SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2959-21

JOHN GUDOSKI and
STEPHANIE GUDOSKI,

Plaintiffs-Appellants,

v.

ROCK PILE PROPERTIES, LLC,

Defendant-Respondent,

and

STATEWIDE FENCE
CONTRACTORS, LLC,

Defendant.

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Submitted October 24, 2022 — Decided November 3, 2022

Before Judges Whipple and Mawla.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Union County, Docket No. L-1530-20.

Bramnick, Rodriguez, Grabas, Arnold & Mangan, LLC, attorneys for appellants (Gary J. Grabas and Brian J. Trembley, on the briefs).

Schenck, Price, Smith & King, LLP, attorneys for respondent (Eric A. Inglis and Thomas N. Gamarello, of counsel and on the brief).

PER CURIAM

Plaintiffs John and Stephanie Gudoski[1] appeal from an April 14, 2022 order granting defendant Rock Pile Properties, LLC summary judgment and dismissing plaintiffs' complaint with prejudice. We affirm.

Defendant owns a building in Garwood, which it leased to Statewide Fence Contractors, LLC (Statewide), a residential, commercial, and industrial fence company. The lease agreement required Statewide to make all repairs and maintain the property, including the roof. John owned a company specializing in solid waste services, roll-off, and garbage transportation; he also had prior experience working for his father's company, Statewide Restoration, Inc.,[2] restoring and repairing building cracks. John was friendly with Statewide's owner, who asked him for advice regarding a leak inside the building.

[1] Because plaintiffs share a common surname, we refer to them by first name. We intend no disrespect.

[2] This entity is unrelated to Statewide Fence Contractors, LLC.

According to Statewide's owner, on August 23, 2019, John came to the property "to look at the building," and "offer a friend some advice" about a crack in the building. When John arrived, there were approximately twenty people, including Statewide employees, having a Labor Day barbecue on the premises. John observed the building perimeter and noticed "[s]ome large cracks in the masonry and what appeared to be a corner separating from the sidewalk." He advised Statewide's owner he needed to go onto the roof to fully examine the crack. Three witnesses saw Statewide's owner inform John not to go onto the roof. John ascended the roof and while inspecting it, stepped onto a skylight and fell through it onto the concrete ground below, suffering several injuries, including to his shoulder, hand, and mouth.

Plaintiffs sued defendant and Statewide for negligence and damages. Following arbitration and plaintiffs' demand for trial de novo, defendant moved for summary judgment, or in the alternative, to strike and bar the liability expert's report and testimony. Statewide also moved for summary judgment.

After oral argument, the motion judge rendered an oral opinion denying Statewide summary judgment, finding "a genuine issue of material fact . . . whether . . . [John] was there as an independent contractor and was hurt within the scope of his duties[, o]r . . . as a friend doing a favor for another friend who

was injured due to inadequate warnings of this danger . . . ." However, the judge granted defendant's motion, finding it could not be liable because it did not owe a duty of care to John merely because it owned the building. The judge noted defendant "had no relationship with [John], no ability to warn him . . . [and] had no idea he was on the premises at the request of [Statewide]." The judge also granted defendant's motion to strike plaintiffs' expert report and testimony as it related to defendant. Although it did not impact granting defendant summary judgment, the motion judge noted plaintiffs' liability expert could refer to Occupational Safety and Health Administration (OSHA) standards, because it "provides support . . . concerning the proper standard of care."

"Our review of a summary judgment ruling is de novo." Conley v. Guerrero, 228 N.J. 339, 346 (2017) (citing Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016)). Summary judgment should be granted where "there is no genuine issue of material fact and 'the moving party is entitled to a judgment or order as a matter of law.'" Ibid. (quoting Templo Fuente De Vida Corp, 224 N.J. at 199). "An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences

therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." R. 4:46-2(c).

On appeal, plaintiffs contend defendant owed John a duty of care and granting summary judgment was contrary to New Jersey law and public policy. They argue a jury should determine whether defendant satisfied its duty of care, and the standard of care can be established using OSHA standards, even where the tortfeasor is not subject to OSHA.

Whether a defendant owes a legal duty to another, and the scope of that duty, are generally questions of law for the court to decide. Carvalho v. Toll Bros. & Devs., 143 N.J. 565, 572 (1996). Our Supreme Court has stated:

> The actual imposition of a duty of care and the formulation of standards defining such a duty derive from considerations of public policy and fairness. . . .
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> . . . That inquiry involves identifying, weighing, and balancing several factors—the relationship of the parties, the nature of the attendant risk, the opportunity and ability to exercise care, and the public interest in the proposed solution.
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> [Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 439 (1993).]

Pursuant to our de novo review, it is clear none of the Hopkins factors were met. There was no evidence John and defendant had a relationship of any

type. Regarding the nature of the attendant risk, we look to "whether the risk is foreseeable, whether it can be readily defined, and whether it is fair to place the burden of preventing the harm upon the defendant." Davis v. Devereux Found., 209 N.J. 269, 296 (2012). We are unconvinced the facts establish it was foreseeable John would be on the roof and fall through a skylight. There was no notice, actual or otherwise; defendant neither maintained a presence on site, nor was it responsible for repairs to the building. For these reasons, the facts do not show defendant had a reasonable opportunity to exercise care. Lastly, we are unconvinced public policy supports the imposition of liability on defendant, given it was Statewide who brought John onto the property it controlled pursuant to the lease.

The remaining arguments raised on appeal lack sufficient merit to warrant a discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.