ELECTRONICALLY FILED - 2020 Oct 23 4:29 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1006386

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON G.H., a minor child, in c/o Candice D. Hilton Plaintiffs, v. Joe Dabit. a/k/a Yousef A. Dabit and Daoudieh Dabit, Jimmy Hill, and Tiffany Hill. Defendant(s).	)	IN THE COURT OF COMMON PLEAS CASE NUMBER.: 2019-CP-10-06386 **MEMORANDUM AND AFFIDAVIT IN SUPPORT OF DEFENDANTS MOTION TO DISMISS**

Defendants Yousef "Joe" Dabit and Daoudieh Dabit (Dabit Defendants), by and through their undersigned counsel, hereby submits this Memorandum and Affidavit in Support of their Motion to Dismiss.

ARGUMENT

1. JUDGMENT FOR THE DEFENDANT SHOULD BE GRANTED AS A MATTER OF LAW BECAUSE PLAINTIFF CANNOT FORECAST EVIDENCE SUFFICIENT TO ESTABLISH A PRIMA FACIE CLAIM FOR NEGLIGENCE AGAINST DEFENDANT

The Plaintiff's reliance on *Clea v. Odom*, 394 S.C. 175, 180, 714 S.E.2d 542, 545 (2011), is misplaced in this matter. South Carolina courts have previously determined that a landlord cannot be liable to a tenant's invitee for injuries inflicted by an animal kept on leased property. *See Gilbert v. Miller*, 356 S.C. 25, 586 S.E.2d 861 (Ct. App. 2003) (granting summary judgment to landlord finding landlord was not liable where one tenant's dog attacked another tenant); *Bruce v. Durney*, 341 S.C. 563, 534 S.E.2d 720 (Ct. App. 2000) (finding landlord not liable where a dog kept on tenant's leased property bit a child). However, in *Clea*, supra, the South Carolina Supreme Court found that a landlord may be held liable under a theory of negligence for injuries to third parties caused by a dog owned by a tenant. Plaintiff cites this precedent as the crux of their argument in opposition to the Defendant's Motion, but the facts of the instant case are clearly

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distinguishable from *Clea* and do not fall into the limited circumstances of when a landlord may be held liable.

> In *Clea*, a two-year-old boy was attacked by a dog that was chained in a common area between two apartment buildings. 394 S.C. at 178. The landlord was not the owner of the dog, but the landlord owned both apartment buildings and allowed the dog's owner (another tenant) to keep the dog chained to the tree for "nearly ten years." *Id*. According to testimony from the dog's owner in *Clea*, the landlord would stop to sit and play with the dog. *Id*. It was also revealed that the landlord knew the dog previously attacked a six-year-old boy. *Id*. at 179.

The case at bar is factually distinguishable from *Clea* in several important ways. Defendant Youself "Joe" Dabit is: (1) **not** the owner or landlord of the Property in question; (2) has never witnessed the dogs outside of tenant's apartment; and (3) has never touched, walked, fed, or cared for the dogs in any way. (See Exhibit A). Defendant Daoudieh Dabit never went to the Property while the tenants, Jimmy & Tiffany Hill, were living there, and had no knowledge of the Hills' dogs.

2. JUDGMENT FOR THE DEFENDANT SHOULD BE GRANTED AS A MATTER OF LAW BECAUSE PLAINTIFF CANNOT FORECAST EVIDENCE SUFFICIENT TO ESTABLISH A PRIMA FACIE CLAIM THAT DABIT DEFENDANTS OWED A DUTY TO THE PLAINTIFFS PURSUANT TO SC CODE ANN § 47-3-110(A).

Plaintiff's Complaint alleges that Dabit Defendants owed a duty to Plaintiff pursuant to South Carolina Code Ann. § 47-3-110 et seq., a statute that imposes strict liability against the owner of a dog or any other person having a dog in its care or keeping. Specifically, § 47-3-110(A) provides:

> "If a person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the dog owner or person having the dog in the person's care or keeping, the dog owner or person having the dog in the person's care or keeping is liable for the damages suffered by the person bitten or otherwise attacked" (emphasis added).

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The Plaintiffs have not alleged in the Complaint nor offered any admissible evidence that the Dabit Defendants owned or ever cared for the dogs in question. Moreover, the Plaintiffs have not alleged nor offered any admissible evidence that the Dabit Defendants had any actual knowledge of dangerous/vicious propensities of the Hill's dogs. The Plaintiff's allegations are that the Defendants "should have known" about the dangerous/vicious propensities of the dogs.

CONCLUSION

The Plaintiffs have not alleged facts that demonstrate they are entitled to relief pursuant to Rule 12(b)(6), therefore, Defendants pray this Honorable Court grant their Motion to Dismiss.

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October 23rd, 2020

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT OF YOUSEF A. DABIT

NOW COMES THE UNDERSIGNED, personally appearing before me, Yousef "Joe" Dabit, who being duly sworn, deposes and says as follows:

1. I do not own the property located at 268 Fleming Road, Charleston, SC 29412 (the "Property"). I am not the owner of the dogs referenced in this lawsuit.

2. To my knowledge, my mother, Daoudieh Dabit, owner of the Property, has not been to the Property during the time Jimmy & Tiffany Hill (the "Tenants") were renting a unit, and she had no knowledge of these dogs.

3. I have only seen the dogs of Tenants Jimmy & Tiffany Hill on two occasions. In both of these instances, their dogs were inside of the apartment. I have never observed or had any knowledge of any dangerous behavior concerning these dogs.

4. I have never observed these dogs outside of the Tenant's apartment or on any part of the Property other than inside the Hill's unit.

5. I have never seen Jimmy or Tiffany Hill walk their dogs. I have never touched the dogs, walked the dogs, fed the dogs, purchased anything for the dogs, or cared for the dogs in any way.

I SO SWEAR!

Yousef A. Dabit
Date:

Subscribed and sworn to before me
this 23rd day of October 2020:

DAVID ESTES III NOTARY My Comm. Exp. 10/08/2030 PUBLIC SOUTH CAROLINA

Notary Public of South Carolina
Date: 10/23/20

My commission expires: 10/08/2030