SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0325-21

STEPHANIE UGARO,

Plaintiff-Appellant,

v.

LIVINGSTON CIRCLE ASSOCIATES, LP, EASTMAN COMPANIES OF NEW JERSEY, LLC, and EASTMAN MANAGEMENT CORP.,

Defendants-Respondents,

and

LONG WHARF CAPITAL, LLC,

Defendant.

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Argued December 13, 2022 – Decided March 16, 2023

Before Judges Gilson, Rose and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-4894-19.

David A. Tykulsker argued the cause for appellant (David Tykulsker & Associates, attorneys; David Tykulsker and Valeria Gheorghiu, on the briefs).

Thomas A. Zammatore argued the cause for respondents (Hendrzak & Lloyd, attorneys; Christopher S. Byrnes, on the brief).

Justin Lee Klein argued the cause for amicus curiae The New Jersey Association for Justice (Law Office of Justin Lee Klein, LLC, attorneys; Justin Lee Klein, of counsel and on the brief).

PER CURIAM

Plaintiff Stephanie Ugaro was injured when a ceiling tile fell on her while she was in a bathroom. She appeals from an order granting summary judgment to defendants, which owned, managed, and maintained the building where plaintiff worked and where she was injured. The trial court reasoned that the doctrine of res ipsa loquitur did not create a presumption of negligence by defendants. We disagree and reverse. The material facts demonstrate that the elements of res ipsa loquitur were established and it is for the jury to determine if defendants can rebut the presumption of their negligence.

I.

We discern the material facts from the summary-judgment record, viewing them in the light most favorable to plaintiff, the non-moving party. See Richter v. Oakland Bd. of Educ., 246 N.J. 507, 515 (2021). The record in this matter

establishes that most of the material facts were not in dispute. Instead, this appeal predominantly turns on the application of the law concerning res ipsa loquitur to those material facts.

In 2017, plaintiff was employed by Verizon to work at a call center located at 290 W. Mount Pleasant Avenue in Livingston (the Building). The Building was owned by defendant Livingston Circle Associates, LP (Livingston) and managed by Eastman Management Corporation (Eastman) (collectively, defendants).[1] Under the lease between Verizon and Livingston, Livingston had the obligation to maintain all parts of the Building, including "repair[ing] and replac[ing] all plumbing . . . in bathrooms."

On the evening of October 5, 2017, plaintiff went into the women's restroom on the third floor of the Building. After she entered one of the bathroom stalls, the ceiling tile above the stall collapsed, struck plaintiff in the

[1] Plaintiff also named Eastman Companies of New Jersey, LLC (Eastman N.J.) as a defendant. Eastman N.J. moved for summary judgment on the grounds that it was a separate company from Eastman and, although it was affiliated with Eastman, it had no role in the management of the Building. Plaintiff did not challenge that portion of defendants' summary-judgment motion. Moreover, plaintiff has not addressed that issue on this appeal. Nevertheless, no separate order concerning the dismissal of the claims against Eastman N.J. was entered. Accordingly, we do not address this issue on this appeal. Instead, on remand, the parties and the trial court can address that issue and, if appropriate, a separate order granting summary judgment to Eastman N.J. can be entered.

head and back, and injured her. Plaintiff claims that, because of her injuries, she suffered pain in her head, neck, and back, as well as an assortment of visual and neurological symptoms, for which she required medical treatment.

Plaintiff sued defendants, alleging they were negligent in failing to provide safe premises to her as an employee of a tenant – a business invitee. In response to discovery requests, defendants certified that their investigation of the incident had disclosed that the cause of the ceiling collapse was water leaking from a broken pipe. The Eastman facility manager was deposed, and he explained that he had investigated the ceiling tile collapse. During that investigation, he went to the fourth-floor bathrooms, which were directly above the third-floor bathrooms, including the room where plaintiff had been injured, looked through an access panel in the men's bathroom, observed water, opened the wall, and saw that "a foot and a half section of inch and a half [drain]pipe . . . had split." The facility manager reasoned that water had leaked from the pipe, had accumulated on the ceiling tile above the third-floor bathroom, and had caused that tile to become saturated with water and collapse.

The facility manager also explained that the Building was periodically inspected, but he did not directly address whether those inspections included looking at pipes that were located inside of walls. Finally, the facility manager

explained that the third-floor bathrooms were checked twice a day by one of his employees to make sure that they were clean and "everything was adequate."

Following the close of discovery, defendants moved for summary judgment, contending that plaintiff could not show that they had been negligent because they had no notice that the broken pipe was leaking water. Plaintiff opposed the motion, arguing that the doctrine of res ipsa loquitur created a presumption of negligence and a jury should decide if defendants can rebut that presumption.

On August 24, 2021, after hearing argument, the trial court issued a written opinion and order granting summary judgment to defendants. The trial court reasoned that plaintiff had established two of the three elements for res ipsa loquitur to apply: the Building and its components, including the ceiling tiles and pipes, were under the exclusive control of defendants; and plaintiff's injury was not the result of her own voluntary act or neglect. Accordingly, the question was whether the occurrence bespoke negligence. The trial court focused on the broken pipe and reasoned that the pipe could have leaked or "burst" without negligence by defendants. In reaching that holding, the trial court reasoned:

> The subject piping – apparently at the root cause of the ceiling collapse – is not visible or accessible for

> purposes of inspection or repair without breaching a wall or floor. [Eastman] performed inspection and cleaning of the bathrooms in the [B]uilding. There is no evidence in the record as to protocols, policies or procedures for inspection of the plumbing system within the walls of the [B]uilding by the owner or [Eastman].
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> The [p]laintiff did not proffer evidence as to the specific cause of the plumbing failure. Nor did she offer an expert as to the proper protocols, policies or procedures for inspection, testing or maintenance of a plumbing system in a commercial building of this character, including of piping that is obscured by walls, floors and ceilings.

Plaintiff now appeals from the summary-judgment order. We allowed The New Jersey Association for Justice to submit a brief as an amicus curiae supporting plaintiff's position.

II.

On appeal, plaintiff makes two arguments. She contends that she established all three elements for the application of the res ipsa loquitur presumption. She also asserts that the trial court usurped the role of the jury by drawing factual inferences in favor of defendants.

We agree that all three elements triggering the res ipsa inference were established and, therefore, the question of whether defendants can rebut their

presumption of negligence must be presented to a jury. Consequently, we reverse and remand this matter for trial.

A. Our Standard of Review.

We review de novo the grant of summary judgment, applying the same standard as the motion judge. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). That standard requires us to "determine whether 'the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that 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.'" Ibid. (quoting R. 4:46-2(c)). "To decide whether a genuine issue of material fact exists, the trial court must 'draw[] all legitimate inferences from the facts in favor of the non-moving party.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (alteration in original) (quoting Globe Motor Co. v. Igdalev, 225 N.J. 469, 480 (2016)). "[The] trial court's interpretation of the law and the legal consequences that flow from established fact are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

B. Negligence and Res Ispa Loquitur.

To establish negligence, a plaintiff must show four elements: "(1) a duty of care, (2) a breach of that duty, (3) proximate cause, and (4) actual damages." Townsend v. Pierre, 221 N.J. 36, 51 (2015) (quoting Polzo v. County of Essex, 196 N.J. 569, 584 (2008)). Defendants, as the owner and property manager of the Building, had a duty to exercise reasonable care to protect invited guests, including employees of tenants, from dangerous conditions in the Building. See McDaid v. Aztec W. Condo. Ass'n, 234 N.J. 130, 141-42 (2018).

In its lease with Verizon, Livingston undertook the obligation to maintain the Verizon premises and, therefore, defendants were responsible for keeping the third floor safe. The duty to maintain safe premises and protect invited guests includes an affirmative obligation to inspect the premises "'to discover their actual condition and any latent defects' . . . as well as 'possible dangerous conditions of which [the owner or manager] does not know.'" Brown v. Racquet Club of Bricktown, 95 N.J. 280, 289-91 (1984) (first quoting Restatement (Second) of Torts § 343 cmt. b, at 216 (Am. Law Inst. 1966), then W. Prosser, Law of Torts, § 61 at 393 (4th ed. 1971)).

"Res ipsa loquitur is an equitable doctrine that allows, in appropriate circumstances, a permissive inference of negligence to be drawn against a party

who exercises exclusive control of [premises with an unsafe condition that] causes injury to another." McDaid, 234 N.J. at 135. To benefit from the inference, a plaintiff must establish three things: "(a) the occurrence itself ordinarily bespeaks negligence; (b) the instrumentality [or building] was within the defendant's exclusive control; and (c) there is no indication in the circumstances that the injury was the result of the plaintiff's own voluntary act or neglect." Id. at 142-43 (quoting Jerista v. Murray, 185 N.J. 175, 192 (2005)).

"To invoke the res ipsa inference, a plaintiff does not have to exclude alternative possible causes of the accident, 'provided that the circumstances establish "that it is more probable than not that the defendant's negligence was a proximate cause of the mishap."'" Id. at 144 (quoting Jerista, 185 N.J. at 192). "The res ipsa inference ordinarily will allow the plaintiff to establish a prima facie case and survive a motion to dismiss at the summary judgment stage – that is, unless 'the defendant's countervailing proofs are so overwhelming that they destroy any reasonable inference of negligence.'" Ibid. (quoting Jerista, 185 N.J. at 193). If a case goes to trial and the jury is instructed on the res ipsa inference, "the [jury] is 'free to accept or reject' [the inference]." Ibid. (quoting Jerista, 185 N.J. at 193).

In this case, there is no dispute that plaintiff established the second and third elements of the res ipsa inference. It is undisputed that defendants maintained exclusive control over the maintenance and upkeep of the third floor of the Building, including the women's bathroom. It is also undisputed that plaintiff's injuries were not the result of her own voluntary act or neglect. The controlling issue is whether the occurrence itself ordinarily bespeaks negligence.

Defendants and the trial court focused on the broken pipe. That focus was misplaced. Plaintiff was injured by a falling ceiling tile. A ceiling tile does not ordinarily fall and, if it does, that occurrence "bespeaks negligence." Buckelew v. Grossbard, 87 N.J. 512, 525 (1981); see also Law v. Morris, 102 N.J.L. 650 (E. & A. 1926) (holding the doctrine of res ipsa loquitur applicable to injury to customer by plaster falling from ceiling of store).

Defendants point to the leaking pipe, and the water that leaked from it, as the cause of the ceiling tile's collapse. Defendants' proofs regarding the leaking pipe came from the testimony of the Eastman facility manager. Those proofs are not so overwhelming that they destroy any reasonable inference of negligence. Although a jury need not accept plaintiff's inference that defendants were negligent, it need not accept defendants' contention that it would be unreasonable to inspect pipes, including pipes within a wall.

Even if we were to look at the pipe leak itself as the occurrence, defendants' proofs do not rebut the inference. Defendants and the trial court contend that plaintiff did not offer any proof that pipes in a building should be periodically inspected. That focus improperly shifts the burden. Once a res ipsa inference is established, the burden shifts to defendants to present "countervailing proofs [that] are so overwhelming that they destroy any reasonable inference of negligence." McDaid, 234 N.J. at 144 (quoting Jerista, 185 N.J. at 193). Although the Eastman facility manager "guess[ed]" the pipe broke "from age," defendants never offered any explanation as to why the pipe broke, nor were there any proofs in the current record as to how long the pipe was leaking before sufficient water accumulated on the ceiling tile below and caused that tile to collapse on plaintiff. Thus, a reasonable jury could accept plaintiff's inference of negligence and reject defendants' arguments that it would be unreasonable for them to conduct an inspection of pipes in bathrooms, even pipes enclosed in walls.

In granting summary judgment to defendants, the trial court also impermissibly drew factual inferences in favor of defendants. Without any expert report from defendants and without any detailed analysis of all the facts in the record, the trial court reasoned that it would be unduly burdensome and

unreasonable to conduct an inspection of pipes in walls, noting the pipe at issue was not "observable without invasive inspection efforts." The Eastman facility manager, however, testified that there was an access panel in one of the fourth-floor bathrooms, which was easily opened and at that point he could see indications that water was leaking behind the wall. Although the facility manager went on to explain that he needed to break through the wall to see the pipe itself, he also testified that the water damage could be seen before he broke the wall. Based on that testimony, a jury could reasonably conclude that defendants were negligent in not conducting at least periodic inspections to look through the access panel.

Defendants, and the trial court, relied on our decision in Fanning v. Town of Montclair, 81 N.J. Super. 481 (App. Div. 1963), to support their contention that res ipsa does not apply in this case. The facts of Fanning are distinguishable. Fanning addressed an underground water main, which was buried four feet in the ground and broke approximately seventy years after it was installed. Id. at 483. In Fanning, we held that the doctrine of res ipsa loquitur was not applicable to a broken underground water pipe. Id. at 486. In this case, by contrast, the injury arose from a collapsed ceiling tile. The leak from the pipe was defendants' explanation of why the ceiling tile had collapsed.

As we have already explained, "[e]vidence bringing to light the circumstances of the accident does not . . . make res ipsa inapplicable." Brown, 95 N.J. at 292 (quoting Lustine-Nicholson Motor Co. v. Petzal, 268 F.2d 893, 894 (D.C. Cir. 1959)). Accordingly, the holding in Fanning does not apply to this case.

Instead, this is a case where the res ipsa inference should be charged to the jury and the jury can determine whether it accepts that inference or accepts defendants' explanation for why they were not negligent. Consequently, we vacate the summary judgment order and remand this matter for trial.

Reversed and remanded. We do not retain jurisdiction.