

2015 IL App (1st) 140717-U
No. 1-14-0717
Order Filed May 29, 2015

SIXTH 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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

| | | |
|----------------------------------------------|---|-------------------------------|
| LAVERGNE DIETCH, |) | Appeal from the Circuit Court |
| |) | of Cook County. |
| Plaintiff-Appellant, |) | |
| |) | |
| v. |) | |
| |) | |
| CARL SANDBURG VILLAGE HOME |) | No. 2011 L 540 |
| OWNERS ASSOCIATION and DRAPER AND |) | |
| KRAMER, INC., |) | |
| |) | |
| Defendants-Appellees, |) | |
| |) | |
| (Chicago Title Land Trust Company, Everest |) | |
| Snow Management, Inc., Robert Palichleb, |) | |
| Independent Administrator of the Estate of |) | Honorable |
| Janusz Palichleb, deceased, Andrzej Chrobak, |) | Randy Kogan, |
| Bug Construction Company and Janus |) | Judge Presiding. |
| Construction, Inc., |) | |
| |) | |
| Defendants). |) | |

JUSTICE HALL delivered the judgment of the court.

Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

O R D E R

¶ 1 *Held:* Summary judgment for the defendants was proper where the Snow Removal Manual, which was for internal use, did not create a duty owed by the defendants to the plaintiff to clear an accumulation of snow and ice.

¶ 2 The plaintiff, LaVergne Dietch, appeals from an order of the circuit court of Cook County granting summary judgment to defendants, Carl Sandberg Village Home Owners Association (the HOA) and Draper & Kramer, Inc. (Draper & Kramer) (collectively the defendants) on her second amended complaint. On appeal, the plaintiff contends that the circuit court's determination that the defendants did not owe the plaintiff a duty to clear ice and/or snow from the sidewalk where she fell and was injured was erroneous. For the reasons set forth below, we affirm the order of the circuit court.

¶ 3 At the time of the accident, the plaintiff resided in a condominium at 1560 North Sandburg Terrace, Chicago, part of the Carl Sandberg Village condominium complex. Each building in the condominium complex had its own association and its own property manager who was responsible for the interior maintenance of the building. The HOA was responsible for the exterior maintenance of the entire complex. Prior to January 15, 2009, the HOA entered into a contract with Draper & Kramer for the maintenance, upkeep, and cleanliness of the exterior of the buildings in the condominium complex property and the recreation facilities. Draper & Kramer were also responsible for the landscaping and providing snow and ice removal services. A Draper & Kramer employee worked as the HOA property manager for the entire complex; the individual association property managers would contact the HOA property manager if there were problems with the exterior of the buildings.

¶ 4 On January 15, 2009, the plaintiff was walking on the sidewalk at the rear of her building when she slipped on the ice and/or snow and fell, injuring herself.

¶ 5 On January 14, 2011, the plaintiff filed a multi-count personal injury complaint against Chicago Title Land Trust Company (Chicago Title), the HOA, Draper & Kramer, Everest Snow Management, Inc. (Everest), Robert Palichleb, independent administrator of the estate of Janusz Palichleb, deceased, (the Palichleb Estate), Andrzej Chrobak (Mr. Chrobak), Bug Construction Company (Bug) and Janus Construction, Inc. (Janus). The plaintiff alleged that her injuries resulted from the named defendants' negligence in failing to remove an unnatural accumulation of snow and ice from a sidewalk, located behind the building where she resided and adjacent to LaSalle Street in Chicago.

¶ 6 On August 12, 2011, the plaintiff filed her first amended complaint. The defendants filed a motion for summary judgment which was granted on March 18, 2013. On June 26, the circuit court granted the plaintiff's motion to dismiss the case with prejudice as to the defendants, Chicago Title, the Palichleb Estate, Mr. Chrobak, Bug and Janus. The case was continued as to the defendants and Everest. The plaintiff was granted leave to file her second amended complaint.

¶ 7 Unlike her prior complaints, in her second amended complaint, the plaintiff now alleged that her fall was caused by "an accumulation of ice and/or snow" rather than "an unnatural accumulation" as she had previously alleged. She alleged for the first time that the HOA created a Snow Removal Manual (the Manual) for the benefit of the residents of the condominium complex. The plaintiff alleged that the Manual provided: that the HOA was responsible for snow and ice removal at 1560 North Sandburg Terrace, including the perimeter sidewalk adjacent to LaSalle Street where the plaintiff fell and that it was the duty

of the staff of the HOA to clear the snow and ice from the perimeter sidewalks. The plaintiff further alleged that a portion of the assessments paid by the residents to the HOA was for snow removal.

¶ 8 The defendants moved for summary judgment on the second amended complaint. The defendants asserted that the Manual was an internal memorandum for the employees of the HOA and was not a contract that created a duty on the part of the defendants.

¶ 9 In response, the plaintiff relied on the deposition testimony of Steven Mitchell Habib, an employee of Draper & Kramer, who worked as the property manager for the HOA. Mr. Habib testified that the condominium declaration and the bylaws provided that the HOA was responsible for maintenance of the property and had contracted with Everest for snow removal. The residents paid an assessment part of which financed the snow removal from the property. When Mr. Habib began working at the property in 2007, he reviewed the Manual as part of his training. The Manual provided that snow removal for the condominium complex was the responsibility of the HOA, and included the following areas; exterior areas, driveways, loading docks of the individual associations and sidewalks located in the surrounding areas, including the City of Chicago sidewalks.

¶ 10 Mr. Habib testified that the Manual was not part of the condominium declaration and the bylaws and was only for internal use. The residents were not given a copy of the Manual. It was only distributed to the property managers of the individual associations and members of the HOA board when Mr. Habib and the board made alterations to the Manual. Asked to address why the Manual was created, Mr. Habib stated:

"It is created essentially to make certain that all entities involved know their responsibility and also to let the individual associations know that they're responsible

for assisting and also that there is an hourly wage rate of reimbursement, and I think it's just a document that was created for clarity sake – for the sake of clarity for all parties involved."

¶ 11 Mr. Habib acknowledged that the driving force behind the HOA's snow removal policies and procedures was the safety of the residents and the Manual existed largely for the benefit of the individual residents. The HOA was required to perform the snow removal at the complex based on the declaration and the bylaws, but he did not know whether the declarations and bylaws required the HOA to remove the snow and ice from the City of Chicago sidewalks. The reason the HOA performed the snow removal on the city sidewalks was because of the City of Chicago ordinance requiring that the city sidewalks be cleared of snow and ice.

¶ 12 On November 13, 2013, the circuit court granted summary judgment to the defendants on counts I and II of the second amended complaint. On February 11, 2014, the circuit court granted the defendants' motion for a finding pursuant to Illinois Supreme Court Rule 304(a) that there was no just reason to delay enforcement or appeal or both of the November 13, 2013, order. Ill. S. Ct. R.304 (a) (eff. Feb. 26, 2010).¹

¶ 13 The plaintiff appeals.

¶ 14 ANALYSIS

¶ 15 I. Standard of Review

¶ 16 A court reviews the grant of summary judgment *de novo*. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 309 (2010).

¶ 17 II. Discussion

¹The case remained pending as to defendant Everest Snow Management, Inc.

¶ 18 Our review is guided by the well-settled principle that "[s]ummary judgment is proper if, and only if, the pleadings, depositions, admissions, affidavits and other relevant matters on file show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law." *Illinois Farmers Insurance Co. v. Hall*, 363 Ill. App. 3d 989, 993 (2006). Because summary judgment is a drastic measure, it should be granted only when the movant's right to judgment is free and clear from doubt. *Bourgonjie v. Machev*, 362 Ill. App. 3d 984, 994 (2005).

¶ 19 To establish negligence, a plaintiff must prove the following: "a duty owed to it by the defendant, a breach of that duty and an injury proximately caused by that breach." *Claimsone v. Professional Property Management, LLC*, 2011 IL App (2d) 101115, ¶ 17. While the question of whether a duty has been breached is a factual question, in general whether the duty exists presents a question of law. *Claimsone*, 2011 IL App (2d) 101115, ¶ 17.

¶ 20 While at common law there was no duty to remove natural accumulations of snow or ice, our courts have recognized two exceptions to the rule: the voluntary undertaking and the contractual assumption of the duty. *Claimsone*, 2011 IL App (2d) 101115, ¶ 18. The plaintiff maintains that the defendants assumed a duty to her because the Manual contractually obligated the defendants to remove the snow and ice from the sidewalk where she fell. We disagree.

¶ 21 "Where the law does not impose a duty, one will not generally be created by a defendant's rules or internal guidelines." (Internal quotations marks omitted.) *Fichtel v. Board of Directors of the River Shore of Naperville Condominium Ass'n, Hillcrest Management Co.*, 389 Ill. App. 3d 951, 959-60 (2009) (quoting *Shank v. H. C. Fields*, 373 Ill. App. 3d 290,

296-97 (2007), quoting *Rhodes v. Illinois Central Gulf R.R.*, 172 Ill. 2d 213, 238 (1996)).

In *Blankenship v. Peoria Park District*, 269 Ill. App. 3d 416 (1994), the reviewing court held that the park district's internal rule requiring one lifeguard to remain on duty at all times did not create a legal duty to have one lifeguard on duty. The court observed that,

"[w]hile the violation of a *statute* or *ordinance* designed to protect human life or property is *prima facie* evidence of negligence [citations], 'a legal duty is normally not established through rules *** or internal guidelines[.]' " (Emphasis in original.)

Blankenship, 269 Ill. App. 3d at 422-23 (quoting *Quinn v. Sigma Rho Chapter of Theta Pi Fraternity*, 155 Ill. App. 3d 231, 238 (1987). See *Shank*, 373 Ill. App. 3d at 296("[v]iolations of self-imposed rules or internal guidelines ***do not normally impose a legal duty, let alone constitute evidence of negligence"); see also *Fillpot v. Midway Airlines, Inc.*, 261 Ill. App. 3d 237, 244 (1994) (where the airline owed no duty to remove snow and ice, the airline's policy manual did not create such a duty).

¶ 22

In his deposition testimony, Mr. Habib explained that the Manual was for internal use and was created to explain the division of responsibilities among the various homeowners associations that made up the complex. While Mr. Habib acknowledged that the Manual was concerned with the safety and protection of the residents, it was not part of the condominium declaration and the bylaws, and was not distributed to the residents. Therefore, the Manual did not create a duty on the part of the defendants to clear snow and ice from the perimeter of the sidewalk where she fell.

¶ 23

Fichtel v. Board of Directors of the River Shore of Naperville Condominium Ass'n, Hillcrest Management Co., 389 Ill. App. 3d 951 (2009), is instructive. In that case, the Gattos appealed the trial court's dismissal of their insurer, State Farm, contending that State

Farm had assumed the duty to disclose mold damage to their residence based on State Farm's operating guide. *Fichtel*, 389 Ill. App. 3d at 959. In light of *Rhodes*, *Shank* and *Fillpot* and distinguishing *Rice v. White*, 374 Ill. App. 3d 870 (2007), the reviewing court in *Fichtel* found no reason to deviate from the rule that internal guidelines do not create a duty. *Fichtel*, 389 Ill. App. 3d at 959-60.

¶ 24

In *Rice*, the plaintiff's decedent was the victim of a shooting at a party hosted by the defendants. The plaintiff filed a wrongful death suit against the defendants alleging they were negligent, based on the fact that prior to the party, the defendants had distributed flyers announcing the party and stating that " ' "We will check for weapons." ' " *Fichtel*, 389 Ill. App. 3d at 960 (quoting *Rice*, 374 Ill. App. 3d at 873. The reviewing court in *Rice* held that based on the flyer the defendants had voluntarily assumed the duty to check party guests for weapons. The court in *Fichtel* drew a distinction between the distribution of the flyer and State Farm's operating guide stating as follows:

"In *Rice*, the defendants acted affirmatively in distributing to prospective party guests a flyer announcing a voluntary assumption of the duty to check for weapons. That flyer is not analogous to State Farm's internal policies articulated in its operating guide for the use of its employees, in that there is no evidence that State Farm distributed it to the Gattos or other insureds or otherwise announced to anyone other than its employees that it was assuming the duty of disclosing mold. The Gattos do not even contend that they were aware of the existence of the operating guide prior to discovery. Moreover, in *Rice*, the plaintiff testified that she had been influenced by the defendants' flyer when deciding to allow her daughter to attend the party.

[Citation.] In contrast, the Gattos do not claim that they contracted with State Farm

because of the contents of its operating guide. Consequently, *Rice* provides no basis for deviating from the rule that internal guidelines do not create a duty." *Fichtel*, 389 Ill. App. 3d at 960.

¶ 25 The plaintiff's reliance on *Tressler v. Winfield Village Cooperative, Inc.*, 134 Ill. App. 3d 578 (1985), is misplaced. In that case, the plaintiff leased an apartment from the defendant. The defendant made oral representations to the plaintiff and furnished the plaintiff with a handbook containing those representations and providing that the defendant would arrange for snow removal from the premises. *Tressler*, 134 Ill. App. 3d at 579. After she was injured from a fall due to the snow and ice, she sued the defendant alleging that her injuries resulted from the defendant's failure to perform the snow removal service. *Tressler*, 134 Ill. App. 3d at 579. The trial court found that the defendant had assumed a duty to plaintiff based on its "covenant" to remove the snow and ice but granted summary judgment to the defendant on the ground that there was insufficient evidence that the defendant was negligent.

¶ 26 On appeal, the reviewing court agreed that the defendant assumed the duty to remove the snow and ice from the premises, but the court reversed the summary judgment on the ground that whether the defendant negligently breached the covenant was a question for the trier of fact. *Tressler*, 134 Ill. App. 3d at 580-81. In contrast to the plaintiff in *Tressler*, here the plaintiff was not given a copy of the Manual, and the plaintiff does not allege that she was given any verbal or written representations about snow and ice removal procedures based on the provisions in the Manual.

¶ 27 The plaintiff's reliance on *Schoondyke v. Heil, Heil, Smart & Golee, Inc.*, 89 Ill. App. 3d 640 (1980), is also misplaced. In that case, the plaintiff resided in a condominium unit

owned by her parents. Snow had fallen when she left for work in the morning. Upon returning home, no snow removal had been done, and the plaintiff suffered injuries when she fell on the common sidewalk. Under the condominium declarations and bylaws, the defendants had assumed the duty to remove natural accumulations of snow and ice, therefore the defendants were not entitled to summary judgment. *Schoondyke*, 89 Ill. App. 3d at 645. In the present case, the plaintiff relied on the Manual to create the contractual duty on the part of the defendants owed to her. While Mr. Habib confirmed that the declarations and bylaws required the defendants to remove the snow and ice from the property managed by them, the Manual was not part of the condominium declaration and the bylaws.

¶ 28

In the present case, the plaintiff relied exclusively on the provisions of the Manual to create the duty she asserts is owed to her by the defendants, not the provisions of the declaration and the bylaws. Mr. Habib confirmed that the residents, such as plaintiff, paid for snow and ice removal as part of their monthly assessment; however, there is no reference to that fact in the Manual. The evidence established that the Manual was not a part of the declarations and bylaws, and it was not distributed to the residents; it was intended for internal use only. Unlike *Rice*, the plaintiff did not allege her reliance on the snow removal provisions of the Manual, that she based her residence choice or her choice of ingress or egress from her residence based on its provisions, or that she was even aware of its provisions. We note that it was not until her second amended complaint that she alleged the existence of the Manual.

¶ 29

We conclude as a matter of law that the Manual did not create a duty on the part of the defendants to the plaintiff to remove the snow and ice from the sidewalk where she fell. In the absence of a duty, the plaintiff's negligence claim against the defendants fails, and the

circuit court's grant of summary judgment to the defendants on counts I and II of the second amended complaint was proper. Deciding this case as we do, we need not address the defendants' argument concerning the interplay between the Manual and the City of Chicago snow removal ordinance.

¶ 30 The order of the circuit court granting summary judgment to defendants, the HOA and Draper & Kramer is affirmed.

¶ 31 Affirmed.