



1998

# Recent Developments: Shields v. Wagman: A Landlord Who Knew of the Viciousness of a Tenant's Dog, but Failed to Rid the Premises of Such Danger, May Be Liable for Injuries the Dog Inflicts on Invitees in the Common Areas of Property under the Landlord's Control

Kofi Asamoah

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>



Part of the [Law Commons](#)

## Recommended Citation

Asamoah, Kofi (1998) "Recent Developments: Shields v. Wagman: A Landlord Who Knew of the Viciousness of a Tenant's Dog, but Failed to Rid the Premises of Such Danger, May Be Liable for Injuries the Dog Inflicts on Invitees in the Common Areas of Property under the Landlord's Control," *University of Baltimore Law Forum*: Vol. 29 : No. 1 , Article 18.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol29/iss1/18>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact [snolan@ubalt.edu](mailto:snolan@ubalt.edu).

## *Shields v. Wagman*

In a case of first impression, the Court of Appeals of Maryland held that a landlord, who knew of the potential danger posed by a tenant's vicious dog, but failed to rid the premises of such danger, was liable for injuries the dog inflicted on invitees in the common areas of the premises. *Shields v. Wagman*, 350 Md. 666, 714 A.2d 881 (1998). The court reasoned that the landlord failed to use reasonable care to prevent injuries to the invitees in the common area by re-letting the premises to the tenant, notwithstanding the landlord's knowledge of the potential danger posed by the tenant's vicious pit bull that was kept on the leased premises. Since the court was addressing this issue for the first time, its ruling was based on the trend in other jurisdictions as well as Maryland's long recognized rule concerning a landlord's duty to invitees in the common areas of the premises.

Arthur Wagman ("Wagman") was the landlord of a commercial strip mall, leased primarily by automobile repair shops. On August 28, 1993, a tenant's pit bull attacked and seriously injured Kimberly Shields ("Shields") in the parking area of the mall. She subsequently filed suit against Wagman on November 26, 1993. In January, 1995, Bernard Johnson ("Johnson"), a tenant, was also attacked by the pit bull in the same parking lot. Johnson had, on

**A LANDLORD WHO  
KNEW OF THE  
VICIOUSNESS OF A  
TENANT'S DOG, BUT  
FAILED TO RID THE  
PREMISES OF SUCH  
DANGER, MAY BE  
LIABLE FOR  
INJURIES THE DOG  
INFLICTS ON  
INVITEES IN THE  
COMMON AREAS OF  
PROPERTY UNDER  
THE LANDLORD'S  
CONTROL**

By Kofi Asamoah

previous occasions, discussed with Wagman the danger posed by the pit bull. Johnson also filed suit against Wagman. The suits by Shields and Johnson against Wagman were consolidated at trial.

The Circuit Court for Prince George's County granted the defendant's motion for summary judgment holding that "the landlord owes no special duty to the invited public into the leased premises." Plaintiffs appealed to the Court of Special Appeals of Maryland, which affirmed the trial court's ruling. The Court of Appeals of Maryland granted certiorari and reversed.

The court of appeals began its analysis by stating that, to successfully hold a landlord liable for injuries caused by a tenant's

dog, a plaintiff must prove the four elements of negligence: duty, breach, causation and injury. *Shields*, 350 Md. at 672, 714 A.2d at 883-84. The court focused on the issue of whether the landlord had a duty to protect the plaintiffs from the pit bull attacks. *Id.*

The court reviewed Maryland case law and explained that Maryland had long recognized a landlord's duty to protect people who lawfully come onto their property. *Id.* at 673, 714 A.2d at 884. Such a duty, according to the court, depends on the person's legal status on the property, i.e., as invitee, social guest or trespasser, and whether the injuries occur in the common areas over which the landlord retains control. *Id.* The court observed in its prior rulings that landlords have been held liable for injuries that occurred in common areas under the landlord's control, where the plaintiff could demonstrate that the "landlord knew or had reason to know the danger existed." *Id.* at 675, 714 A.2d 885. This "common area exception," the court opined, applies to multi-unit residential as well as business premises. *Id.* at 674, 714 A.2d 885.

The court, explaining that because it was the first time it addressed the liability of landlords for injuries caused by a tenant's dog in the common areas of the premises, turned to case law in other jurisdictions which have decided this issue. *Id.* at 678-81,

## Recent Developments

---

714 A.2d 887-88. The court observed that in dog-bite cases most jurisdictions were willing to impose liability on landlords if the injuries occurred in the common areas under the landlord's control, and the landlord knew or had reason to know about the danger. *Id.* at 681, 714 A.2d at 888.

Focusing on the evidence presented in this case, the court concluded that a jury could have found that the parking lot where the attacks on Shields and Johnson occurred was a common area. *Id.* at 678, 714 A.2d at 886. The court rejected the defendant's argument that the pit bull was not kept in the common area, and therefore, posed no danger in the common area. *Id.* at 678, 714 A.2d 886-87. The court noted that the issue was not whether the pit bull was kept in the common area, but whether the pit bull's presence posed a threat to those in the common area. *Id.* at 678, 714 A.2d at 887.

The court also rejected Wagman's argument that he had no control over the pit bull and therefore could not be held liable. *Id.* at 681, 714 A.2d at 888. The court reasoned that the "control" requirement was "control" over the common area and not "control" over the specific "instrumentality" that caused the injury. *Id.* The court further noted that Wagman had the ability to exercise control over the dog by conditioning the renewal of the tenant's lease on the removal of the dog from the premises. *Id.* at 682-84, 714 A.2d at 888-89.

Drawing an analogy between

this case and those in other jurisdictions that had viewed the act of re-letting as an affirmative act giving rise to the potential for liability, the court concluded that there was sufficient basis for imposing liability on Wagman. *Id.* at 683, 714 A.2d at 889 (citing *Vigil v. Payne*, 725 P.2d 1155, 1157 (Colo. Ct. App.1986); *Strunk v. Zoltanski*, 479 N.Y.S.2d 175, 468 N.E.2d 13, 15 (N.Y. 1984)). In so concluding, the court relied on the fact that Wagman had control over the common area where the attacks occurred, coupled with his re-letting of the shop to the pit bull owner. *Id.*

On the issue of Wagman's knowledge about the dangerous condition prior to the attacks, the court observed that the evidence in the case warranted the submission of the issue to the jury. *Id.* at 685-87, 714 A.2d at 890-91. The court pointed to evidence which included the attack on Shields, the subsequent complaint served on Wagman, Johnson's discussions with Wagman about the viciousness of the pit bull, and Wagman's awareness of the presence of the pit bull from the time it was a puppy. *Id.* The court concluded that there was enough evidence upon which a jury could find that Wagman knew or should have known that the pit bull's presence and viciousness posed a threat to those in the common area of the property. *Id.*

Furthermore, the court noted that because Johnson and Shields were invitees at the time of the attacks, Wagman owed them a

higher duty than would have been owed a social guest. *Id.* at 690, 714 A.2d at 892. The court cautioned that its ruling was limited to injuries that occurred within the common areas, and expressly decided not to comment on what the outcome would have been if the attacks had occurred in the leased premises. *Id.* at 690, 714 A.2d at 893.

The court's holding in *Shields v. Wagman* was essentially an extension of its previous decisions holding landlords liable for injuries caused by dangers that the landlord knew existed in the common areas of properties under their control. Nonetheless, to extend the liability of landlords to attacks by a dog negligently let loose by a tenant from his leased premises to the common area, appears to be a misplacement of liability and/or an over-extension of the "common area exception." This ruling imposes a heavy burden on landlords and may force them to institute extreme measures to avoid possible liability. For example, landlords may have to ban or regulate tenants' ownership of dogs or landlords may have to mount twenty-four-hour surveillance over the movement of dogs, not only in the common areas, but also in the leased premises. These measures may be necessary because a danger which did not previously exist in the common area, but emanates from the leased premises and occurs in the common area, could subject the landlord to liability.