69103-1

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NO. 69103-1-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

MARGARET L. BRISCOE,

Appellant,

vs.

RANDALL LAMONICUS McWILLIAMS,

Respondent,

and

LEVITICUS JADE McWILLIAMS, ELIZABETH ANN ROWLAND, and VICTOR GREER,

Defendants.

APPEAL FROM KING COUNTY SUPERIOR COURT
Honorable Susan Craighead, Judge

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Page

I. NATURE OF THE CASE 1

II. ISSUES PRESENTED 1

III. STATEMENT OF THE CASE 2

A. STATEMENT OF RELEVANT FACTS 2

B. STATEMENT OF PROCEDURE 3

IV. ARGUMENT 4

A. DENIAL OF A CR 12(b)(6) MOTION DOES NOT PRECLUDE SUMMARY JUDGMENT 5

B. IN WASHINGTON THE ONLY PRIVATE PERSONS WHO CAN BE LIABLE FOR A DOG BITE ARE THE DOG'S OWNER, KEEPER, OR HARBORER 7

C. PLAINTIFF'S OTHER THEORIES ARE MERITLESS 13

1. Randy McWilliams Cannot Be Liable Under an Agency Liability Theory 15

2. Randy McWilliams Cannot Be Liable Under a Premises Liability Theory 26

3. Randy McWilliams Cannot Be Liable Under a Negligent Entrustment Theory 36

V. CONCLUSION 38

TABLE OF AUTHORITIES

Washington Cases

Page

Adcox v. Children's Orthopedic Hospital & Medical Center, 123 Wn.2d 15, 864 P.2d 921 (1993) 5, 6

Alwood v. Aukeen District Court, 94 Wn. App 396, 973 P.2d 12 (1999) 6

Arnold v. Laird, 94 Wn.2d 867, 621 P.2d 138 (1980) 12

Beeler v. Hickman, 50 Wn. App. 746, 750 P.2d 1282 (1988) 7, 8

Bernethy v. Walt Failor's, Inc., 97 Wn.2d 929, 653 P.2d 280 (1982) 36

Bratton v. Calkins, 73 Wn. App. 492, 870 P.2d 981, *rev. denied*, 124 Wn.2d 1029 (1994) 16

Breedlove v. Stout, 104 Wn. App. 67, 14 P.3d 897 (2001) 21, 24

Carlyle v. Safeway Stores,, Inc., 78 Wn. App. 272, 896 P.2d 750, *rev. denied*, 128 Wn.2d 1004 (1995) 35

Champagne v. Spokane Humane Society, 47 Wn. App. 887, 737 P.2d 1279, *rev. denied*, 108 Wn.2d 1035 (1987) 8

Clemmons v. Fidler, 58 Wn. App. 32, 791 P.2d 257, *rev. denied*, 115 Wn.2d 1019 (1990) 9, 10, 12, 13, 25, 26, 31, 38

Drinkwitz v. Alliant Techsystems, Inc., 140 Wn.2d 291, 996 P.2d 582 (2000) 4

Frobig v. Gordon, 69 Wn. App. 570, 849 P.2d 676 (1993), *rev'd*, 124 Wn.2d 732, 881 P.2d 226 (1994) 11

Frobig v. Gordon, 124 Wn.2d 732, 881 P.2d 226 (1994) 7, 8, 10, 11, 12, 13, 25, 26, 31, 38

Hickle v. Whitney Farms, Inc., 148 Wn.2d 911, 64 P.3d 1244 (2003) 36, 37

Howell v. Spokane & Inland Empire Blood Bank, 117 Wn.2d 619, 818 P.2d 1056 (1991) 5

Iwai v. State, 129 Wn.2d 84, 915 P.2d 1089 (1996) 27, 35

Kamla v. Space Needle Corp., 147 Wn.2d 114, 52 P.3d 472 (2002) 27

Kaye v. Lowe's HIW, Inc., 158 Wn. App. 320, 242 P.3d 27 (2010) 37

King v. Hutson, 97 Wn. App. 590, 987 P.2d 655 (1999) 8

Kirkland v. Department of Revenue, 45 Wn. App. 720, 727 P.2d 254 (1986) 24

Kuehn v. White, 24 Wn. App. 274, 600 P.2d 679 (1979) 16, 17

Laguna v. State Department of Transportation, 146 Wn. App. 260, 192 P.3d 374 (2008) 5

Leuthold v. Goodman, 22 Wn.2d 583, 157 P.2d 326 (1945) 21

Livingston v. City of Everett, 50 Wn. App. 655, 751 P.2d 1199, *rev. denied*, 110 Wn.2d 1028 (1988) 8

Lynn v. Labor Ready, Inc., 136 Wn. App. 295, 151 P.3d 201 (2006) 4

Markwood v. McBroom, 110 Wash. 208, 188 P. 521 (1920) 8, 9

McNew v. Puget Sound Pulp & Timber Co., 37 Wn.2d 495, 224 P.2d 627 (1950) 23

Mitchell v. Churches, 119 Wash. 547, 206 P. 6 (1922) 36

Nielson v. Spanaway General Medical Clinic, 135 Wn.2d 255, 956 P.2d 312 (1998) 4

Pimentel v. Roundup Co., 100 Wn.2d 39, 666 P.2d 888 (1983) 35

Rahman v. State, 170 Wn.2d 810, 246 P.3d 182 (2011) 21, 22

Rogers v. Irving, 85 Wn. App 455, 933 P.2d 1060 (1997) 15

Seiber v. Poulsbo Marine Center, Inc., 136 Wn. App. 731, 150 P.3d 633 (2007) 4, 5

Shafer v. Beyers, 26 Wn. App. 442, 613 P.2d 554 (1980) 28, 29, 31, 32

Skinner v. Holgate, 141 Wn. App. 840, 173 P.3d 300 (2007) 14

Sligar v. Odell, 156 Wash. App. 720, 233 P.3d 914 (2010) 8

Smith v. Leber, 34 Wn.2d 611, 209 P.2d 297 (1949) 21

Sorenson v. Keith Uddenberg, Inc., 65 Wn. App. 474, 828 P.2d 650 (1992) 27

Strachan v. Kitsap County, 27 Wn. App. 271, 616 P.2d 1251 (1980) 21

Thompson v. Everett Clinic, 71 Wn. App. 548, 860 P.2d 1054 (1993), *rev. denied*, 123 Wn.2d 1027 (1994) 16

Weber v. Budget Truck Rental, LLC, 162 Wn. App. 5, 254 P.3d 196, *rev. denied*, 172 Wn.2d 1015 (2011) 36

Young v. Key Pharmaceuticals, Inc., 112 Wn.2d 216, 770 P.2d 182 (1989) 14

Other Jurisdictions

Beard v. Fender, 179 Ga. App. 465, 346 S.E.2d 901 (1986) 34

Croley v. Moon Enterprises, Inc., 118 Ohio Misc. 2d 151, 770 N. E.2d 148 (2001) 19, 20

Dickson v. Graham-Jones Paper Co., 84 So.2d 309 (Fla. 1955) .. 17, 18, 19

Garrett v. Overland Garage & Parts, Inc., 882 S.W.2d 188 (Mo. App. 1994) 33

Hackett v. Dayton Hudson Corp., 191 Ga. App. 442, 382 S.E.2d 180 (1989) 17, 18, 19

Klitzka v. Hellios. 348 Ill. App. 3d 594, 810 N.E.2d 252, *appeal denied*, 212 Ill. 2d 534, 824 N.E.2d 284 (2004) 32, 38

Landings Association, Inc. v. Williams, 309 Ga. App. 321, 711 S.E.2d 294 (2011), *rev'd on other grounds*, 728 S.E.2d 577 (2012) 33, 34

Langan v. Valerie Wilson Travel, Inc., No. 9:06-cv-03511-CWH (D. S. C. July 21, 2008) (2008 U.S. Dist. LEXIS 55323) 33

Lindsey v. Dayton-Hudson Corp., 592 F.2d 1118 (10th Cir. 1979), *cert. denied*, 444 U.S. 856 (1979) 6

Malpezzi v. Ryan, 28 A.D.3d 1036, 815 N.Y.S.2d 295 (2006) 32

Savory v. Hensick, 143 S.W.3d 712 (Mo. App. 2004) 33

Schrum v. Moskaluk, 655 N.E.2d 561 (Ind. App. 1995) 34, 35

Shindler v. Mid-Continent Life Ins. Co., 768 S.W.2d 331 (Tex. App. 1989) 15

Smaxwell v. Bayard, 274 Wis. 2d 278, 682 N.W.2d 923 (2004)..... 13, 38

Thurber v. Apmann, 91 A.D.3d 1257, 936 N.Y.S.2d 789 (2012) 32

Vollendorff v. United States, 951 F.2d 215 (9th Cir. 1991)..... 23, 24

Statutes

RCW ch. 16.08 12

RCW 16.08.010 12

RCW 16.08.030 12

RCW 16.08.040 ..... 6, 7

RCW 16.08.070(7) 12

RCW 16.08.080 12

RCW 16.08.090 12

RCW 16.08.100 12

Rules and Regulations

CR 12(b)(6) 3, 5, 6

CR 54(b) 4

Other Authorities

RESTATEMENT (SECOND) OF AGENCY 239 (1958) 21

RESTATEMENT (SECOND) OF AGENCY 240 (1958) 21

RESTATEMENT (SECOND) OF TORTS 343 (1965) 26

I. NATURE OF THE CASE

Randy hired his brother, Levi, to clean Randy's apartment, because Randy was moving out. Levi assured Randy he would be done by the evening of July 16. Unbeknownst to Randy, Levi brought his dog with him to the apartment, and on July 17, Levi and the dog were still there. Levi decided he needed to run an errand and left the dog, unchained, unmuzzled, and loose in the apartment.

Unbeknownst to either Randy or Levi, the landlord asked plaintiff to check on the apartment. When plaintiff opened the door, the dog attacked her.

Plaintiff seeks to hold Randy liable, even though she does not claim that he owned, harbored, or kept the dog, and even though Randy did not know it was at his apartment. The trial court granted Randy summary judgment.

II. ISSUES PRESENTED

Can a person who is not the owner, harborer, or keeper of a dog be liable for dog bites that occur on property he rented, especially when he was not present at the time and did not even know the dog was there?

III. STATEMENT OF THE CASE

A. STATEMENT OF RELEVANT FACTS.

Defendant/respondent Randy McWilliams, rented an apartment in Seattle from his longtime friend, Victor Greer. (CP 84-85) At some point, Greer decided to sell the apartment. Randy decided to move out. (CP 69, 85)

To prepare for the move, Randy moved out his furniture and cleaned the upstairs and the garage. (CP 71-72). However, to help out his younger brother, Levi McWilliams, who was unemployed, Randy agreed to pay Levi $300 to clean the rest of the apartment and move Randy's remaining personal items to their mother's house. (CP 73-74, 92)

On July 14 Randy went to California. (CP 75) On July 16, while in Sacramento, Randy called Levi to find out how he was progressing on cleaning the apartment. Levi assured his brother that he would be done with the cleanup by that evening, *i.e.,* the evening of July 16. Accordingly, Randy agreed to transfer the $300 into Randy's girlfriend's bank account. In addition, Randy told the landlord on July 16 that the apartment would be done by that evening. (CP 74-75, 85-86, 96-97)

Levi and his girlfriend, Elizabeth "Liz" Rowland, owned a pit bull named Jersey. (CP 77, 114) Unbeknownst to Randy, Levi brought Jersey with him to Randy's apartment and stayed overnight. (CP 76, 101)

Unbeknownst to Randy, Levi did not finish cleaning by the evening of July 16 as he had promised. Unbeknownst to Randy, Levi *and* Jersey were still at the apartment on July 17. (CP 96, 99; Appellant's Amended Opening Brief 7, 21)

In the meantime, unbeknownst to both Randy and Levi, the landlord asked plaintiff Margaret Briscoe, his aunt, to go to the apartment to see if Randy had moved out. (CP 84, 86) On July 17, the day after Levi had assured Randy he would be done, plaintiff arrived at the apartment. (CP 82, 96-97) Levi had gone out on an errand. (CP 113) When plaintiff opened the door, Levi's dog attacked, severely injuring her legs. (CP 82)

B. STATEMENT OF PROCEDURE.

Plaintiff sued the landlord, Levi, Liz, and Randy. (CP 1-5) Plaintiff asserted causes of action against Randy for negligence, agency liability, and breach of the lease contract. She also claimed she was a third-party beneficiary of the lease contract. (CP 3-4)

Randy brought a CR 12(b)(6) motion. (CP 11-27) The trial court granted the motion as to the third-party beneficiary claim. (CP 42-43) As plaintiff concedes, the denial implicitly dismissed the claim for breach of the lease contract as well. (Appellant's Opening Brief 9) Plaintiff has abandoned these two claims on appeal.

Randy then moved for summary judgment to dismiss the remaining claims against him. (CP 44-80) The trial court granted Randy's motion. (CP 167-69)

Thereafter, plaintiff obtained a default order against Levi and Liz and took a voluntary dismissal of the landlord. (CP 170-73) Subsequently, the trial court entered CR 54(b) findings, declaring that there was no just reason for delay and entry of final judgment. (CP 174-78)

IV. ARGUMENT

This is an appeal from summary judgment. The purpose of summary judgment is to avoid a useless trial where there is no genuine issue of material fact. *Nielson v. Spanaway General Medical Clinic*, 135 Wn.2d 255, 262, 956 P.2d 312 (1998). This court reviews summary judgments by engaging in the same inquiry as the trial court. *Drinkwitz v. Alliant Techsystems, Inc.,* 140 Wn.2d 291, 295, 996 P.2d 582 (2000).

Although facts and reasonable inferences must be viewed in the light most favorable to the nonmoving party (here, plaintiff), plaintiff still had to set forth specific facts to create a genuine issue of material fact. *See Seiber v. Poulsbo Marine Center, Inc.,* 136 Wn. App. 731, 736-37, 150 P.3d 633 (2007); *Lynn v. Labor Ready, Inc.,* 136 Wn. App. 295, 305-06, 151 P.3d 201 (2006). She could not rely on speculation, conclusory statements, or argumentative assertions that factual issues remain. *Seiber,*

136 Wn. App. at 736-37. Her affidavits or declarations are not to be taken at face value and she was required to offer more than merely colorable evidence or a scintilla of evidence. *Id.* at 736. "Ultimate facts or conclusions of fact are insufficient." *Id.* at 737.

Moreover, while credibility issues ordinarily cannot be decided on summary judgment, plaintiff here—

> "must be able to point to some facts which may or will entitled [her] to judgment, or refute the proof of the moving party in some material portion, and that the opposing party may not merely recite the incantation, 'Credibility,' and have a trial on the hope that a jury may disbelieve factually uncontested proof."

Laguna v. State Department of Transportation, 146 Wn. App. 260, 266-67, 192 P.3d 374 (2008) (quoting *Howell v. Spokane & Inland Empire Blood Bank,* 117 Wn.2d 619, 627, 818 P.2d 1056 (1991)).

A. DENIAL OF A CR 12(b)(6) MOTION DOES NOT PRECLUDE SUMMARY JUDGMENT.

Preliminarily, plaintiff claims that the trial court's partial denial of Randy's CR 12(b)(6) motion precluded the subsequent granting of summary judgment. Not so. Even if the denial of the motion to dismiss could be construed as a ruling that the undismissed claims were claims upon which relief could be granted, "[a] judge may reverse or modify a pretrial ruling at any time prior to the entry of final judgment." *Adcox v. Children's Orthopedic Hospital & Medical Center*, 123 Wn.2d 15, 37, 864

P.2d 921 (1993). This is because interlocutory orders are not automatically appealable, so "permitting a trial court to correct any mistakes prior to entry of final judgment serves the interests of judicial economy." *Alwood v. Aukeen District Court*, 94 Wn. App 396, 400-01, 973 P.2d 12 (1999). As one court has explained:

> We see no merit in the contentions that summary judgment was improper because a motion to dismiss, or an earlier motion for summary judgment, which raised the same issues, had been denied.... Until final decree the court always retains jurisdiction to modify or rescind a prior interlocutory order. Although the court might properly refuse to consider a second motion, we will not require a judge to perpetuate error or take a more roundabout way to arrive at an ultimately necessary judgment by refusing him the right to entertain a second motion for summary judgment after he has ruled once the other way.

Lindsey v. Dayton-Hudson Corp., 592 F.2d 1118, 1121 (10th Cir. 1979) (citations omitted), *cert. denied*, 444 U.S. 856 (1979). Plaintiff has failed to cite any authority that says that once a CR 12(b)(6) motion is denied, the trial court cannot thereafter grant summary judgment on the same grounds raised in the earlier motion.

* * * *

No one disputes this was an unfortunate incident. No one disputes the owners of the dog, Levi and Liz, are strictly liable under RCW 16.08.040. The issue in this appeal is whether Levi's brother, Randy, could also be liable, even though Randy did not own, harbor, or keep the

dog, and did not even know it was in his apartment. As will be discussed, the answer is "no".

B. In Washington the Only Private Persons Who Can Be Liable for a Dog Bite Are the Dog's Owner, Keeper, or Harborer.

In Washington liability for a dog attack can be either statutory or under common law. The relevant statute, RCW 16.08.040, provides as follows:

> The ***owner*** of any dog which shall bite any person while such person is in or on a public place or lawfully in or on a private place, including the property of the owner of such dog, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness.

(Emphasis added.) By its terms, the statute makes the ***owner*** of a dog strictly liable, without regard to knowledge. *Beeler v. Hickman*, 50 Wn. App. 746, 751-52, 750 P.2d 1282 (1988). The statute applies to Levi and Liz, the owners of the dog. No one claims the statute applies to Randy, as there is no dispute that Randy did not own the dog.

Under the common law, liability flows from ownership or direct control of the animal. *Frobig v. Gordon*, 124 Wn.2d 732, 735, 881 P.2d 226 (1994). A person cannot be liable for an injury resulting from a dog

bite unless he or she was the owner, keeper, or harborer[1] of the dog. *Markwood v. McBroom*, 110 Wash. 208, 211, 188 P. 521 (1920). The only exception to this rule in Washington is for public agencies or their contractors in their role as animal control agencies.[2] *See, e.g., King v. Hutson,* 97 Wn. App. 590, 987 P.2d 655 (1999); *Livingston v. City of Everett,* 50 Wn. App. 655, 751 P.2d 1199, *rev. denied*, 110 Wn.2d 1028 (1988); *Champagne v. Spokane Humane Society,* 47 Wn. App. 887, 737 P.2d 1279, *rev. denied*, 108 Wn.2d 1035 (1987).

A dog owner, keeper, or harborer may be strictly liable only if he or she knows of the animal's vicious propensities. *Frobig,* 124 Wn.2d at 735 n.1. Absent such knowledge, the dog owner, keeper, or harborer may be liable in negligence, but only if he or she fails to reasonably prevent harm. *Id.* In short, Washington courts have consistently refused to deviate from the rule that liability resulting from the ownership and management of an animal rests exclusively with the owner, harborer, or keeper.[3] This is true even if the dog causes death or life-threatening

---

[1] A harborer is one who treats a dog as living at his house and undertakes to control his actions. *Markwood v. McBroom,* 110 Wash. 208, 211, 188 P. 521 (1920).

[2] The Pierce County verdict described in the newspaper article plaintiff submitted appears to fall within this exception. (CP 123) Of course, the verdict has no precedential effect in this case.

[3] *See, e.g., Sligar v. Odell,* 156 Wash. App. 720, 233 P.3d 914 (2010); *Beeler v. Hickman,* 50 Wn. App. 746, 750 P.2d 1282 (1988).

injuries.[4]

Clemmons v. Fidler, 58 Wn. App. 32, 791 P.2d 257, *rev. denied*, 115 Wn.2d 1019 (1990), is illustrative. There the tenants acquired a pit bull, which they chained up in the yard of their rented house. The landlord knew the tenants had a pit bull, but there was a dispute whether he knew the dog was vicious.

The tenants had a party. One of their guests brought her two-year-old. The pitbull bit the two-year-old.

The plaintiff sued the landlord. Affirming summary judgment for the landlord, the Court of Appeals declared:

> The common law rule, which is the settled law of Washington, is clear: ***only*** the owner, keeper, or harborer of such a dog is liable.

58 Wn. App. at 35-36 (emphasis added). The Washington Supreme Court denied review. 115 Wn.2d 1019 (1990).

There is no dispute that Randy McWilliams was not the owner, keeper, or harborer of his brother's dog. Thus, under well-settled Washington law, he cannot be liable as a matter of law.

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[4] *See, e.g., Markwood v. McBroom,* 110 Wash. 208, 188 P. 521 (1920) (death); *Clemmons v. Fidler,* 58 Wn. App. 32, 791 P.2d 257 (1990) (serious permanent injuries), *rev. denied*, 115 Wn.2d 1019 (1990).

Plaintiff claims several theories of liability supersede the well-settled Washington rule. She even goes so far as to say:

> [Plaintiff's] counsel has found no case holding as a matter of law that under no circumstances can a landowner [who is not the dog's owner] be held liable for injuries caused by [a dog] attacking an invitee.

and

> There is no reason to believe that Washington law does not impose a duty on one in control of premises in situations where an animal on the premises causes injury to an invitee…

(Appellant's Amended Opening Brief 30, 34-35, 38) But plaintiff ignores *Clemmons* and the Washington Supreme Court's subsequent decision in *Frobig.*

In *Clemmons* Division II noted that some older Washington cases had implied that property owners could be liable for dogs owned by others if they knew of the dogs' vicious tendencies. Division II observed that this was mere dicta, and not the law. 58 Wn. App. at 35-36. The Court of Appeals went on to hold:

> This impression [given by some older Washington cases] should be dispelled. The common law rule, which is the settled law Washington, is clear: ***only the owner, keeper or harborer of such a dog is liable.***

Id. (emphasis added).

Four years later, in *Frobig*, the Washington Supreme Court confirmed *Clemmons.* In *Frobig* defendant landlords leased property to a

wild animal trainer. Defendants were aware that their tenant kept a tiger on the property. Prior to leasing the property, they secured from her a verbal agreement that she would take certain security measures.

A commercial featuring the tiger was filmed on the premises. During filming, the tiger attacked plaintiff, causing serious permanent injuries. Plaintiff sued the landlords.

The trial court dismissed. The Court of Appeals, however, did exactly what plaintiff here claims this court should do: it reversed on the ground that there were material issues of fact whether the landlords had taken reasonable precautions to protect third persons from foreseeable injuries. *Frobig v. Gordon,* 69 Wn. App. 570, 576, 849 P.2d 676 (1993).

A unanimous Washington Supreme Court reversed the Court of Appeals and reinstated the dismissal. First, the Court noted that the same law applicable to vicious dogs applies to wild animals. 124 Wn.2d 732, 737, 881 P.2d 226 (1994). Second, recognizing that some courts elsewhere had adopted the approach taken by the Court of Appeals, the Court rejected that approach. Instead, the Court ruled that the common-law rule applicable to dogs applied. Under that rule, the landlords' knowledge of the tiger's presence was immaterial. 124 Wn.2d at 737. The Court explained:

[L]iability flows from ownership or direct control...

...

> The wild animals were [the owner's] alone, and under Washington law liability resulting from the ownership and management of those animals rests with [the owner] alone.

124 Wn.2d at 735, 737.

Here, the dog belonged to Levi and Liz alone. Under Washington law, liability resulting from the ownership and management of the dog rested with Levi and Liz alone.

Plaintiff does not even mention *Frobig* or *Clemmons*, let alone try to explain why they do not apply. Instead, she relies on *Arnold v. Laird*, 94 Wn.2d 867, 621 P.2d 138 (1980), and several non-dog Washington cases to argue that the common-law rule on dogs no longer applies. (Appellant's Opening Brief 39-40) But in *Arnold,* defendants were the dog *owners*. The non-dog cases are simply inapposite in this dog bite case.

Moreover, the Legislature is presumed to know Washington's long-standing common-law rule. *Clemmons,* 58 Wn. App. at 36. This is significant because RCW ch. 16.08, governing dogs, imposes liability only upon the dog owner, and responsibilities only upon the owner, keeper, harborer, or person having an interest in, or having control or custody of, the animal. *See* RCW 16.08.010, .030-.040, .070(7), .080, .090-.100. The statutes are consistent with the common law's requirement that liability for

a dog depends on ownership or direct control of the animal. *Clemmons,* 58 Wn. App. at 37; *see Frobig,* 124 Wn.2d at 735.

Had it chosen to do so, the Legislature could have changed this well-established rule. *Clemmons,* 58 Wn. App. at 36. It did not. Such a substantial departure from long-standing law should be made, if at all, by the Legislature where, as here, the proposed departure would be contrary to current statutory law. *See id.; Smaxwell v. Bayard*, 274 Wis. 2d 278, 682 N.W.2d 923, 941 (2004) (refusing to extend common-law dog bite liability to landlords where such liability would conflict with statutes limiting dog bite liability to owners).

The trial court was correct in granting summary judgment to Randy McWilliams. This court should affirm.

C. PLAINTIFF'S OTHER THEORIES ARE MERITLESS.

Because Washington law is clear that a person not an owner, harborer, or keeper of a dog cannot be liable for injuries inflicted by that dog, this court need go no farther. However, even if, under certain circumstances, Washington law were to allow recovery from a person not the owner, harborer, or keeper, those circumstances are not present here. For that reason as well, summary judgment must be affirmed.

Preliminarily, plaintiff claims reversal is necessary because Randy's motion did not attempt to show undisputed facts as to plaintiff's

agency, premises liability, or negligent entrustment claims. But Randy met his burden on summary judgment.

Randy moved for summary judgment on the basis that regardless of plaintiff's theories of recovery, he could not be liable because plaintiff did not dispute that he was not the owner, keeper, or harborer of the dog. (CP 49, 57-61, 65) Randy further showed that under Washington law, no one except the owner, harborer, or keeper of a dog can be liable if that dog bites someone. (CP 49, 50) That was all Randy was required to do. Plaintiff has not cited any authority whatsoever that *required*[5] Randy's motion to show the absence of factual issues on plaintiff's theories when the motion was made on the ground that none of those theories applies.

For that reason alone, this court should affirm. But in the event Washington law on liability for dog bites could theoretically be expanded, summary judgment under the undisputed facts in this case must still be affirmed. This court may affirm on any ground. *Skinner v. Holgate*, 141 Wn. App. 840, 849, 173 P.3d 300 (2007).

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[5] The defendants in *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989), moved for summary judgment on statute of limitation grounds, but also presented evidence on the merits as an alternative ground. The Washington Supreme Court did not rule on whether such evidence was *required* to affirm.

1. Randy McWilliams Cannot Be Liable Under an Agency Liability Theory.

Plaintiff claims that because Randy hired his brother, Levi, to clean his apartment, Levi was Randy's agent, and Randy is therefore liable for the dog bite. There is no evidence that by by hiring Levi, Randy somehow made Levi his agent, as opposed to an independent contractor.[6] One who retains an independent contractor is generally not liable for that contractor's negligence. *Rogers v. Irving*, 85 Wn. App 455, 464, 933 P.2d 1060 (1997).

Even assuming Levi was Randy's agent, it was for the sole purpose of cleaning the apartment. There is no evidence that Randy hired or otherwise authorized Levi to bring his dog, let alone to leave it in the apartment unleashed and unmuzzled when Levi left to run an errand. There is no dispute that Randy did not even know the dog was there. Further, it would never occur to any reasonable person that a person hired to clean an apartment would bring a dog.[7]

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[6] Liz Rowland, Levi's girlfriend, testified that "as far as I know" Levi was working under Randy's direction." (CP 112). Testimony made on the basis of "as far as I know" is insufficient to defeat summary judgment. *Shindler v. Mid-Continent Life Ins. Co.*, 768 S.W.2d 331, 334 (Tex. App. 1989).

[7]Citing CP 97-98, plaintiff claims that when Randy learned of the dog attack he "immediately" knew it must have been Levi's dog, Jersey. (Appellant's Amended Opening Brief 12) That is not correct What Randy really said was this (CP 97-98):

A master is not liable when "the servant 'steps aside from the master's business in order to effect some purpose of his own...'" *Bratton v. Calkins*, 73 Wn. App. 492, 498, 870 P.2d 981 (1994) (quoting *Kuehn v. White*, 24 Wn. App. 274, 277, 600 P.2d 679 (1979)), *rev. denied*, 124 Wn.2d 1029 (1994). A tort committed by an agent, while engaged in the principal's employment, cannot be charged to the principal so long as it emanated from a wholly personal motive and was done solely to gratify the personal objectives or desires of the agent. *Thompson v. Everett Clinic,* 71 Wn. App. 548, 553, 860 P.2d 1054 (1993), *rev. denied*, 123 Wn.2d 1027 (1994). Levi's bringing the dog and leaving it to run around the apartment emanated from a wholly personal motive to gratify Levi's personal desires.

At most, Randy's hiring Levi to clean his apartment merely resulted in a physical environment in which Levi's wrongful acts—of

---

> A. ... And he [the landlord] told me, Hey, man, Mom got bit by a dog.
>
> Oh, wow. Really? And I'm like, is she going to be okay? He's like, Dude, got bit at your house. And I'm like, What? And he tells me, Yeah, she went over there in the morning and, you know, opened up the door, and dog bit her.
>
> Q. Did he say which dog?
>
> A. He said – he had got – he had talked to her, and it was a light tan dog. *And then first thing that went through my head was like, Oh, who could that be?* And I'm thinking, Don't tell me it is Jersey. And he's like, Yeah, I think it was Jersey.

(Emphasis added.)

which Randy had no knowledge – could take place. *Kuehn v. White*, 24 Wn. App. 274, 600 P.2d 679 (1979), demonstrates that where the employment situation does nothing more than provide the opportunity for the agent's wrongful acts or the means of carrying them out, the principal is not liable.

In *Kuehn* an employee was driving his employer's truck in the course of employment when he got angry at another motorist. In a fit of road rage, the employee attacked the other motorist. Affirming summary judgment for the employer, this court explained that when an employee's intentionally tortious or criminal acts are not performed in furtherance of the employer's business, the employer will not be liable as a matter of law, even though the employment situation provided the opportunity for the employee's wrongful acts or the means for carrying them out. 24 Wn. App. at 278.

This case does not involve an intentional tort. But the reasoning is the same. The alleged employment situation merely provided the opportunity for Levi's wrongful acts or the means for carrying them out, nothing more. Randy should not be liable as a matter of law.

Dickson v. Graham-Jones Paper Co., 84 So.2d 309 (Fla. 1955), and *Hackett v. Dayton Hudson Corp.*, 191 Ga. App. 442, 382 S.E.2d 180 (1989), provide a helpful comparison. In *Dickson*, unbeknownst to the

defendant employer, defendant's manager kept a "fighting cock" at work. The cock attacked a business invitee. Affirming judgment on the pleadings for the defendant employer, the court explained:

> It is inconceivable to this Court how keeping a "fighting cock" is in the furtherance of the corporation business.... Certainly the corporation did not own the cock, nor was it engaged in such a business as promoting "fighting cocks."...
>
> ....
>
> Knowledge of the owner of the viciousness of an animal is not imputable to anyone else, especially his employer, unless the employer directed the employee to do the specific act of keeping the animal, or unless it was reasonably foreseeable *as a result of his authority as the agent*. To hold otherwise would be to make every corporation an insurer of the actions of its employees.

84 So.2d at 310 (emphasis added).

In *Hackett* defendant employer's general manager brought his dog to work because he was having construction done at his home. He chained the dog outside his workplace. Defendant employer had no knowledge the dog was there. The dog bit a business invitee.

Affirming summary judgment for the defendant employer, the court explained:

> The uncontroverted evidence is that the alleged negligence of defendant [employee] was not done within the scope and course of his employment. Defendant [employee] was not acting to further the business of his employer, but to further his own personal and private needs. Under these circumstances the corporate defendant is not liable for its employees' acts.

382 S. E. 2d at 181.

Just as in *Dickson* and *Hackett*, Levi brought the dog to Randy's apartment for his own personal convenience. Like the employers in those cases, Randy was unaware the dog was there. It was not reasonably foreseeable that Levi would bring the dog *as a result of any authority that he had as Randy's agent* (assuming *arguendo* that he was Randy's agent) to clean the apartment. *See Dickson*, 84 So.2d at 310. Levi was not acting to further the interests of Randy, but to further his own personal and private needs. Randy is not liable for the dog attack.

That Levi's errand may have been within the scope of his authority to clean Randy's apartment does not convert his bringing or leaving the dog into an act within the scope of his authority or in furtherance of Randy's interest. *Croley v. Moon Enterprises, Inc.,* 118 Ohio Misc. 2d 151, 770 N. E.2d 148 (2001), is illustrative.

In *Croley* defendant employer's bookkeeper brought her dogs to work so she could take them to the veterinarian later. While the bookkeeper was on the telephone, one of the dogs bit a business invitee entering the bookkeeper's office. Affirming summary judgment for the defendant employer, the court explained:

> As to the vicarious-liability theory, an employee acts within the scope of her employment only when she acts for the employer, and acts to further the employer's business....

> [The bookkeeper/dog owner] admitted that she was engaged in the scope of her business at the time [her dog] bit [plaintiff].... ***At that time, [the bookkeeper/dog owner] was talking on the telephone for her employer....*** However, there is also no dispute that [the dog's] presence on the MEI premises was outside the scope of [the bookkeeper/dog owner's] employment because it was for [her] convenience and not for the benefit of MEI's business. ***Thus, while [the bookkeeper/dog owner] was furthering MEI's business (on the telephone) when (plaintiff) was at the door of the trailer, the court finds that reasonable minds could only conclude that, as to [the dog's] presence and attack on [plaintiff], [the bookkeeper/dog owner] was operating outside the scope of her employment.*** Thus, MEI is not liable... by virtue of vicarious liability.

770 N.E.2d at 152 (emphasis added).

This case is like *Croley*. As with the bookkeeper, the presence of Levi's dog on the premises was for Levi's personal convenience only and was outside the scope of his alleged agency, not for Randy's benefit. Although Levi may have been acting within the scope of his alleged agency when he went on his errand, Levi was operating outside the scope of his alleged agency as to the dog's presence and attack on plaintiff.

Plaintiff's attempt to analogize to cases in which an unauthorized act is done in conjunction with authorized acts, or when the agent has dual motives or is combining his own personal business with his principal's business, must fail. None involved the situation here, where the alleged agent, without the alleged principal's knowledge, brings the sole

instrumentality of the injury to the jobsite, even though that instrumentality has absolutely nothing to do with the job.[8]

Indeed, section 239 of the RESTATEMENT (SECOND) OF AGENCY provides:

> A master is not liable for injuries caused by the negligence of a servant in the use of an instrumentality which if of a substantially different kind from that authorized as a means of performing the master's service, or over the use of which it is understood that the master is to have no right of control.

See also RESTATEMENT (SECOND) OF AGENCY § 240 (master may be liable if he entrusted servant with an instrumentality that servant left somewhere while within scope of employment). Here, the instrumentality – the dog – was not even a means of performing the job that Randy had hired Levi to a do, and Randy certainly did not entrust the dog to Levi. Randy simply could not be liable under agency principles.

Citing *Rahman v. State,* 170 Wn.2d 810, 246 P.3d 182 (2011), plaintiff asserts that Randy should have told Levi not to bring the dog.[9]

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[8] *See Smith v. Leber*, 34 Wn.2d 611, 209 P.2d 297 (1949) (jury could find former employee's returning employer's rented truck was within the scope of authority); *Leuthold v. Goodman*, 22 Wn.2d 583, 157 P.2d 326 (1945) (employee's short deviation using employer's vehicle while on employer's errand did not defeat vicarious liability); *cf. Breedlove v. Stout,* 104 Wn. App. 67, 14 P.3d 897 (2001) (employee not within scope of employment as a matter of law when he returned to work to retrieve work-related manual without employer's knowledge or control); *Strachan v. Kitsap County*, 27 Wn. App. 271, 616 P.2d 1251 (1980) (jury could find that off-duty city police officer was County's agent while assisting County deputy sheriff in performing County police duties).

(Appellate's Amended Opening Brief 24-25) But *Rahman* does not support plaintiff's position. There, a state employee took his wife along on a business trip in a state-owned car, even though the state agency employer forbade unauthorized passengers. The couple was involved in an accident while the husband was driving. The wife sought to hold the state vicariously liable for her husband's negligence.

The Washington Supreme Court ruled the husband employee was acting within the scope of his employment at the time of the accident. The Court explained:

> ... The Court of Appeals correctly concluded that [the husband] was acting within the scope of his employment at the time of the automobile accident that injured [his wife]. Though he combined his own business with the State's by allowing [her] to ride along as a passenger, the trip and the route taken were dictated by official state business, and ***there is no evidence that [the wife's] presence in any way contributed to the accident.***

170 Wn.2d at 817 (emphasis added).

Unlike in *Rahman*, the unauthorized being here, the dog, was the very thing that caused the injury. And unlike the employer-owned car in *Rahman,* the dog – which was not owned by Randy – had nothing whatsoever to do with Levi's alleged employment.

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[9]Plaintiff also says that if Randy had done this, he still would have been liable. (Appellant's Amended Opening Brief 24-26) Plaintiff cannot have it both ways.

Plaintiff's citation to *McNew v. Puget Sound Pulp & Timber Co.*, 37 Wn.2d 495, 224 P.2d 627 (1950), is puzzling. In *McNew* the head cook of a logging camp drove home to visit his family every other weekend. On one such trip, he bought supplies for the camp on the way. He was involved in an accident while returning from his family visit to the camp.

The trial court dismissed the logging camp owner. The Washington Supreme Court affirmed, explaining:

> ... Nelson made this particular journey to serve his own purpose, namely, to visit his family, and... ***the accident in which he became involved was wholly unrelated to the purchase and transportation of the supplies for the camp***. .... It is our opinion that at the time of the accident. Nelson was on a journey of his own, and what he had done or was doing to accommodate his employer was not done in the course of or scope of his employment as head cook.

37 Wn.2d at 499-500 (emphasis added). As in *McNew*, the dog attack here was wholly unrelated to Levi's job cleaning the apartment. *McNew* supports Randy's position, not plaintiff's.

Plaintiff's reliance on *Vollendorff v. United States*, 951 F.2d 215 (9th Cir. 1991), is misplaced. In that case, the Army required an army officer to take chloroquine. His granddaughter was permanently and severely injured when she got into his chloroquine bottle on the kitchen counter of his home. The Court of Appeals ruled the Army could be vicariously liable because it required the chloroquine for its own concerns,

and the drug's storage was merely incidental to that requirement. 951 F.2d at 218-19. In other words, usage and storage of the instrumentality that caused the injury were within the scope of the grandfather's employment.

Here, in contrast, Randy did not order or otherwise authorize Levi to bring his dog to Randy's apartment when Levi came to clean it. The dog's presence was not in furtherance of Randy's interest. Nor was leaving the dog while Levi went out on an errand.

Plaintiff's claim that the dog's presence furthered Randy's interests because it was a guard dog has absolutely no basis in fact. Nothing in the record, explicitly or implicitly, suggests that Randy had any concern about the security of his apartment, or even that Levi had brought the dog for security reasons. Conclusory allegations are insufficient to defeat summary judgment. *Kirkland v. Department of Revenue*, 45 Wn. App. 720, 724, 727 P.2d 254 (1986). That Randy might have benefited in the unlikely event that a burglar had tried to get into his apartment is insufficient. *Cf. Breedlove v. Stout,* 104 Wn. App. 67, 72, 14 P.3d 897 (2001) (that employer might have ultimately benefited by employee's voluntary return to workplace while driving home to pick up work-related material insufficient to impose vicarious liability).

Plaintiff's attempt to equate the dog with an open pit, construction equipment, or some other instrumentality rendering the premises unsafe

must fail. (Appellant's Amended Opening Brief 20-21) Such conditions are not subject to the Washington rule on dog bite liability. *See Frobig*, 124 Wn.2d at 737; *Clemmons*, 58 Wn. App. at 34-35. And, unlike an open pit, construction equipment, or some other instrumentality that would render the premises unsafe, Levi brought *his own* dog to the premises without Randy's knowledge or consent. Further, the dog had nothing to do with the job for which Levi was retained.

Plaintiff tries to shoehorn this case into her agency theory by arguing that Randy misinformed the landlord when the house would be vacated. Randy's misrepresentation was based on Levi's assuring his brother that he would be done the evening of July 16.[10] Plaintiff claims Levi's erroneous assurance was made within the scope of his authority.

There are at least two flaws with this argument. First, even though the date Randy gave the landlord ultimately proved to be wrong, this would have been harmless had Levi not brought his dog to the apartment. Bringing the dog and leaving it there had nothing to do with Levi's job to clean the apartment.

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[10] Plaintiff's implying that Randy deliberately misrepresented the completion time to avoid paying more rent is based on sheer speculation.

Second, plaintiff argues that Randy had a duty to check with Levi the evening of July 16 or the morning of July 17. (Appellant's Amended Opening Brief 22) But Randy, who was in California, had already checked with Levi earlier in the day of July 16. Levi had assured him that he would be done by that evening. (CP 96) Nowhere does plaintiff identify any law requiring Randy to do anything more.

As explained *supra*, Randy cannot be liable as a matter of law because he was not the owner, keeper, or harborer of the dog. But even if this were not true, the trial court properly granted Randy summary judgment on plaintiff's agency theory. This court should affirm.

2. Randy McWilliams Cannot Be Liable Under a Premises Liability Theory.

Plaintiff claims Randy should be liable on the ground that Levi's dog constituted a dangerous condition at the apartment. As discussed *supra*, *Frobig* and *Clemmons* rejected such a theory. But even if premises liability principles did apply to dog bite cases, his argument has no merit under the facts of this case.

Washington courts have adopted section 343 of the RESTATEMENT (SECOND) OF THE LAW OF TORTS, for non-dog bite premises liability cases. Section 343 provides as follows:

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he
>
> (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
>
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
>
> (c) fails to exercise reasonable care to protect them against the danger.

See, e.g., Kamla v. Space Needle Corp., 147 Wn.2d 114, 125-26, 52 P.3d 472 (2002). Even assuming *arguendo* that plaintiff was Randy's invitee, as required by section 343, section 343 would not apply.

First, plaintiff attempts to circumvent section 343's notice requirement by claiming Randy need not have had knowledge, actual or constructive, of the allegedly dangerous condition. Plaintiff claims such notice was unnecessary on the ground that Randy or his agent created the dangerous condition.

But Randy did not bring the dog to, or leave it in, the apartment. The agency cases plaintiff cites both involved agents who created the dangerous condition *in the course and scope of their employment. See Iwai v. State*, 129 Wn.2d 84, 915 P.2d 1089 (1996) (icy parking lot created by landowner's contractor hired to snowplow lot); *Sorenson v. Keith Uddenberg, Inc.,* 65 Wn. App. 474, 828 P.2d 650 (1992) (same as *Iwai*).

As discussed *supra*, insofar as the dog was concerned, Levi was not acting within the course and scope of his alleged agency. Thus, even if the common-law dog bite rule no longer applied, plaintiff would have to show the required notice.

Plaintiff cannot show that Randy had actual knowledge. Randy did not know that (1) Levi had brought his dog with him to the apartment, (2) Levi (and least of all, the dog) had failed to vacate the apartment by the time Levi had said he would,[11] (3) Levi temporarily left the apartment without taking or otherwise securing the dog, or (4) plaintiff was coming to the apartment.

Randy had no constructive knowledge either. Plaintiff claims Levi's knowledge should be imputed to Randy under agency principles. But as discussed *supra,* Levi was not Randy's agent, as to the dog.

Plaintiff concedes that to prove constructive notice, she "must show the specific and particular condition had existed long enough for defendants to have become aware of it." (Appellant's Amended Opening Brief 28) That Randy, under the circumstances, had insufficient time is demonstrated by *Shafer v. Beyers*, 26 Wn. App. 442, 613 P.2d 554 (1980).

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[11] Even if Randy assumed Levi would have to return to the apartment on July 17 to pick up cleaning supplies (CP 96), a reasonable person in Randy's position would not have thought Levi would bring his dog.

In *Shafer*, plaintiff sought to impose liability on a landlord after a subtenant's dog bit plaintiff. The court affirmed summary judgment for the landlord, explaining:

> Nothing indicates that Mr. Ackmann had ever seen or heard of Nojo before the injury. The dog had only have been on the premises from 1 to 3 weeks.... Mrs. Ackmann did not see or hear of it until April 1 or 2, 1978, just two or three days before the April 4, 1978 injury to the plaintiff. This was on April 1 or 2, when Mrs. Ackmann visited the duplex and saw Nojo for the first time.

26 Wn. App. at 448.

If the landlord in *Shafer* could not be liable as a matter of law, neither can Randy, who was not even in the state at the time. In *Shafer*, the landlord had actual knowledge at least a day or two before the attack that the Doberman was on the premises. Here, Randy had no idea the dog was on the premises. Further, the Doberman in *Shafer* was on the premises for 1-3 weeks. Here, Jersey was at the apartment for only a day or two at most. (CP 101)

That Randy may have known that Levi was homeless means nothing.[12] Levi and his dog were staying with friends. (CP 101) No reasonable person would expect someone hired to clean an apartment

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[12] The record is not clear whether Randy knew at the time that Levi, who had previously had a home, was homeless. (CP 66, 92, 108, 113)

would bring a dog. Accordingly, a reasonable person in Randy's position who knew Levi was homeless would have expected Levi to have left the dog with his co-owner, Liz, or at the home where he was staying, or even had he brought the dog, that Levi would have tied up or locked the dog into a room in Randy's apartment, or taken the dog with him, when he left.

Plaintiff also claims that Randy failed to inspect. Randy was in California at the time. But Randy called Levi to check on his progress the day before the dog attack. Levi assured him he would be done that evening. (CP 96) No reasonable person would think that someone hired to clean their house would bring a dog, so there was no reason for Randy to ask Levi whether he had.

Plaintiff does not claim Randy should have specifically known the landlord would send someone to check on the apartment on July 17. Instead, she argues Randy should have known people might come since the apartment was for sale and there was a realtor's lockbox on the door. But the listing agent was to call Randy prior to showing the apartment. No one called. (CP 77)

Plaintiff's theory that the dog would have attacked her even if Levi had been present is based on nothing more than speculation and conjecture. (Appellant's Amended Opening Brief 12) Plaintiff has no evidence to show that if Levi had been there, he would not have heard

plaintiff at the door and been able to warn her or restrain the dog before she entered.

Even if Randy knew or should have known that Levi would bring Jersey, plaintiff also had the burden of creating a genuine issue of material fact that Randy knew or had reason to know that the dog created a hazardous condition. Knowledge of the the dog's mere presence was insufficient.

Shafer v. Beyers, 26 Wn. App. 442, 613 P.2d 554 (1980), decided before *Frobig* and *Clemmons,* provides a helpful comparison. There, a male Doberman owned by a subtenant bit plaintiff. Plaintiff sued the landlord. As here, plaintiff argued a variety of premises liability theories. The court responded:

> It is unnecessary to detail the plaintiff's "dangerous conditions and activities" theories other than to point out that in order to recover under any of them, the plaintiff is required to establish that the landlords knew, or should have known, that the male Doberman pinscher, Nojo, that injured the plaintiff, was dangerous. As Professor Prosser's treatise explains, so far as the common law is concerned, dogs are usually regarded as harmless and in order to recover "it must be shown that the defendant knew, or had reason to know, of a dangerous propensity ***in the one animal in question***."

26 Wn. App. at 448 (emphasis by the court). In other words, even though Dobermans are often thought to be vicious dogs, it was not sufficient to show the landlords knew or should have known that. Instead plaintiff had

to show the landlord knew or should have known the specific Doberman in question was vicious. *See also Klitzka v. Hellios.* 348 Ill. App. 3d 594, 810 N.E.2d 252, *appeal denied*, 212 Ill. 2d 534, 824 N.E.2d 284 (2004); *Thurber v. Apmann*, 91 A.D.3d 1257, 936 N.Y.S.2d 789, 790 (2012); *Malpezzi v. Ryan*, 28 A.D.3d 1036, 815 N.Y.S.2d 295, 296-97 (2006).

The court upheld summary judgment for the landlord, explaining:

> We have read carefully reviewed the record presented and it does not establish that the landlords knew or had reason to know that Nojo was a dangerous animal. . . . Although at her deposition Mrs. Ackmann did use the phrase, "(t)hat dog, looked vicious to me," a reading of that in context with her complete deposition indicates no more than as she testified, that Nojo did nothing but just stand there. We fail to see how this can establish the required quantum of proof that the landlords ... knew or reasonably should have known "that the dog (had) vicious or dangerous propensities likely to cause the injury complained of,..."

26 Wn. App. at 448-49.

Here there was no evidence Randy knew that Jersey, as opposed to pitbulls in general, was vicious. While Randy knew Levi and Liz took precautions with the dog that may have been consistent with breed's reputation, justified or not, there was no evidence Randy was aware that Jersey, in particular, had vicious tendencies. Indeed, Liz testified, "everybody liked Jersey." (CP 108, 109) Since the landlord in *Shafer* was entitled to summary judgment, so is Randy.

Plaintiff's cited cases involve entirely different sets of facts. In *Langan v. Valerie Wilson Travel, Inc.*, No. 9:06-cv-03511-CWH (D. S. C. July 21, 2008) (2008 U.S. Dist. LEXIS 55323), the employee/dog owner had a written contract with her employer allowing her to keep her German Shepherd in her office with her. The dog was periodically left unattended and unleashed and would roam throughout the office including the public spaces. Prior to the attack in question, the office manager had informed senior management that the dog was not being kept in its owner's office as required by the contract and was causing problems with clients and employees. There was evidence that before the attack, the dog had behaved aggressively towards various individuals at least 10 times.

In *Garrett v. Overland Garage & Parts, Inc.*, 882 S.W.2d 188 (Mo. App. 1994), and *Savory v. Hensick*, 143 S.W.3d 712 (Mo. App. 2004), the defendants were the owners of the dogs. In *Garrett* the dog was kept on the premises to guard it. In *Savory* plaintiff contractor and his workers had asked defendant dog owner numerous times to keep the dog inside while they worked. The injury occurred because the dog was left outside.

Landings Association, Inc. v. Williams, 309 Ga. App. 321, 711 S.E.2d 294 (2011), *rev'd on other grounds*, 728 S.E.2d 577 (2012), also does not apply. There, an elderly lady was killed by an alligator at a

residential development. Defendant association well knew the premises were populated by indigenous alligators, had a policy of removing any alligator over 7 feet long, and annually warned its residents about the alligators.

The Georgia Court of Appeals ruled that there were questions of fact under *a statute* that imposed liability on owners or occupiers of land for injuries to invitees caused by the failure to exercise ordinary care in keeping the premises and approaches safe.

Here, there is no such statute. And unlike the association in *Williams,* which knew alligators frequented the property, Randy did not know Levi's dog was in his apartment. *See also Beard v. Fender,* 179 Ga. App. 465, 346 S.E.2d 901 (1986) (plaintiff and defendant were trying to get rid of a wasp nest).

Schrum v. Moskaluk, 655 N.E.2d 561 (Ind. App. 1995), did permit a dog bite victim to go to trial on a premises liability theory, even though defendant did not have actual knowledge of the dog's presence at her garage sale. But unlike here, the defendant possessors of land were holding open their property to all members of the public for a garage sale. In addition, the opinion, which has not been cited in a dog attack case in any other state, failed to explain why there was a genuine issue of material fact whether defendant landowner *reasonably should have known* of the

dog's presence. Absent constructive knowledge, *Schrum* would be contrary to Washington law, which requires plaintiffs to show that landowners had "actual or constructive notice of the unsafe condition." *Iwai*, 129 Wn.2d at 96.

Indeed, in the Washington cases plaintiff cites, the defendant possessor of land reasonably could have foreseen the dangerous condition because of defendant's business operations. *See Iwai v. State* 129 Wn.2d 84, 915 P.2d 1089 (1996) (slip and fall on icy parking lot maintained by defendant Employment Security Department); *Pimentel v. Roundup Co.*, 100 Wn.2d 39, 666 P.2d 888 (1983) (paint can improperly shelved in retail store) *cf. Carlyle v. Safeway Stores,, Inc.,* 78 Wn. App. 272, 896 P.2d 750 (1995) (grocery store not liable for fall on spilled shampoo in grocery where accident was not reasonably foreseeable), *rev. denied*, 128 Wn.2d 1004 (1995).

Here, in contrast, Randy was a renter, who was away from home for a few days. In hiring Levi to come clean his apartment and move some items, a reasonable person in Randy's position could not have foreseen that not only would Levi bring his dog, but would leave it alone and loose in the apartment when he left.

A person who is not the owner, keeper, or harborer of a dog cannot be liable for a dog attack. But even if the rule were otherwise, no

reasonable person would think that Randy, in the exercise of reasonable care, should have done anything more that would have prevented plaintiff's injuries. Washington premises liability law does not apply as a matter of law. The trial court was correct in granting summary judgment. This court should affirm.

3. Randy McWilliams Cannot Be Liable Under a Negligent Entrustment Theory.

Plaintiff also claims Randy could be liable for negligently entrusting the apartment to Levi so he could clean it. Even if this theory could theoretically apply, it cannot in this case, since it is based on pure speculation and conjecture.

In Washington the tort of negligent entrustment is typically associated with auto accident cases, although other chattel can be involved. *See, e.g., Mitchell v. Churches,* 119 Wash. 547, 206 P. 6 (1922); *Weber v. Budget Truck Rental, LLC*, 162 Wn. App. 5, 254 P.3d 196, *rev. denied*, 172 Wn.2d 1015 (2011); *see also Hickle v. Whitney Farms, Inc.*, 148 Wn.2d 911, 64 P.3d 1244 (2003) (organic waste); *Bernethy v. Walt Failor's, Inc.*, 97 Wn.2d 929, 653 P.2d 280 (1982) (gun). To the best of the undersigned's knowledge, no Washington court has ever recognized a tort for negligent entrustment of real property or of an activity. Assuming,

however, that such a tort exists, plaintiff has failed to present a genuine issue of material fact that Randy could be liable for it.

The tort of negligent entrustment "is based on the foreseeability of harm when one knew or should have known that the person to whom materials were entrusted was unable to safely handle the materials." *Hickle v. Whitney Farms, Inc.*, 148 Wn.2d 911, 925, 64 P.3d 1244 (2003). In other words, "the theory of negligent entrustment is based on foreseeability – the entrustor of a vehicle is liable only if a reasonable person could have foreseen the negligent acts of the entrustee." *Kaye v. Lowe's HIW, Inc.*, 158 Wn. App. 320, 242 P.3d 27 (2010).

The *Kaye* case, involving vehicle entrustment, is illustrative. There the alleged entrustor knew of the alleged entrustee's extensive history of problems with authority; his disregard for the law, rules of society, and for others; his mental instability and use of drugs; and that the entrustee operated "off the grid". Yet, because the alleged entrustor did not know that the alleged entrustee was an incompetent driver or posed a danger driving, this court ruled there was insufficient evidence to support a negligent entrustment claim.

Here, plaintiff has failed to produce any specific facts showing that a reasonable person could have foreseen that (1) Levi would bring his dog to the apartment when he went to clean it; or (2) even if a reasonable

person could have foreseen that, that Levi would leave the dog loose in the apartment when he left to run an errand. Even if Randy could be liable, although he was not the dog's owner, keeper, or harborer, he could not be liable for negligent entrustment as a matter of law.

V. CONCLUSION

Under Washington law, only the owner, keeper, or harborer of a dog can be liable for a dog attack. It is true that this rule does not apply in all jurisdictions. However, as Division II has recognized,

> We decline [to adopt a more liberal rule], for we see no reason to depart from our settled rule.... Our rule also promotes the salutary policy of placing responsibility where it belongs, rather than fostering a search for a defendant whose affluence is more apparent than his culpability.

Clemmons, 58 Wn. App. at 38; *accord Smaxwell,* 274 Wis.2d at 309-10, 682 N.W.2d at 938-39; *Klitzka,* 810 N.E.2d at 258; *see generally Frobig.* 124 Wn.2d at 736.

The responsibility for the dog here belongs with its owners, Levi and Liz. Plaintiff is seeking to hold Randy liable solely because his affluence is more apparent than his culpability. The trial court properly granted Randy summary judgment. This court should affirm.

DATED this 31st day of October, 2012.

REED McCLURE

By Pamela A. Okano

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Attorneys for Appellants

067824.099409/361534

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

MARGARET L. BRISCOE,

Appellant,

vs.

RANDALL LAMONICUS McWILLIAMS,

Respondent,

and

LEVITICUS JADE McWILLIAMS, ELIZABETH ANN ROWLAND, and VICTOR GREER,

Defendants

No. 69103-1-I

AFFIDAVIT OF SERVICE BY MAIL

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

The undersigned, being first duly sworn on oath, deposes and says:

That she is a citizen of the United States of America; that she is over the age of 18 years, not a party to the above-entitled action and competent to be a witness therein; that on the date herein listed below,

affiant deposited in the United States mail, postage prepaid, via regular mail, copies of the following documents:

1. Brief of Respondent; and

2. This Affidavit of Service by Mail

addressed to the following parties:

Michael E. Withey
Law Offices of Michael Withey, PLLC
601 Union Street, #4200
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DATED this 2nd day of November 2012.

Jessica Pitre-Williams

SIGNED AND SWORN to (or affirmed) before me on November 2, 2012 by Jessica Pitre-Williams.

LEONE R. POWERS
Commission Expires
NOTARY
PUBLIC
01-05-2015
STATE OF WASHINGTON

Print Name: Leone R. Powers
Notary Public Residing at Sno. Co., WA
My appointment expires: 1/5/2015

#67824.099409/375553