2015 IL App (1st) 122775-U

SIXTH DIVISION
February 27, 2015

No. 1-12-2775

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TEKITA BRYANT, individually and as Mother and Next Friend of Daniel T. Bryant, Keiontay S. Bryant, Dyelon S. Latimore, Keith C. Collins and Kristden E. Collins,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	08 L 009111
THE CHICAGO HOUSING AUTHORITY, an Illinois Municipal Corporation, and THE WOODLAWN COMMUNITY DEVELOPMENT CORPORATION, an Illinois not-for-profit corporation,	)	Honorable Kathleen Flanagan
Defendants-Appellees.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justice Lampkin and Justice Rochford concurred in the judgment.

ORDER

Held: Summary judgment in favor of defendants affirmed where defendants did not voluntarily undertake any duty to protect plaintiffs from the criminal acts of third parties and where plaintiffs failed to establish that the intervening criminal acts at issue were reasonably foreseeable.

¶ 1 The plaintiff, Tekita Bryant, individually and as mother and next friend of Daniel T. Bryant, Keiontay S. Bryant, Dyelon S. Latimore, Keith C. Collins and Kristden E. Collins (collectively, the plaintiffs), appeals a summary judgment order entered in favor of defendants Chicago Housing Authority (CHA) and the Woodlawn Community Development Corporation (Woodlawn). This case arose from a natural gas explosion following an unknown trespasser's criminal acts of tampering with a kitchen gas line and arson in a vacant townhouse unit. The vacant unit is immediately adjacent to and shares a common structural wall (party wall) with the plaintiff's townhouse unit. The units are part of a complex of three semi-detached townhouses owned by the CHA and managed by Woodlawn. Plaintiff claimed that as a result of the explosion and resulting fire in the adjacent vacant unit, her unit was damaged rendering it uninhabitable and she and her family experienced emotional trauma and loss of most of their personal property.

¶ 2 Plaintiff filed a second amended complaint against defendants sounding in negligence. The trial court subsequently entered a memorandum opinion and order granting defendants' motions for summary judgment. The trial court determined that defendants owed no duty to plaintiffs to prevent the criminal actions that caused the explosion. The court also held there was no causative link between plaintiffs' claimed injuries and defendants' alleged negligence of restoring gas service to the vacant unit, failing to secure the kitchen gas line with a locking device, and failing to stop unauthorized entry into the unit. The court further determined that

section 4-102 of the Tort Immunity Act (745 ILCS 10/4-102 (West 2010)) immunized the CHA from liability to the extent that the plaintiffs alleged the CHA failed to prevent the arson.[1]

¶ 3 Plaintiff now appeals the summary judgment dismissal of her negligence claims against defendants. For the reasons that follow, we affirm the grant of summary judgment in favor of defendants.

¶ 4 ANALYSIS

¶ 5 We review the grant of summary judgment under a *de novo* standard of review. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). The purpose of summary judgment is not to try questions of fact, but to determine if triable questions of fact exist. *Watkins v. Schmitt*, 172 Ill. 2d 193, 203 (1996). Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits and exhibits, when viewed in the light most favorable to the nonmoving party, indicate there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (c) (West 2000); *Bier v. Leanna Lakeside Property Ass'n*, 305 Ill. App. 3d 45, 50 (1999).

¶ 6 To properly state a cause of action for negligence, plaintiffs need to establish that: (1) the defendants owed them a duty of care; (2) defendants breached that duty; and (3) the breach proximately caused their injuries. *Hills v. Bridgeview Little League Association*, 195 Ill. 2d 210, 228 (2000). "It is fundamental that there can be no recovery in tort for negligence unless the defendant has breached a duty owed to the plaintiff." *Boyd v. Racine Currency Exchange, Inc.*,

[1] In light of our decision affirming the grant of summary judgment, it is unnecessary to address this issue.

56 Ill. 2d 95, 97 (1973). Plaintiff challenges the trial court's finding that defendants did not owe her and her family a duty of care.

¶ 7 The question of the existence of a duty is a question of law to be determined by the court. *Kirk v. Michael Reese Hospital and Medical Center*, 117 Ill. 2d 507, 525 (1987). In determining whether a legal duty exists, courts consider whether the harm was reasonably foreseeable, the likelihood of injury, the magnitude of the burden of guarding against the harm, and the consequences of placing that burden on defendant. *Ward v. K Mart Corp.*, 136 Ill. 2d 132, 140-41 (1990).

¶ 8 Generally, Illinois law does not impose a duty to protect another from the criminal conduct of a third party unless the conduct was reasonably foreseeable and the injured party and defendant stood in one of the following "special relationships": common carrier and passenger; innkeeper and guest; business invitor and invitee; or voluntary custodian and protectee. *Geimer v. Chicago Park District*, 272 Ill. App. 3d 629, 632-33 (1995); *Hernandez v. Rapid Bus Co.*, 267 Ill. App. 3d 519, 524 (1994). Although our courts have held that a landlord-tenant relationship does not fall into the category of a special relationship imposing a duty upon a landlord to protect its tenants against the criminal acts of third parties (*Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 216 (1988)), our courts have found that a landlord may be held liable for the criminal acts of third parties when it voluntarily undertakes to provide security measures, but performs the undertaking negligently and the negligence is the proximate cause of injury to the plaintiff. *Rowe*, 125 Ill. 2d at 217.

¶ 9 In this regard, Illinois has adopted section 324A of the Restatement (Second) of Torts, which states:

> "One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if
>
> (a) his failure to exercise reasonable care increases the risk of such harm, or
>
> (b) he has undertaken to perform a duty owed by the other to the third person, or
>
> (c) the harm is suffered because of reliance of the other or the third person upon the undertaking." Restatement (Second) Torts § 324A (1965).

¶ 10 Plaintiff argues that defendants owed her and her family a duty arising from defendants' voluntary undertaking to secure the vacant unit. Plaintiff contends that defendants are liable for the criminal acts of a third party because defendants voluntarily undertook to secure the vacant unit, but then performed the undertaking negligently. Plaintiff claims the trial court erred in failing to recognize that the defendants owed her and her family a duty to avoid certain acts or omissions which increased the dangers arising from known criminal activity in the vacant unit. Plaintiff maintains the vacant unit was already at an increased risk for arson because it was vacant and located in a high crime area. She claims, however, that the vacant unit was not at an increased risk of explosion until defendants: restored natural gas service to the unit, failed to secure the shut-off valve of the exposed gas line in the kitchen of the unit, and failed to stop unauthorized entry into the unit. Plaintiff argues that these acts and omissions contributed to the explosion. Plaintiff contends the defendants voluntarily undertook a duty to secure the vacant unit, but was negligent in performing that duty.

¶ 11 We find that the defendants' actions to secure the vacant unit did not constitute a voluntary undertaking to protect plaintiffs, as tenants in the adjacent unit, from the criminal

activities of third parties. It is not uncommon for landlords, particularly those with housing in high crime areas, to attempt to secure vacant property in an effort to prevent vandalism and property damage. Even viewing the record in the light most favorable to plaintiff, such an undertaking, standing alone, cannot be regarding as an assumption of a duty to protect plaintiffs against the criminal activity of third parties. See, *e.g.*, *N.W. v. Amalgamated Trust and Savings Bank*, 196 Ill. App. 3d 1066, 1074 (1990) (promise to maintain door locks in working condition does not rise to a voluntary undertaking to protect tenants from criminal activity); *Rowe*, 125 Ill. 2d at 218-19 (agreement to repair locks and provide lighting in common areas could not reasonably be regarded as an assumption of a duty to protect against criminal acts).

¶ 12 In addition, the plaintiff has failed to present evidence showing that the criminal activity at issue was reasonably foreseeable. "A duty does not arise unless there are sufficient facts to put defendants on notice that an intervening criminal act is likely to occur." *Gill v. Chicago Park District*, 85 Ill. App. 3d 903, 905 (1980). "The key to establishing liability is to show that the intervening criminal act was a reasonably foreseeable event at the time of the landlord's failure to maintain the premises." *N.W.*, 196 Ill. App. 3d at 1075. Foreseeability is determined by the facts and circumstances of each case. *Lutz v. Goodlife Entertainment, Inc.*, 208 Ill. App. 3d 565, 569 (1990).

¶ 13 "The negligence of a defendant will not constitute a proximate cause of a plaintiff's injuries if some intervening act supersedes the defendant's negligence, but if the defendant could reasonably foresee the intervening act, that act will not relieve the defendant of liability." *Mack v. Ford Motor Co.*, 283 Ill. App. 3d 52, 57 (1996). In the instant case, absent some evidence of similar prior incidents of criminal activity in the vacant unit, the intervening criminal acts of tampering with the gas line and arson were not reasonably foreseeable consequences of the

defendants' alleged failure to secure the vacant unit. Plaintiff's theory is that the explosion would not have occurred if defendants had secured the gas line with a locking device or not restored natural gas service to the vacant unit. To accept this theory would require the court to engage in guesswork and speculation, which we decline to do.

¶ 14 "Foreseeability questions are generally left to the jury, but proximate cause becomes a question of law when the facts are undisputed and are such that there can be no difference in the judgment of reasonable persons as to the inferences to be drawn from them." *Benner v. Bell*, 236 Ill. App. 3d 761, 766 (1992). "[F]oreseeability is not to be construed so as to find a defendant liable for every injury that could possibly occur." *Siwa v. Koch*, 388 Ill. App. 3d 444, 449 (2009). At the summary judgment stage, the plaintiff must present affirmative evidence that the defendant's negligence was arguably a proximate cause of the plaintiff's injuries. *Hussung v. Patel*, 369 Ill. App. 3d 924, 931 (2007). "The existence of proximate cause cannot be established by speculation, surmise, or conjecture." *Gyllin v. College Craft Enterprises, Ltd.*, 260 Ill. App. 3d 707, 712 (1994). "[P]roximate cause can only be established when there is a reasonable certainty that defendant's acts caused the injury." *Kimbrough v. Jewel Companies, Inc.*, 92 Ill. App. 3d 813, 817 (1981).

¶ 15 In this case, the trial court concluded that arson or an explosion due to tampering with a gas line in the vacant unit was not foreseeable as a matter of law from the types of criminal acts the defendants were aware had occurred in the surrounding area or in the vacant unit. We agree.

¶ 16 Without evidentiary material establishing that defendants had knowledge of similar prior incidents in the area or vacant unit, plaintiff's arguments regarding proximate cause and foreseeability were based on nothing more than speculation or conjecture. See, *e.g.*, *Sanchez v. Wilmette Real Estate and Management, Co.*, 404 Ill. App. 3d 54, 62 (2010) (without evidentiary

materials establishing a previous criminal attack in an apartment or previous discovery of a third person in the vacant apartment, plaintiff's arguments regarding the foreseeability of the attack was based on nothing more than speculation or conjecture). Proximate cause is absent since the intervening criminal acts of tampering with the gas line and arson were not reasonably foreseeable consequences of the defendants' alleged failure to secure the vacant unit. Although a plaintiff need not prove her case at the summary judgment stage of the proceedings, if she fails to present sufficient evidentiary facts to support the elements of her cause of action, including the proximate cause element, then summary judgment in favor of the defendant is appropriate. *Nowak v. Coghill*, 296 Ill. App. 3d 886, 895 (1998).

¶ 17 In conclusion, summary judgment in favor of defendants was proper because, by agreeing to secure the vacant unit, the defendants did not voluntarily undertake any duty to protect plaintiffs from the criminal acts of third parties. In addition, plaintiff failed to establish that the intervening criminal acts of tampering with the gas line and arson were reasonably foreseeable consequences of the defendants' alleged failure to secure the vacant unit.

¶ 18 Affirmed.