Memorandum of Decision Denying Summary Judgment

Practice Book §17-49 provides that a court can grant a defendant summary judgment 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."

The Supreme Court discourages trial courts from granting summary judgment in negligence cases. In 1984, in *Fogarty* v. *Rashaw*, the Court held that, "[i]ssues of negligence are ordinarily not susceptible of summary adjudication but should be resolved by trial in the ordinary manner."[1] Nevertheless, in *Allstate Insurance Co. v. Barron* in 2004, the Court did say that a plaintiff challenged with evidence suggesting the absence of genuine issues of material fact must present evidence that shows a dispute exists.[2]

Here, May Westwood has sued Leslie Mortimer for injuries caused by a cat named Sunflower that bit and scratched Westwood while Westwood was visiting Mortimer's home. Westwood claims that Mortimer knew or should have known that Sunflower was dangerous and should have done something to prevent the attack. Mortimer claims that even if she owed Westwood some duty, she had no reason to

[1] 193 Conn. 442, 446 (1984).
[2] 269 Conn. 394, 405-06 (2004).

believe that Pukin was dangerous and therefore no reason to do anything to guard against an attack. Westwood counters that Mortimer knew that Sunflower was feral and conceded that feral cats were "unpredictable." Sunflower, Westwood rejoins was the "runt of the litter", "sweet" and "shy."

First, we can clear out of the way the issue of the precise relationship between Westwood and Sunflower. The parties agree that Mortimer had allowed Sunflower in her home, and it appears undisputed that Westwood was a social invitee. With these undisputed facts, Mortimer would owe Westwood a duty to take reasonable steps to make her home safe for her invited visitors—for instance by maintaining the integrity of the physical structure, repairing the sidewalk, or, more to the point, refusing to harbor feral cats that could be expected to maul her guests. So, the heart of the matter remains whether there is a genuine issue of material fact about whether Mortimer knew or should have known that Sunflower was a danger to guests at the Mortimer home. As the Supreme Court held in 1997 in *Jaworski v. Kiernan*, "[t]he ultimate test of the existence of a duty to use care is found in the foreseeability that harm may result if it is not exercised…."[3]

One other thing should be clear. It does not matter whether Sunflower had shown vicious propensities towards people in the past. A cat's viciousness toward

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[3] 241 Conn. 399, 405 (1997).

other animals could easily put a reasonable person on notice that the cat might be vicious to people. The Supreme Court held so in 2008 in *Allen v. Cox*: [W]e conclude that when a cat has a propensity to attack other cats, knowledge of that propensity may render the owner liable for injuries to people that *foreseeably* result from such behavior." [4]

Mortimer says that like any reasonable person she would not think cats are inherently vicious, so just because Sunflower is a cat it does not mean she is vicious. Indeed, while this year in *Vendrella v. Astriab Family Ltd. Partnership, et al*, the Supreme Court held that a jury might reasonably consider that horses have "naturally mischievous propensities,"[5] one hundred years ago in *Bischoff v. Cheney* the Court had high praise for cats: "The cat's disposition is kindly and docile, and by nature is one of the most tame and harmless of all domestic animals."[6] Tellingly, the *Vendrella* Court looked right through this encomium to a different suggestion it found in *Bischoff*. The *Vendrella* decision suggests that *Bischoff* also can be read to say that, "although cats generally are harmless, if [a] particular cat belongs to [a] class of cats having mischievous propensities, [an] owner can be held liable for injuries."[7]

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[4] 285 Conn. 603, 617 (2008).
[5] 311 Conn. 301, 339 (2014).
[6] 89 Conn. 1, 5 (1914).
[7] 311 Conn at 334.

Sweet animals or not, what matters with a cat is still whether there is reason to know that this cat might strike. Mortimer says that, because Sunflower was feral, she did not know her all that well and would not have had reason to know that she might attack Westwood. But this cuts both ways because Mortimer also says that feral cats – "a class of cats"–like Sunflower are a "little unpredictable." Mortimer insists she only saw Sunflower "get into a scrap" with her mother and that she saw her "defending" herself and backing away once from a bigger cat. Westwood says she never saw this "sweet", "shy" cat attack any person. The fact remains that Westwood admits knowing that feral cats like Sunflower are a little unpredictable and that this cat has been in at least two fights.

Given that the Supreme Court disfavors summary judgment in negligence cases, that it reversed a defendant's summary judgment in the *Allen* cat case, and that it went out of its way to loosen *Bischoff*'s collaring of the anti-cat crowd, it would be hard to say that a jury cannot hear Westwood. Following full development of the issues at trial, a reasonable jury might conclude that a feral cat with two fights under its belt would have a propensity to attack people. There is a genuine issue of material fact in dispute—whether Mortimer knew or should have known that this cat was likely to attack a human.

Mortimer's motion for summary judgment is denied.

BY THE COURT

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MOUKAWSHER, J.