SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1575-16T1

ERIN KIEFFER,

Plaintiff-Appellant,

v.

DAVITA HEALTHCARE PARTNERS, INC. d/b/a DAVITA EDISON DIALYSIS, DVA RENAL HEALTHCARE, INC.; U.S. INVESTMENT PROPERTIES, LLC; and KCR LANDSCAPE SERVICES, LLC,

Defendants-Respondents.

Submitted March 13, 2018 – Decided April 2, 2018

Before Judges Fasciale and Sumners.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-5223-14.

Kroll Heineman Carton, LLC, attorneys for appellant (Michael T. Carton, of counsel and on the briefs).

Martin Clearwater & Bell, LLP, attorneys for respondents DaVita Healthcare Partners, Inc. d/b/a DaVita Edison Dialysis, DVA Renal Healthcare, Inc. and U.S. Investment Properties, LLC (Emma B. Glazer, on the brief).

Law Offices of Linda S. Baumann, attorneys for respondent KCR Landscaping Services, LLC (Deirdre M. Dennis, of counsel and on the brief).

PER CURIAM

In this slip and fall action, plaintiff appeals from two November 28, 2016 orders granting U.S. Investment Properties, LLC (U.S. Investment), DaVita Healthcare Partners, Inc. (DaVita), and K.C.R. Landscape Services, LLC (KCR) summary judgment. We reverse both orders and remand for a trial on all issues.

U.S. Investment[1] owned 29 Meridian Road, Edison, New Jersey (the property), in which DaVita was the sole tenant with exclusive control and possession. DaVita was responsible for all snow and ice inspections associated with the property, and contracted with KCR for snow and ice removal services.

In February 2014, plaintiff was employed as an EMT and was transporting a patient to the property. Plaintiff and her partner parked the ambulance within roughly 150 feet of the entrance of DaVita's facility. Upon returning to the ambulance, plaintiff slipped on ice and injured her ankle. The injury required surgery and forced plaintiff to end her career as an EMT.

[1] Plaintiff does not appeal the order granting summary judgment to U.S. Investment.

The property received multiple inches of snow prior to the time plaintiff fell. DaVita and KCR maintain that all reasonable steps were taken to clear and treat the parking lot, including plowing, treating the area with hundreds of pounds of salt, and inspecting the area for ice. KCR also kept a log of all treatment activity and the time each was performed. Plaintiff submits that factual questions remain regarding DaVita's inspection of the property and KCR's plowing in accordance with its agreement with DaVita. Specifically, plaintiff argues that DaVita did not inspect the premises, and thus did not discover the ice in the parking lot. Plaintiff also argues that KCR improperly plowed snow near the entrance of the building, which forced the ambulance to park further away from the building.

The judge granted summary judgment finding "a reasonable trier of fact could not come to the conclusion reasonable care was not taken." The judge specifically referred to the snow and ice removal methods utilized by KCR in the days leading up to and the early morning of the accident. The judge found that both DaVita and KCR did not breach the applicable standard of care, thus absolving themselves of any liability from plaintiff's injury.

When reviewing an order granting summary judgment, we apply "the same standard governing the trial court." Oyola v. Liu, 431 N.J. Super. 493, 497 (App. Div. 2013). We owe no deference to the

motion judge's conclusions on issues of law. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Summary judgment is not appropriate when "the evidential materials relied upon by the moving party, considered in light of the applicable burden of proof, raise sufficient credibility issues 'to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.'" D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 114 (App. Div. 1997) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995)).

Plaintiff, as a business invitee of the property, was owed "a duty of reasonable care to guard against any dangerous conditions on his or her property that the owner either knows about or should have discovered." Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 434 (1993). A landowner's or occupier's "standard of care encompasses the duty to conduct a reasonable inspection to discover latent dangerous conditions." Ibid. DaVita, as the occupier of the property, owed plaintiff a duty of care. Furthermore, KCR, who performed snow and ice removal services on the property, also owed plaintiff a duty of care. Aronsohn v. Mandara, 98 N.J. 92, 105-06 (1984).

This court has routinely held that the jury should decide issues of fact regarding whether a commercial landlord or occupier breached the applicable standard of care to a business invitee.

See Gray v. Caldwell Wood Prods., Inc., 425 N.J. Super. 496, 503 (App. Div. 2012); Tymczyszyn v. Columbus Gardens, 422 N.J. Super. 253, 256 (App. Div. 2011); Bates v. Valley Fair Enters., Inc., 86 N.J. Super. 1, 12-13 (App. Div. 1964). Factual questions remain regarding DaVita's procedure for inspecting the property and whether DaVita performed these inspections in the days preceding plaintiff's fall. Questions also remain whether KCR properly plowed snow and salted pursuant to its agreement with DaVita requiring snow to be removed from near the building's entrance. These disputed factual questions of whether KCR and DaVita acted negligently should be resolved by the jury.

Reversed and remanded. We do not retain jurisdiction.