

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

CHAKA MADDREY,)	
Plaintiff,)	
)	
v.)	C.A. No. N15C-07-076 ALR
)	
BERKOWITZ & SCHAGRIN, P.A.,)	
)	
Defendant.)	

Upon Defendant’s Motion to Dismiss – DENIED

Submitted: September 2, 2015

Decided: September 9, 2015

Plaintiff Chaka Maddrey claims to have been bitten by a dog at the law offices of Defendant Berkowitz & Schagrin, P.A. Defendant has moved to dismiss Plaintiff’s complaint on the grounds that the dog was not owned by the Defendant law firm; rather, according to Defendant, the dog was owned by a secretary employed by the Defendant law firm. Plaintiff opposes Defendant’s Motion to Dismiss.

Upon consideration of Defendant’s Motion to Dismiss and Plaintiff’s opposition thereto, the Court finds as follows:

1. A motion to dismiss must be decided solely upon the allegations set forth in the complaint.¹ The Court shall accept all well-pleaded allegations as true and

¹ *Am. Bottling Co. v. Crescent/Mach I Partners, L.P.*, 2009 WL 3290729, at *2 (Del. Super. Sept. 30, 2009).

make all reasonable inferences in favor of the non-moving party.² Factual allegations, even if vague, are well-pleaded if they provide notice of the claim to the other party.³ The Court should deny the motion if the claimant “may recover under any reasonably conceivable set of circumstances susceptible of proof.”⁴

2. A business invitee is “one who is invited to enter onto another’s land or premises for the purpose of doing business.”⁵ A land possessor’s duty to a business invitee is that “once the possessor knows, or should know, of a condition which poses an unreasonable risk of harm to the invitee, he must employ reasonable measures to warn the invitee or protect him from the harm.”⁶

3. Plaintiff visited Defendant’s law office located at 1218 Market Street, Wilmington, Delaware, for a scheduled appointment with Defendant when Plaintiff was bitten by a dog. Defendant does not deny that Plaintiff was a business invitee. Defendant does not deny that Defendant maintained the law office. Whether Defendant owned the dog is not dispositive of Plaintiff’s claims at the pleading stage.

² *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978); *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998).

³ *Spence*, 396 A.2d at 968.

⁴ *Id.*

⁵ *Dilks v. Morris*, 2005 WL 445530, at *2 (Del. Super. Feb. 25, 2005).

⁶ *DiOssi v. Maroney*, 548 A.2d 1361, 1368 (Del. 1988); *see also Himbrick v. Dover Hospitality Grp., LLC*, 2012 WL 1980425, at *2 (Del. Super. May 1, 2012) (“Delaware ‘imposes liability on a possessor of land for physical harm caused to a business invitee by a condition on the land if he knows of it, or if by the exercise of reasonable care he would discover the condition and, realizing that it involves an unreasonable risk of harm to the business invitee, give him warning.’”).

4. Accordingly, Plaintiff's claim is "well-pleaded" and states a claim upon which relief may be granted. Therefore, dismissal is inappropriate.

NOW, THEREFORE, this 9th day of September, 2015, Defendant's Motion to Dismiss is hereby DENIED.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli