

2015 IL App (1st) 132547-U

No. 1-13-2547

February 10, 2015

SECOND DIVISION

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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GENE ERBY,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11 L 1116
	)	
MERCY HOUSING MANAGEMENT GROUP,	)	
	)	The Honorable
Defendant-Appellee.	)	Kathy M. Flanagan,
	)	Judge presiding.

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JUSTICE NEVILLE delivered the judgment of the court.

Presiding Justice Simon and Justice Pierce concurred in the judgment.

**ORDER**

¶ 1 *Held:* When a tenant commits a criminal act and injures another tenant in the common area of a residential building, the landlord has no duty to prevent the injury where the injury is not caused by the physical condition of the property and the landlord has not voluntarily undertaken to provide security to protect tenants from the criminal acts of third parties.

¶ 2 Gene Erby (Erby), the plaintiff, filed a complaint, with negligence and intentional infliction of emotional distress counts, against the defendant, Mercy Housing Management Group (Mercy Housing), for personal injuries he sustained when he was attacked by Calvin Woods (Woods), another tenant. The circuit court found that Mercy Housing did not have a duty to protect Erby because his injuries were not caused by the condition of the property and because Mercy Housing did not voluntarily undertake to provide security. Therefore, the circuit court granted Mercy Housing's motion for summary judgment and Erby filed this appeal.

¶ 3 We find that where a tenant commits a criminal act and injures another tenant in the common area of a residential building, the landlord has no duty to prevent the injury where the injury was not caused by the physical condition of the property and the landlord has not voluntarily undertaken to provide security to protect the tenant from the criminal acts of third parties. Therefore, we affirm the decision of the circuit court.

¶ 4 **BACKGROUND**

¶ 5 Erby has been a tenant in the property located at 4626 North Magnolia, Chicago, Illinois (the complex) for 18 years. Magnolia Limited Partnership owns the property at 4626 North Magnolia. However, Mercy Housing, a corporation incorporated in the State of Illinois, manages or controls the complex. Mercy Housing is a not-for-profit organization that provides management services for properties that primarily house non-traditional tenants, specifically those with physical, mental, and economic challenges. Mercy Housing also provides on-site resident services to assist tenants with their various challenges.

¶ 6 On September 6, 2008, Woods attacked Erby, with a knife, in the common area of the complex. Terrance Willis (Willis), a Mercy Housing desk clerk, witnessed the attack, reported it in the desk clerk security log, and prepared a serious incident report for management. The Chicago police were called to the complex in response to the attack.

¶ 7 Months prior to the attack, Woods threatened Mercy Housing employees, and Mercy Housing attempted to evict Woods for his failure to pay rent. However, Woods and Mercy Housing entered into an agreement whereby Woods would complete his recertification process so that Mercy Housing could obtain past and future rent subsidies, and Mercy Housing would no longer pursue his eviction.

¶ 8 On January 31, 2009, Woods attacked Erby with a knife, a second time, and stabbed him numerous times. Erby suffered multiple internal and external injuries, and Woods sustained an arm injury. The police were called, and both Erby and Woods were transported to Illinois Masonic Hospital. Willis also witnessed the second attack, reported it in the desk clerk security log, and submitted a serious incident report. Erby spent months recovering from his injuries in the Illinois Masonic Hospital as well as in a nursing home. Woods was convicted of aggravated battery for his attack on Erby and served two and half years in the penitentiary.

¶ 9 On January 31, 2011, Erby filed a *pro se* complaint against Mercy Housing, and on March 22, 2011, he filed a two-count, Third Amended Complaint, with negligence and intentional infliction of emotional distress counts, against Mercy Housing. Erby alleged that Mercy Housing had actual knowledge that Woods presented a threat to staff and tenants

generally, and that Woods presented a threat to Erby, specifically. Erby further alleged that Mercy Housing was negligent for failing to protect Erby and was, therefore, liable for Woods' foreseeable attack on Erby.

¶ 10 On June 12, 2013, Mercy Housing filed a motion for summary judgment on both counts of the complaint. Erby agreed to summary judgment on count II, and on August 5, 2013 the circuit court granted summary judgment on count I. On August 6, 2013, Erby filed a notice of appeal seeking review of the circuit court's order granting Mercy Housing's motion for summary judgment on count I of Erby's complaint.

¶ 11 ANALYSIS

¶ 12 This matter is before the appellate court to review the circuit court's order granting Mercy Housing's motion for summary judgment in favor of Erby's negligence claim. "The purpose of summary judgment is not to try a question of fact, but rather to determine whether a genuine issue of material fact exists." *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). Summary judgment is only appropriate when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Williams*, 228 Ill. 2d at 417. A court must construe the "pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent" in determining whether a genuine issue as to any material fact exists. *Williams*, 228 Ill. 2d at 417.

¶ 13 Summary judgment is precluded where "the material facts are disputed or where, the material facts being undisputed, reasonable persons might draw different inferences from the

undisputed facts." *Williams*, 228 Ill. 2d at 417. Summary judgment should be allowed "only where the right of the moving party is clear and free from doubt." *Williams*, 228 Ill. 2d at 417 citing *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004) (and cases cited therein).

¶ 14 Summary judgment is proper if the plaintiff "fails to establish any element of the cause of action." *Williams*, 228 Ill. 2d at 417. This court reviews appeals from orders granting summary judgment *de novo*. *Williams*, 228 Ill. 2d at 417.

¶ 15 Erby argues that Mercy Housing's failure to evict Woods after his first attack on Erby on September 6, 2008, constituted negligence and resulted in Erby's injuries when Woods attacked Erby a second time on January 31, 2009. Erby also argues that Mercy Housing owed Erby a duty of protection from Woods because of the covenant of quiet enjoyment implied in all leases and because Mercy Housing had a duty to keep the common areas safe. Further, Erby argues that because Woods' January 31, 2009 attack was foreseeable (as he attacked Erby five months earlier in a similar way), and because Mercy Housing was in a position to protect Erby by evicting Woods, Mercy Housing is liable for Erby's injuries. We fail to find evidence in the record to support Erby's position.

¶ 16 In order to establish a cause of action for negligence, Erby must establish that Mercy Housing owed him a duty, that Mercy Housing breached that duty, and that Erby was injured as a proximate result of that breach. *Vesey v. Chicago Housing Authority*, 145 Ill. 2d 404, 411 (1991), *Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 215 (1988). Illinois courts have repeatedly held that the general rule is that a landlord owes no duty to a tenant for criminal

acts of a third party, even if these criminal acts are foreseeable. *Rowe*, 125 Ill. 2d at 216. The landlord can be liable however, if:

"(1) a latent defect exists at the time of the leasing that the landlord should know about; (2) the landlord fraudulently conceals a dangerous condition; (3) the defect causing the harm amounts to a nuisance; (4) the landlord makes a promise at the time of the leasing to repair a condition; (5) the landlord violates a statutory requirement \*\*\*; and (6) the landlord voluntarily undertakes to render a service." *Klitzka ex rel. Teutonico v. Hellios*, 348 Ill. App. 3d 594, 598 (2004).

¶ 17 If the landlord voluntarily agrees to provide security services on the property, but performs the undertaking negligently, resulting in an injury to the plaintiff, the landlord may be liable for the injury to the plaintiff. *Rowe*, 125 Ill. 2d at 217. Erby failed to present evidence which established that Mercy Housing owed Erby a duty to protect against the criminal acts of Woods in the common area of the complex. Moreover, Erby failed to present evidence which established that Mercy Housing voluntarily undertook to provide security services to its tenants, or evidence that Mercy Housing did so negligently.

¶ 18 Erby's reliance upon *Mims v. New York Life Insurance Company*, 133 Ill. App. 2d 283 (1971), *Williams v. Alfred K. Koplín & Co.*, 114 Ill. App. 3d 482 (1983), and *Pippin v. Chicago Housing Authority*, 78 Ill. 2d 204 (1979) to support his argument that Mercy Housing owed him a duty to protect is misplaced.

¶ 19 In *Mims*, while the case involved the criminal act of a third party, that Court was not faced with reviewing a summary judgment order and determining whether a material fact existed which would make an order granting summary judgment improper, but it was faced with determining whether the circuit court erred when it made findings of fact after a trial. Specifically, the *Mims* court had to review the trial evidence and determine whether the landlord breached the duty owed to the tenant, whether the breach was the proximate cause of the injury, and whether the injury was foreseeable. *Mims*, 33 Ill. App. 2d at 285. Therefore, *Mims*, a case where there was a trial, is factually distinguishable from the present case where a judgment was entered prior to the trial.

¶ 20 In *Williams*, the injured plaintiff sustained an injury, not by the criminal acts of a third party, but rather, due to a physical condition in the common area of the property that existed because of a voluntary undertaking of the landlord: the landlord voluntarily shoveled snow on the property but performed the undertaking without taking reasonable care. *Williams*, 114 Ill. App. 3d at 486-87. In the present case, Erby was injured in the common area of the complex; however, his injuries were caused by a third party's criminal acts and were not connected to the physical condition of the property. Therefore, *Williams* does not provide support for Erby's position.

¶ 21 In *Pippin*, the Illinois Supreme Court held that the Chicago Housing Authority (CHA) did not owe a duty to provide protection from criminal acts against persons lawfully on CHA premises where it did not voluntarily undertake to provide those services, but rather, the security company, which was contracted to provide security services, assumed that duty.

