SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5094-15T3

SABRINA L. REAVES-HARRINGTON
and DEDRIA A. DOUGANS,

Plaintiffs-Appellants,

v.

THOMAS D. DIGUISEPPI,

Defendant-Respondent.

Argued October 3, 2017 – Decided November 6, 2017

Before Judges Fisher and Moynihan.

On appeal from the Superior Court of New Jersey, Law Division, Cumberland County, Docket No. L-0333-14.

Devesh Taskar argued the cause for appellants (Law Offices of Robert I. Segal, attorneys; Maria DeTitto, on the brief).

Deborah C. Halpern argued the cause for respondent (Parker Young & Antinoff, attorneys; Ms. Halpern, on the brief).

PER CURIAM

On the Fourth of July 2013, plaintiffs Sabrina L. Reaves-Harrington and Dedria A. Dougans sat on the porch of the Bridgeton home Dedria leased from defendant Thomas DiGuiseppi when a

triangular wooden piece (referred to in depositions as a scroll), which was fixed to both a supporting pole and the porch roof, became dislodged, fell, and struck Sabrina.[1] Later, after Sabrina was taken to a hospital, a wooden pole extending from the porch to the underside of the porch roof (to which the scroll had been attached) fell and struck Dedria. Because Dedria's long-term lease[2] imposed no obligation on Thomas to inspect, maintain or repair,[3] and because Thomas did not know or have reason to know of any problems with the pieces of the porch that dislodged, we affirm the summary judgment dismissing Dedria and Sabrina's suit.

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[1] We have appended a photograph, which was identified at Thomas's deposition, depicting the porch's appearance shortly after the July Fourth incident. The pole that fell and allegedly struck Dedria was drawn in by Thomas at the deposition; it appears to the right of the stairs that lead from ground level to the porch. Thomas also circled on the photograph what he referred to as a scroll.

[2] She had leased the property since May 2011.

[3] In his deposition, Thomas acknowledged he had made repairs to the property in the past when a problem manifested. The contract, however, does not expressly impose such a duty. And, despite plaintiffs' argument to the contrary, the contract does not preclude the tenant from maintaining or repairing the property should the tenant observe a problem. The lease only prohibits the tenant from "mak[ing] or suffer[ing] any alterations" to the premises; this provision was uttered in the same sentence that barred the tenant from using the property for "any . . . purpose other than as a private dwelling" and should be interpreted in that sense and not as a bar on the tenant's rights to make repairs or maintain the property.

The facts are undisputed, and the case poses a simple question: whether the common law imposed a duty on Thomas, the landlord, to inspect the leased property for latent defects. Or, as the question is put by plaintiffs: does the doctrine of res ipsa loquitur apply and impose liability on a landlord in these circumstances? Much has been written on this subject that we need not reiterate beyond providing for the reader a brief outline of the current state of a landlord's common-law duties.

Despite plaintiffs' forceful arguments, the doctrine of res ipsa loquitur has no application here. Justice Brennan, when he sat in this court, wrote in Patton v. The Texas Co., 13 N.J. Super. 42, 47 (App. Div.), certif. denied, 7 N.J. 348 (1951), that a landlord, who had leased a home and lot and had not contracted to repair or maintain, was entitled to the reversal of a plaintiff's verdict because the common law imposed on landlords no duty to remedy a property defect absent a "fraudulent concealment of a latent defect." We later recognized in Szeles v. Vena, 321 N.J. Super. 601, 606 (App. Div. 1999), that Patton is consistent with Restatement (Second) of Torts § 355 (1965), which declares that "a lessor of land is not subject to liability for bodily harm caused to [a] lessee or others upon the land . . . by any dangerous condition which comes into existence after the lessee has taken possession." The Second Restatement recognizes exceptions to this

general rule that have no arguable application here, e.g.: where the lessor contracts to repair, id., § 357; where the property is leased for purposes involving public admission, id., § 359; where parts of the land are controlled by the lessor, although the lessee is entitled to their use, id., § 360; and where the lessor has been negligent in making repairs, id., § 362. See Szeles, supra, 321 N.J. Super. at 606.[4]

The only exception to the Second Restatement's general rule that we need to consider is that which imposes liability when a landlord "knows or has reason to know" of the condition, "realizes or should realize the risk involved," and "has reason to expect that the lessee will not discover the condition or realize the risk." Restatement (Second), supra, § 358(1)(b). These elements of the exception, however, have not been demonstrated here.

There is no dispute that no one — neither Thomas nor Dedria — was aware the pole or the scroll or both were in disrepair or on the verge of becoming displaced. The only question, then, is

[4] The implied covenant of habitability recognized in Marini v. Ireland, 56 N.J. 130, 144 (1970), does not expand a landlord's obligations in this circumstance. Szeles, supra, 321 N.J. Super. at 607. That common-law concept, as well as others found in the Anti-Eviction Act, N.J.S.A. 2A:18-61.1 to -61.2, relate to the tenancy itself and not to claims asserted by persons injured by a dangerous condition in the premises. See Dwyer v. Skyline Apts., Inc., 123 N.J. Super. 48, 55 (App. Div.), aff'd o.b., 63 N.J. 577 (1973).

whether Thomas had reason to know of such a possibility.[5] The record is barren of any evidence to support such a contention and the absence of any such evidence required entry of summary judgment in Thomas's favor. We thus find insufficient merit in plaintiffs' arguments to warrant further discussion in this opinion, R. 2:11-3(e)(1)(E), except to add that we are mindful of our more recent decisions in Meier v. D'Ambose, 419 N.J. Super. 439 (App. Div.), certif. denied, 208 N.J. 370 (2011), and Reyes v. Egner, 404 N.J. Super. 433 (App. Div. 2009), aff'd by a divided court on other grounds, 201 N.J. 417 (2010), and are aware a superficial reading of those decisions might suggest a different outcome.

In Meier, the panel concluded that a defendant-landlord was not entitled to summary judgment where the plaintiff-tenant died from smoke inhalation caused by the property's faulty furnace. This decision, however, does not compel the same result here. The Meier panel observed that administrative regulations regarding chimneys, smokestacks, and other similar furnace components, imposed on the landlord an independent duty to inspect the furnace, 419 N.J. Super. at 447-48, which he disregarded for the eight years preceding entry into his lease with the decedent, id. at 451. The panel recognized that if the landlord complied with this

[5] We assume for present purposes that neither plaintiff actively dislodged the pole or scroll.

independent duty he would likely have discovered the dangerous condition. Id. at 449-51. In short, Meier represents an example of when a tenant has sufficiently presented a triable issue about whether a landlord had reason to know of a dangerous condition. And Meier is distinguishable because that landlord's claim of lack of knowledge was arguably unjustified (or could be rejected by a jury) because of the landlord's affirmative duty — imposed not by common law or contract but by regulation — to inspect the furnace.

Reyes is also distinguishable. Although suggesting "inroads" have been made, 404 N.J. Super. at 454, toward the rejection of Patton's "fraudulent concealment" requirement — an observation with which we agree[6] — Reyes otherwise distinguished our earlier holdings in reversing the defendant-landlord's summary judgment because the lease was a short-term, two-week rental, a circumstance the panel found "fundamentally different from the multi-year tenancies" in the other cases, Reyes, supra, 404 N.J. Super. at 455.

In adhering to our well-established, common-law principles that bar the imposition of liability on a landlord in this

[6] In other words, Patton's express holding seems to require that a plaintiff show the landlord "fraudulently concealed" a defect. Reyes suggests, and we agree, that adherence to the Second Restatement has likely rendered unnecessary proof in a case like this that a landlord "fraudulently" kept knowledge of a defect from a tenant.

circumstance absent proof the landlord knew or should have known of the alleged dangerous condition, we affirm the summary judgment entered here in Thomas's favor.

Affirmed.


EXHIBIT
DiGiuseppi
4/28/15 FR