 11, 2021.

However, it is uncontroverted that on August 24, 2021, Plaintiff's wife notified Moving Defendant about the attack that occurred on August 11, 2021. The Court finds there is question of fact whether the Moving Defendant 1) had "control of the premises or other capability to remove or confine the animal" (*id.*) between his learning of the dogs violent propensities and the second attack on September 9, 2021 and 2) whether he had notice of the problem for "such a period of time that, in the exercise of reasonable care, it should have been corrected" (*Rodgers v. Horizons at Monticello, LLP*, 130 AD3d 1285 [3rd Dept. 2015]). Therefore, the Court is denying the motion for summary judgement with regards to the attack that occurred on September 9, 2021.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the motion for summary judgement is **granted** as to the August 11, 2021 attack and **denied** as to the September 9, 2021; and it is further

ORDERED, that the allegations in the Complaint related to the August 11, 2021 attack are hereby **dismissed**; and it is further

ORDERED, that a copy of this Order with notice of entry shall be served on Plaintiff and Defendant Chris Reinhart, with proof of service to be filed to the electronic case file not later than December 15, 2023.

IT IS SO ORDERED.

ENTER

Dated: November 28, 2023
Oswego, New York

Allison J. Nelson
HON. ALLISON J. NELSON
ACTING SUPREME COURT JUSTICE