SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4615-15T4

EDWARDO VEGA,

Plaintiff-Appellant,

v.

SURESH MUTHUPANDI,

Defendant/Third-Party
Plaintiff-Respondent,

v.

CASTLEPOINT INSURANCE COMPANY
and COE GROUP, INC.,

Third-Party
Defendants-Respondents.

Argued April 16, 2018 – Decided May 10, 2018

Before Judges O'Connor and Vernoia.

On appeal from Superior Court of New Jersey, Law Division, Union County, Docket No. L-1699-14.

Christopher F. Struben argued the cause for appellant (Percario, Nitti & Struben, attorneys; Christopher F. Struben, on the brief).

James P. McBarron argued the cause for respondent Coe Group, Inc. (Hardin, Kundla,

McKeon & Poletto, PA, attorneys; John R. Scott, of counsel and on the brief; Cynthia Lee, on the brief).

PER CURIAM

In this sidewalk slip-and-fall matter, plaintiff Edwardo Vega appeals from the April 1, 2016 Law Division order granting third-party defendant Coe Group, Inc., (Coe) summary judgment dismissal of plaintiff's complaint. Plaintiff also appeals from the June 17, 2016 order denying his motion for reconsideration of the April 1, 2016 order and dismissing the complaint against defendant Suresh Muthupandi.[1] We affirm.

I

We glean the following from the summary judgment record provided to us. In December 2013, Muthupandi purchased a vacant two-family house. Defendant wanted to rent out one of the dwellings in the building and, because he was having marital problems with and wanted to separate from his wife, to move into the other dwelling. In addition, Fannie Mae, the mortgagee from which he obtained a mortgage to purchase the property, required and in fact defendant signed a certification stating he would move into the property within sixty days of purchase. In

[1] Plaintiff's notice of appeal states third-party defendant Castlepoint Insurance Company was granted summary judgment dismissal before the orders under review were entered. Castlepoint Insurance Company did not participate in this appeal.

preparation for moving into the property, in December 2013 defendant secured a driver's license that reflected the address of the two-family house as his residence.

Before he could move in, in January 2014, the roof on the building collapsed, causing extensive damage and precluding his ability to move into one of the units and rent out the other. Defendant did not bother to advertise or show the rental unit to any prospective tenant. In February 2014, plaintiff slipped and fell on snow that had accumulated on the sidewalk abutting the property, and sustained injuries. No one moved into the building until February 2015. In the interim, defendant reconciled with his wife and never moved into either unit in the two-family house.

Plaintiff filed a complaint against defendant alleging he had been negligent for failing to remove the snow from the sidewalk that had accumulated in front of the property at the time of plaintiff's fall. Defendant in turn filed a third-party complaint against Coe and Castlepoint Insurance Company. Defendant alleged either Coe, an insurance agency, failed to secure or Castlepoint Insurance Company improperly declined to provide coverage under a homeowners insurance policy defendant contended he had acquired before plaintiff's fall.

After discovery concluded, Coe obtained summary judgment dismissal of plaintiff's complaint. Plaintiff's motion for reconsideration was not only unavailing, but also plaintiff's complaint was dismissed as to defendant. The trial court found that at the time of plaintiff's fall, the two-family home was not a commercial but a residential property; therefore, defendant was not liable for any injuries arising out of his failure to remove snow and ice from the sidewalk.

II

On appeal, plaintiff argues the court erred when it found the two-family house was not a commercial property. In support of his argument, plaintiff maintains defendant did not actually intend to move into the property just before plaintiff's fall or, at the least, there is a question of fact over what his intentions were. Plaintiff argues that if defendant intended at the time of the fall to rent out both units, the property was a commercial one and defendant is liable for plaintiff's injuries. Plaintiff also contends that, in the weeks preceding his fall, the workers present at the property to fix the damage to the roof and the interior of the house walked over the existing snow on the sidewalk, causing the snow to "pack down" and create an enhanced dangerous condition.

Rule 4:46-2(c) directs that summary judgment be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Essentially, the court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Liberty Surplus Ins. Corp. v. Nowell Amoroso, PA, 189 N.J. 436, 445-46 (2007) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995)).

We review a trial court's decision on summary judgment "de novo, employing the same standard used by the trial court." Tarabokia v. Structure Tone, 429 N.J. Super. 103, 106 (App. Div. 2012) (citing Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div. 1998)). We give "no deference to the trial court's conclusions on issues of law." Depolink Court Reporting & Litig. Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013). We must also "view the evidence in the light most favorable to the non-moving party and analyze whether the moving party was entitled to judgment as a matter of law."

Mem'l Props., LLC v. Zurich Am. Ins. Co., 210 N.J. 512, 524 (2012) (citing Brill, 142 N.J. at 523).

Currently, owners of residential property are not liable to those injured as a result of the failure to remove snow and ice from an abutting public sidewalk. See Brown v. St. Venantius Sch., 111 N.J. 325, 327 (1988). Further, two-family homes in which the owner occupies a unit are not deemed commercial properties. See Smith v. Young, 300 N.J. Super. 82, 97 (App. Div. 1997) (noting a two-family home, one unit of which was owner-occupied and the other rented to a tenant, was "unquestionably residential in use").

Even if the subject property were deemed commercial, defendant is not liable under the facts presented here. In Gray v. Caldwell Wood Prods., Inc., 425 N.J. Super. 496 (App. Div. 2012), we examined whether the defendant, the owner of a vacant commercial building, was liable to the plaintiff after she fell on a snow-covered sidewalk abutting the defendant's property. The defendant had moved for summary judgment and relied upon our decision in Abraham v. Gupta, 281 N.J. Super. 81 (App. Div. 1995) to support its argument it was not liable to the plaintiff.

In Abraham, we held the owner of a vacant commercial lot was not liable for injuries the plaintiff sustained when he fell

on snow that had accumulated on the sidewalk adjacent to the defendant's property. Drawing from Stewart v. 104 Wallace St., Inc., 87 N.J. 146, 157 (1981), we determined that because the lot was vacant and the defendant was not conducting any commercial activity on such property, there was no need for the defendant to provide safe access to such lot. Further, we found the defendant was not generating income to purchase liability insurance coverage. We noted:

> What we glean from Stewart and its progeny is an unexpressed, but nevertheless intended limitation to its rule [imposing liability for owners of commercial properties abutting public sidewalks]: . . . . It is the capacity to generate income which is the key. In part, liability is imposed because of the benefits the entrepreneur derives from providing a safe and convenient access for its patrons. Secondly, such an enterprise has the capacity to spread the risk of loss arising from injuries on abutting sidewalks, either through the purchase of commercial liability policies or "through higher charges for the commercial enterprise's goods and services." Mirza [v. Filmore Corp., 92 N.J. 390, 397 (1983)].
>
> [Abraham, 281 N.J. Super. at 85.]

In Gray, the defendant argued it was not liable to the plaintiff because its commercial building was vacant and no business operations were being conducted at the property at the time of the plaintiff's fall. We distinguished Abraham and held the defendant was liable. We found the building the defendant

owned in Gray had the capacity to generate income at the time of the accident. Specifically, the property could have been put to use to produce income as a retail store but, instead, the defendant chose to keep the building vacant and market the building for sale.

In addition, we observed the defendant "made the property accessible to potential buyers thereby subjecting itself to the duty to keep their property safe for their invitees. Defendant maintained property insurance, presumably to protect against injuries to their invitees. . . . Defendant is precisely the type of commercial property owner upon whom it is appropriate to impose liability." Gray, 425 N.J. Super. at 501.

Here, by the time of plaintiff's fall, the roof had collapsed into the building. The building was not habitable. There was no use to which the building could have been put to generate income. Defendant was not even showing the property to prospective tenants. Defendant was not and could not have conducted the business of renting out the property. Therefore, at the time of plaintiff's fall, defendant's property was not a commercial one.

We reject plaintiff's remaining arguments, none of which warrants discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION