

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

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**CA 18-01404**

PRESENT: CENTRA, J.P., CARNI, LINDLEY, NEMOYER, AND TROUTMAN, JJ.

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MARY A. PAUSZEK, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

AMY M. WAYLETT, DEFENDANT-APPELLANT,  
MICHAEL LIN AND JUEL LIN, ALSO KNOWN AS  
JEWEL C. LIN, DEFENDANTS.

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WALSH, ROBERTS & GRACE, BUFFALO (ROBERT P. GOODWIN OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

FESSENDEN, LAUMER & DEANGELO, PLLC, JAMESTOWN (MARY B. SCHILLER OF  
COUNSEL), FOR PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Chautauqua County  
(Frank A. Sedita, III, J.), entered January 23, 2018. The order  
denied the motion of defendant Amy M. Waylett for summary judgment  
dismissing the amended complaint against her.

It is hereby ORDERED that the order so appealed from is  
unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for  
injuries she sustained when she tripped in a "divot" on her own  
property and fell after she was frightened by a dog owned by her  
neighbors, defendants Michael Lin and Juel Lin, also known as Jewel C.  
Lin, who were renting their home from Amy M. Waylett (defendant).  
Supreme Court denied defendant's motion for summary judgment  
dismissing the amended complaint against her, and we affirm.

Contrary to defendant's contention, she failed to establish as a  
matter of law that she did not owe a duty of care to plaintiff.  
Although plaintiff was injured on her own property, the conduct of the  
dog in question occurred on defendant's property (*cf. Walker v Gold*,  
70 AD3d 1349, 1350 [4th Dept 2010], *lv denied* 14 NY3d 712 [2010];  
*Seiger v Dercole*, 50 AD3d 1524, 1524 [4th Dept 2008]; *Ruffin v Dykes*,  
37 AD3d 1191, 1191 [4th Dept 2007]; *Weipert v Oldfield*, 298 AD2d 974,  
974 [4th Dept 2002]), and defendant's own evidence raised a triable  
issue of fact whether she took "reasonable precautions for the  
protection of third persons" (*Strunk v Zoltanski*, 62 NY2d 572, 577  
[1984]).

Contrary to her further contentions, defendant also failed to  
establish as a matter of law that the dog did not have vicious

propensities or that she lacked notice of those propensities (see *id.*). In support of her motion, defendant submitted evidence that, after the Lins moved into the premises, the dog was observed lunging at or jumping on people. Although "barking and running around" is generally considered normal canine behavior and does not amount to vicious propensities (*Collier v Zambito*, 1 NY3d 444, 447 [2004]), "[a] known tendency to attack others, even in playfulness, as in the case of the overly friendly large dog with a propensity for enthusiastic jumping up on visitors, will be enough to make [a] defendant[] liable for damages resulting from such an act" (*Lewis v Lustan*, 72 AD3d 1486, 1487 [4th Dept 2010] [internal quotation marks omitted]). In addition, the act of lunging at people may also be considered a vicious propensity (see *Merwin v McCann*, 129 AD2d 925, 926 [3d Dept 1987]; cf. *Gill v Welch*, 136 AD2d 940, 940 [4th Dept 1988]; see also *Sorel v Iacobucci*, 221 AD2d 852, 853 [3d Dept 1995]; *O'Brien v Amman*, 21 Misc 3d 1118[A], 2008 NY Slip Op 52096 [U], \*3 [Sup Ct, Allegany County 2008]).

With respect to whether defendant had notice of the dog's allegedly vicious propensities, defendant submitted evidence that plaintiff's husband had complained about those very propensities to defendant's property manager, i.e., her agent. Although the property manager denied receiving such complaints, he admitted observing similar behavior by the dog. "The general rule is that knowledge acquired by an agent acting within the scope of his [or her] agency is imputed to his [or her] principal and the latter is bound by such knowledge [even if] the information is never actually communicated to [the principal]" (*Center v Hampton Affiliates*, 66 NY2d 782, 784 [1985]; see *Kirschner v KPMG LLP*, 15 NY3d 446, 465 [2010]). Thus, regardless whether the property manager informed defendant of what he heard or observed of the dog's allegedly vicious propensities, defendant is deemed to have notice of those propensities.

Inasmuch as defendant failed to meet her initial burden on the motion, the burden never shifted to plaintiff to raise a triable issue of fact (see generally *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).