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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION



MARCY MECKLER,)
)
Plaintiff,)
)
v.)
)
WESTFIELD CORPORATION, INC., d/b/a)
WESTFIELD SHOPPINGTOWN OLD)
ORCHARD,)
)
Defendant.)

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MEMORANDUM OPINION AND ORDER ON DEFENDANT'S
2-615 MOTION TO DISMISS SECOND AMENDED COMPLAINT

I. FACTUAL BACKGROUND

The Plaintiff filed a two-count Second Amended Complaint against the Defendant seeking damages for injuries she sustained when a squirrel attached itself to her leg causing her to fall, on August 14, 2006. It is alleged that the Defendant Shopping Center, through its security personnel, allowed the squirrel to remain on the premises and harass people, knowing that it had attacked a person before. Count I sounds in negligence and count II is brought under the Animal Control Act.

The Defendant argues that the Plaintiff has, for the third time, failed to, and cannot, state a duty. The Defendant maintains that after three attempts the Plaintiff cannot properly allege that the Defendant owned, possessed or harbored the squirrel. Further, with respect to the claim brought under the Animal Control Act, the Defendant again argues that the Plaintiff has cannot allege that the Defendant owned or controlled the animal. The Defendant maintains that the Plaintiff does not and cannot state a duty imposed under

Illinois law and the action should be dismissed with prejudice.

The Court has read the motion, a response and reply having been deemed unnecessary.

II. COURT'S DISCUSSION AND RULING

This third attempt at pleading again fails to allege a duty to prevent a wild animal from attacking someone. As the Court noted previously, the Restatement (Second) of Torts provides that a party must own, possess, control or harbor an animal for there to be an imposition of duty *vis-a-vis* the animal causing harm to others. The Plaintiff here continues to fail to allege the facts necessary to demonstrate that the Defendant harbored the squirrel or to show the kind of relationship between the Defendant and the squirrel so as to impose a duty on the Defendant. Further, the Plaintiff has again failed to set forth specific facts which show a violation of the Animal Control Act, i.e., the ownership or control of the squirrel within the meaning of the Act. Thus, the Plaintiff has again failed to state a cause of action against the Defendant and the Second Amended Complaint must be dismissed. The Court previously noted that it was highly unlikely that the Plaintiff would be able to state a cause of action here based on a duty to prevent attack or under the Animal Control Act. As the Plaintiff has again failed to do so, and as the Court previously ruled that the Second Amended Complaint would be the Plaintiff's last and final opportunity to attempt to plead a cause of action, the Second Amended Complaint will be dismissed with prejudice.

Based on the foregoing, Defendant's 2-615 Motion to Dismiss Second Amended Complaint is granted, with prejudice.

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ENTER:

Kathy M. Flanagan

Judge Kathy M. Flanagan

ENTER

JUL 20 2007 ✓

KATHY M. FLANAGAN #267