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No. 3-10-0213

Order filed April 7, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

EUGENE and PEGGY SCHLINDWEIN,	)	Appeal from the Circuit Court
	)	for the 10th Judicial Circuit,
Plaintiffs-Appellants,	)	Peoria County, Illinois,
	)	
v.	)	No. 07--L--315
	)	
CARLSON HOTELS MANAGEMENT CORP.,	)	
Defendant,	)	
and	)	
JOHN BRINKMAN, TORREY PARK LLC,	)	
TORREY PARK LLC, LAURENCE HUNDMAN,	)	
HUNDMAN HOTEL MANAGEMENT,	)	
HUNDMAN HOTEL MANAGEMENT LLC,	)	
HUNDMAN HOTEL MANAGEMENT, LLC,	)	
RADISSON HOTELS INTERNATIONAL, INC.,	)	Honorable
	)	Stephen Kouri,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and Wright concur in the judgment.

ORDER

Held: The trial court correctly granted summary judgment for defendants where the plaintiff was injured when he tripped on a bed frame in his hotel room that was placed in the room during an extensive cosmetic renovation of the hotel. The bed frame was not an improvement to real property such as to bring the plaintiff's

> cause of action against the landowners within the four-year statute of limitations for construction-design management and supervision.

The plaintiffs, Eugene and Peggy Schlindwein, filed a complaint seeking damages for a personal injury and loss of consortium against the owners and operators of the Radisson Hotel in Peoria, Illinois. The complaint alleged that Eugene was injured while he was a guest at the hotel on August 10, 2005, when he struck his left leg on a piece of metal protruding from the bed frame in his hotel room, fell, and injured his leg and left shoulder. The complaint was filed on August 24, 2007. The plaintiffs maintained that the complaint was timely based upon the four-year statute of limitations applicable to the construction of improvements to real property. 735 ILCS 5/13-214 (West 2004). Following completion of discovery, the defendants all filed motions for summary judgment, maintaining that the four-year statute of limitations did not apply; rather, the appropriate statute of limitations was the two-year statute of limitations for personal injuries. 735 ILCS 5/13-202 (West 2004). The circuit court found that the four-year statute of limitations for construction projects did not apply and granted the defendants' motions for summary judgment. The plaintiffs now appeal.

FACTS

On August 10, 2005, Eugene checked into the Radisson Hotel in Peoria, Illinois. He had been scheduled for an angiogram at 6 a.m. the following morning at St. Francis Hospital. The hospital paid for a room at the Radisson. Eugene testified at his deposition that he and his wife checked into the hotel on the evening of August 10, 2005. Immediately upon entering the room, he "kicked off [his] shoes and went to the restroom." Eugene, age 72 at the time, had lost the three largest toes on his right foot some 20 years earlier. He stated that the loss of these toes often negatively affected his balance. When he returned from the restroom, he walked toward

the bed. As he approached the bed, his left foot came in contact with a "piece of steel" protruding from the bottom of the bed frame. The protruding object was apparently covered by the bed's dust ruffle. Eugene struck his left ankle on the protruding object, causing him to fall on his left arm and shoulder.

He was taken to the emergency department at St. Francis Hospital where he was treated and released. He subsequently developed left shoulder pain which ultimately required surgery. He also reported loss of the use of three fingers on his left hand. He attributed these conditions to the fall on the defendants' property.

The plaintiffs filed their complaint on August 24, 2007, asserting that their cause of action was brought pursuant to the four-year statute of limitations for damages resulting from real estate construction. 735 ILCS 5/13-214 (West 2004). The complaint alleged that the defendants were negligent in "the design, planning, supervision, observation and/or management of construction work on an improvement project to convert the old Jumers Castle Lodge *** to a Radisson Hotel."

After some motion practice and discovery, the defendants moved for summary judgment, maintaining that there was no genuine issue of material fact and they were entitled to judgment as a matter of law on the grounds that the replacement of beds during the hotel renovation did not constitute an "improvement to real property" under section 13-214. In support of their motion, the defendants supplied affidavits stating that during the renovations to the old Jumers Lodge, which were completed in August 2004, no structural changes were made to any part of the building. During the renovation, the guest rooms were repainted, new carpet was laid, new drapes were hung, and new furniture was brought in for all the rooms. The hotel remained open for business throughout the entire renovation process. Following a hearing on the defendants'

motion to dismiss, the trial court granted summary judgment for the defendants and the plaintiffs appealed.

ANALYSIS

Summary judgment is appropriate where the pleadings, affidavits, depositions and admissions on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Donovan v. Village of Ohio*, 397 Ill. App. 3d 844, 848 (2010). This court reviews a circuit court's grant of summary judgment *de novo*. *Donovan*, 397 Ill. App. 3d at 848. Moreover, the application of a statute of limitations to a cause of action presents a legal question which is likewise reviewed *de novo*. *Travelers Casualty & Surety Co. v. Bowman*, 229 Ill. 2d 461, 466 (2008).

The issue on appeal is whether replacing guest room furniture as part of a hotel renovation constitutes an "improvement to real property" for purposes of invoking the four-year statute of limitations applicable to actions arising out of "construction-design management and supervision" as set out in section 13-214 of the Code of Civil Procedure (the Code). 735 ILCS 5/13-214 (West 2004). If the bed frame at issue is not an "improvement to real property," then the trial court's grant of summary judgment to the defendants was appropriate.

Section 13-214(a) of the Code, the "construction limitations statute" provides in relevant part as follows:

> "Actions based upon tort, contract, or otherwise against any person for an act or omission of such person in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property shall be commenced within 4 years from the time the person bringing an action, or his or her privity, knew or

should reasonably have known of such act or omission." 735 ILCS 5/13-214(a) (West 2004).

Illinois law applies four factors to guide the determination as to what constitutes an improvement to real property so as to invoke the four-year statute of limitations under section 13-214 of the Code: (1) whether the addition was meant to be permanent or temporary; (2) whether the addition became an integral component of the overall system; (3) whether the value of the property was increased, and (4) whether the use of the property was enhanced. *St. Louis v. Rockwell Graphic Systems, Inc.*, 153 Ill. 2d 1 (1992).

Moreover, it is well settled that an "improvement" is "an addition to real property amounting to more than a mere repair or replacement, and which substantially enhances the value of the property." *McGee v. Danz*, 261 Ill. App. 3d 232, 236 (1994). Even more significant is the fact that, for purposes of the four-year statute of limitations under section 13-214 of the Code, an improvement to an existing building must involve "substantial additions or changes to existing buildings." *Id.*

Here, the "improvement" that caused the plaintiff's injury was a metal bed frame, not a substantial addition or change to the hotel building. Applying the factors articulated in *St. Louis*, the bed frame fails on all four factors. A bed frame is not an addition which is meant to be permanent. It is not even part of the real estate. It is a piece of furniture, a chattel. A bed frame is not an integral component of the overall system as a building. While a bed might be an integral component of a hotel as a business, one particular bed does not form an integral component of the overall hotel. A bed frame does not increase the value of the property, and the use of the property was enhanced by the bed frame only to the extent that any hotel room requires a bed.

Plaintiffs argue that, while the bed which caused his injury may not have been an "improvement," the bed was part of an overall design and plan for the renovation of the hotel, and this overall design and plan did constitute an "improvement" to real property sufficient to bring his cause of action within the purview of section 13-214 of the Code. See *Kleist v. Metrick Electric Co.,* 212 Ill. App 3d 738, 743 (1991) (citing *Hilliard v. Lummus Co.*, 834 F.2d 1352, 1356 (7th Cir. 1987)). Plaintiffs, however, overstate the holdings in *Kleist* and *Hilliard.* In both cases, the question was whether exposed electrical equipment (an electrical junction box and electrical "bushing caps") were improvements to real property. The *Kleist* court framed the issue as "whether a component of a *system which is definitely an improvement to real property* is an improvement to real property itself." (Emphasis added.) *Kleinst*, 212 Ill. App. 3d at 742. The court answered the query by holding that:

> "to artificially extract each component from an improvement to real property and view it in isolation would be an unrealistic and impractical method of determining what is an improvement to real property. Frequently, as in this case, an improvement to real property is going to consist of a complex system of components.
>
> Consequently, we find that if a component is an essential or integral part of the improvement to which it belongs, then it is itself an improvement to real property." *Kleist,* 212 Ill. App. 3d at 742-43.

In the instant matter, the bed frame, unlike the components of the building's electrical system, was not part of a *system which is definitely an improvement to real property.* Thus,

viewing it in isolation was neither unrealistic nor impractical for purposes of determining whether it constituted an improvement to real property.

Moreover, Illinois courts have consistently limited the application of the construction limitation found in section 13-214 to injuries arising from "construction-related activity." *Water Tower Realty Co. v. Fordham 25 E. Superior, L.L.C.*, 404 Ill. App. 3d 658, 663 (2010) (citing *Bowman*, 229 Ill. 2d at 469-70). Additionally, the scope of section 13-214 has been limited to individuals engaged in construction activities on real property such as architects, contractors and construction engineers and was not intended to apply to suits against landowners. *C.S. Johnson Co. v. Champaign National Bank*, 126 Ill. App. 3d 508, 510-11. Here, all defendants were sued in their capacity as landowners of the premises where the plaintiff was injured.

CONCLUSION

For the foregoing reasons, the trial court was correct in granting the motion for summary judgment. The plaintiff was injured by tripping over a bed frame in his hotel room. The fact that the bed frame was placed in the room during an extensive cosmetic renovation of the hotel did not constitute an improvement to real property such as to bring the plaintiff's suit for personal injury against the owners of the premises within the four-year statute of limitations for construction-design management and supervision.

The judgment of the circuit court of Peoria County is affirmed.

Affirmed.