TITLE & INTRODUCTION

This memorandum details Helen Woodley's legal entitlement, under the Massachusetts Dog Bite Statute, G.L. c.215, to damages against Sue Smith. Helen Woodley ("Woodley"), our young eight year old client and plaintiff in this matter, was severely bitten by Defendant's, Sue Smith's ("Smith"), dog. The Massachusetts Dog Bite Statute, G.L. c.215, and supporting case law application, is critical to Helen's case and is further detailed and fulfilled below. .

I. FACTS

On January 1, 2006, Helen and her mother accidentally wandered onto Ms. Smith's property during ordinary hours of the day while they were at the zoo in Randolph, Massachusetts. Ms. Smith's building had the same architecture as the rest of the zoo buildings and there were no signs informing the public that Smith's building was a private residence—nor was there any indication (no sign, no posting of notice, or symbol of danger) to warn away those who seek lawful business.

Smith's German shepherd was not chained or fenced, but was running loose and started Helen and her mom when they were about ten yards away from the front door, appearing suddenly from behind a snow-covered hedge located five yards to the left of the front door. The dog appeared playful and not that of a guard dog, giving no warning to Helen or her mother of any danger.

After several minutes of petting and playing with Smith's German shepherd, Helen and her mother continued towards the front door. Helen ran up the steps and threw a soft snowball at her mother but her mother ducked and the snowball accidentally caused snow to spray on the dog and startle him. The German shepherd—who is, according to Smith, a therapy dog—viciously attacked Helen, biting her four times on her right arm and hand, causing her to need 117 stitches.

II. ISSUE

Does the Massachusetts Dog Bite Statute, G.L. c. 215 entitle Woodley to damages and impose liability upon Smith?

III. RULE

The Massachusetts dog bite statute, G.L. c. 215, provides: If a dog or other animal, without provocation, attacks or injures any person who is peaceably conducting himself in any place where he may lawfully be, the owner of such dog or other animal is liable in damages to such person for the full amount of the injury sustained.

IV. APPLICATION

Under this statute there are four elements[1] that must be satisfied in order for a plaintiff to prove defendant's liability:

(1) Ownership: The injury caused by a dog owned or harbored by the defendant;

(2) Lack of provocation;

(3) Peaceable conduct of the person injured; and

---

[1] See *Bjorstrom v. Carey Management Association*, 732 N.E.2d 441, 690 Mass. 332 (1999); *Dan v. Gilbert*, 818 N.E. 2d 325, 983 Mass. 332 (2001); *Segal v. Chelsea*, 619 N.E.2d 555, 319 Mass. 234 (1992); *Rose v. Leopold*, 718 N.E.2d 853, 415 Mass. 576 (1994)

(4) Lawfully on the premises (the presence of the person injured in a place where s/he has a legal right to be).

1. **Ownership:** No one is disputing that the injury was caused by a dog owned or harbored by the defendant. Defendant admits she owns the dog and thus, the first prong is satisfied of the dog bite statute.

2. **Lack of Provocation:** There are two types of provocation under Massachusetts dog bite statute, G.L. c. 215: (a) Intentional[2] and (b) Unintentional.[3]

   (a) Intentional: To determine if there was any *intentional* provocation, we look at *Segal v. Chelsea*, 619 N.E.2d 555, 319 Mass. 234 (1992), in which Tom Segal ("Segal"), a seven year old dog bite victim threw cards at and repeatedly kicked his friend's, Charlie Chelsea's, dog that was recovering from an automobile accident. Segal admitted he knew he was making the dog angry but continued to kick her anyway, even after she growled and even after Charlie's mom told him to go home.

   That is not the case with our client. Woodley did not aim the snowball at the German shepherd but at her mother who ducked; the snowball only accidentally made contact with the dog. Right before this, the German shepherd was very playful with Woodley; there was no indication that the German shepherd wanted Woodley to leave it alone. Since the facts of this case are completely different, it is conclude there was no intentional provocation.

[2] *Segal v. Chelsea*, 619 N.E.2d 555, 319 Mass. 234 (1992);

[3] *Rose v. Leopold*, 718 N.E.2d 853, 415 Mass. 576 (1994), *Bjorstrom v. Carey Management Association*, 732 N.E.2d 441, 690 Mass. 332 (1999)

(b) Unintentional: To determine if there was any *unintentional* provocation, we look at two cases:

i. *Rose v. Leopold*, 718 N.E.2d 853, 415 Mass. 576 (2004)

ii. *Bjorstrom v. Carey Management Association*, 732 N.E.2d 441, 690 Mass. 332 (1999)

i. In *Rose v. Leopold*, 718 N.E.2d 853, 415 Mass. 576 (2004), a two-and-a-half year old, Evelyn Rose ("Rose"), was playing a game ("Crack the Whip") with Jack Leopold's daughter, friends and cousins and during the game, she was thrown from the whip and accidentally fell on Leopold's Saint Bernard, Chewbaca. The Court found that Chewbaca responded non-viciously and "proportionally by swiping at [Rose]." Though the scratch caused Rose's left eye permanent tear duct damage, it did not impact her vision. There was no evidence that anyone, including Rose, had provoked Chewbaca before the incident and there was no evidence that Chewbaca had ever attacked anyone else.

In comparison to this case, just as Rose did not intend to fall on the dog's tail, so Woodley did not intend for the snowball to hit the German shepherd. A huge defining difference between these cases, however, is that the Saint Bernard's reaction was non-vicious and proportional whereas the German

shepherd's reaction—especially for a therapy dog[4]—to Woodley was vicious (Woodley required 117 stitches) and disproportional.

ii. In *Bjorstrom v. Carey Management Association*, 732 N.E.2d 441, 690 Mass. 332 (1999), we see the Court again taking into great consideration the viciousness of the dog when determining whether or not there was "unintentional provocation." In this case, Mark Bjorstrom ("Bjostrom"), a fourteen-year-old high school student, suffered severe dog bite injuries on the Copley Mall (Boston, MA) building's 4th floor which was the private apartment residence of the mall manager, Justine Carey (Carey Management Association) and guarded by Bowser, Carey's bull dog.

The court stated that it did not believe "provocation" within the meaning of the statute was intended to apply to a situation where a vicious dog interpreted a visitor's nonthreatening movements as hostile actions calling for attack. Similarly, Woodley's innocent snowball aimed at her mother was non-threatening and did not merit the German shepherd's vicious response.

Given both cases just cited, it is concluded that because of the German shepherd's disproportional and vicious reaction to our client's misdirected snowball, there was no intentional or unintentional provocation on Woodley's part and thus, this element of the statute is satisfied.

[4] There are a number of therapy dog organizations in Massachusetts and each of them clearly state on their websites the requirements for a dog to become a therapy dog. For example, http://www.caringcanines.org/faq.html requires at minimum, "The dog needs to be well socialized. Exposing a dog as much as possible to new sights, sounds, smells, other dogs and people of all ages will help your dog in becoming well socialized. The dog should have some basic obedience skills…"

3) **Peaceable conduct of the person injured:** While Smith's attorney suggests the German shepherd would not have bitten Woodley had it not been struck by the snowball, that is an issue of provocation (that we just concluded Woodley was not guilty of), not that of peaceable conduct, especially given the fact that Woodley aimed the snowball at her mother, *not* the German shepherd. Woodley and her mother had been petting and playing with the German shepherd right before the snowball accident occurred. No one appears to be disputing the peaceable conduct of our injured client, but, in the event that opposing counsel argues it, to further determine the peaceable conduct of Woodley, we look at the following cases:

(a) *Bjorstrom v. Carey Management Association*, 732 N.E.2d 441, 690 Mass. 332 (1999)

The facts of this case have already been summarized in the section on unintentional provocation. The Court found Bjorstrom to have satisfied the Massachusetts Dog Bite Statute, G.L. c. 215, and though it did not make a specific ruling regarding Bjostrom's peaceable conduct, peaceable conduct was satisfied as part of the four-prong Massachusetts Dog Bite Statute.

(b) *Dan v. Gilbert*, 818 N.E. 2d 325, 983 Mass. 332 (2001);

In this case, a seventeen year old Girl Scout, Penny Dan ("Dan"), was going door-to-door to sell Girl Scout cookies and as she headed down a pathway to the front porch of the defendant's home, and when she was within five feet of the front door, she was severely bitten by a bull mastiff that suddenly appeared out from the bushes.

As in Bjorstrom v. Carey Management Association, the Court found Dan to have satisfied the Massachusetts Dog Bite Statute, G.L. c. 215, and though

it did not make a specific ruling regarding Dan's peaceable conduct, peaceable conduct was satisfied as part of the four-prong Massachusetts Dog Bite Statute.

In both of these cases, we find that neither Bjorstrom or Dan harassed, kicked or made any intentional or unintentional acts of provocation towards the dog (unlike Segal v. Chelsea in which Segal threw cards at and repeatedly kicked the already quite injured dog) . While Woodley's snowball hit the German shepherd, the snowball was, again, aimed at her mother, *not* the dog, and we've already determined that she's not guilty of even unintentional provocation. Also like Bjorstrom and Dan, Woodley's purpose for being in the dog's vicinity was innocent and not antagonistic towards the dog.

Given the similarities of these cases, given the facts just described, we conclude that Woodley was of peaceable conduct and this element of the statute is satisfied.

4. **Lawfully on Premises:** To determine the presence of the person injured was in a place where she had a legal right to be, we look at the same two cases just cited:

(a) *Bjorstrom v. Carey Management Association*, 732 N.E.2d 441, 690 Mass. 332 (1999)

In this case, Justice Dante ruled, "This court disagrees with Carey's contention that Bjorstrom was not lawfully on the premises. From all indications on the exterior of the Carey's building, in its lobby, and on the inside of the elevator itself, people like Bjorstrom could only surmise that the entire building was devoted to business purposes and that it was intended that the public was invited into the premises to do business. No notices anywhere indicated that any part of the premises was used as a private residence. It is clear, therefore, that when Bjorstrom entered the building,

crossed its lobby, entered the elevator and rode it to the fourth floor, Bjorstrom was lawfully on the premises. In addition, we believe that he was also lawfully on the premises when he entered the fourth floor hall where he was attacked. Persons entering the building and riding its elevator would have no reason to believe that the fourth floor was used for residential purposes or that vicious dogs were kept there."

As in the case of Bjorstrom v. Carey Management, so it is in our client's case that from all indications on the exterior of Ms. Smith's building, a building with the same architecture and appearance as the other zoo buildings, our client and her mother could only surmise that it was part of the zoo and open to the public. No notices anywhere indicated that any part of the premises was used as a private residence.

(b) *Dan v. Gilbert,* 818 N.E. 2d 325, 983 Mass. 332 (2001);

In this case, Judge Bodhi recalled, "On several prior occasions, this court has ruled that the owner of property who provides a path or walkway from a public street or sidewalk to his front door without some indication (a sign, posting of notice, or symbol of danger) to warn away those who seek lawful business with him, extends a license to use the path or walkway during the ordinary hours of the day. See *Commonwealth v. MacDonald,* 665 N.E.2d 648 (Mass. 1994); *Commonwealth v. Christie,* 564 N.E.2d 342 (Mass. 1992). Our decision in *Bjorstrom v. Carey Management Association,* 732 N.E.2d 441, 690 Mass. 332 (1999) supports this view."

As in the case of Dan v. Gilbert, so it is in our client's case that the dog's owner provided a path or walkway from a public street or sidewalk to his/her front door without some indication to warn away those who seek lawful business with them and as a result,

extended a license to use the path or walkway during the ordinary hours of the day. There again was no indication that the owner's building was even a private residence; no signs were posted and by all appearances it looked like another building that was part of the zoo.

Therefore, given both these cases, the fourth prong of the Massachusetts Dog Bite Statute, G.L. c. 215 has been satisfied, providing sufficient grounds to support that our client had a legal right to be on the premises.

V. CONCLUSION

Each element of the four-prong Massachusetts Dog Bite Statute, G.L. c. 215 is now satisfied. Our client, Helen Woodley, is entitled to damages, for which Defendant Sue Smith is liable under this statute.