

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, THIRD DEPARTMENT**

Soloman v. Taylor

91 A.D.3d 1180 (N.Y. App. Div. 3d Dep't 2012) · Decided January 19, 2012

SUMMARY

The court held that a horseback rider assumed the risk of injury when her horse was startled by dogs, because the risk was known, apparent, or reasonably foreseeable based on her experience and prior awareness of the dogs. The court also rejected the plaintiff's strict-liability claim based on the horse's purported vicious propensities and affirmed the lower court's order.

OPINION

LAHTINEN, J.

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Plaintiff had horseback riding experience as a child and she started riding again in the fall of 2007. She purchased a horse, which she boarded at defendants' stable, and had taken riding lessons from Taylor one to three times per week from September 2007 through the spring of 2008. Her lessons included situations purposefully intended to “shy or spook” the horse, which were known risks in riding, and how to handle such situations.

Plaintiff acknowledged several prior occasions where her horse shied while she was riding, including one instance involving dogs. She knew that three dogs were housed at defendants' premises and was aware that Taylor liked to have the dogs with her when she rode. Plaintiff had previously ridden while the dogs were running free. She stated that she had complained about the dogs and told Taylor that she did not like the dogs running free when she was riding.

On the day of the incident, plaintiff was informed by Taylor's boyfriend before going out riding that Taylor was probably already out riding and, while no mention was made of the dogs, she had

not heard or observed them in the vicinity of the stable.

We are unpersuaded that Supreme Court erred in finding that plaintiff assumed the risk under these circumstances (see *Wendt v Jacus*, 288 AD2d 889, 890 [2001], lv denied 98 NY2d 604 [2002]). *1182Plaintiffs further assertion of a strict liability theory based upon purported vicious propensities is unavailing (see *Tilson v Russo*, 30 AD3d at 859). Mercure, A.PJ., Spain, Malone Jr. and Kavanagh, JJ., concur.

Ordered that the order is affirmed, with costs.