SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3747-21

THOMAS B. SELTZER,

Plaintiff-Respondent,

v.

RIVERSIDE SQUARE
LIMITED PARTNERSHIP,

Defendant-Appellant.

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Argued February 14, 2023 – Decided March 27, 2023

Before Judges Sumners and Susswein.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-8629-18.

Gerald J. Gunning argued the cause for appellant (Lester Schwab Katz & Dwyer, LLP, attorneys; Gerald J. Gunning, on the briefs).

Amos Gern argued the cause for respondent (Starr, Gern, Davison & Rubin, PC, attorneys; Amos Gern, of counsel and on the brief; Henry J. Cistrelli, on the brief).

PER CURIAM

Thomas B. Seltzer, an employee of Bloomingdale's, injured himself when he fell on a staircase used solely for Bloomingdale's employees' ingress and egress to the store. Seltzer sued Riverside Square for negligence, relying on his liability expert's opinion that "the proximate cause of []Seltzer's incident and resulting injuries" was the irregular staircase steps, which were nonconforming with engineering standards.

Riverside Square moved for summary judgment dismissal of the suit contending it owed no duty to Seltzer because it did not own or maintain Bloomingdale's or the staircase. Bloomingdale's, built as a stand-alone department store in 1959, is now part of a two-level enclosed shopping mall constructed around it, which is owned and operated by Riverside Square. Under the terms of its 2006 Construction, Operation, and Reciprocal Easement Agreement (COREA) with Bloomingdale's, Riverside Square had no authority to modify Bloomingdale's or the staircase.

The motion court denied summary judgment. In its statement of reasons, the court explained "there are genuine issues of material fact relative to both the subject accident and the issue of control, and the degree thereof, regarding the overall area where [Seltzer] had his trip and fall accident is a disputed fact." The

court added that, based upon Baird v. Am. Med. Optics, 155 N.J. 54, 58 (1998), it had "to accept [Seltzer's] version of facts, and as such, grant [Seltzer] the benefit of all inferences that such facts support." The court did not address whether the COREA imposed a duty on Riverside Square to replace, modify, or maintain the staircase. We granted Riverside Square leave to appeal.

Applying the same standard that governs the motion court's decision, RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018) (citation omitted), summary judgment should have been granted to Riverside Square. The motion court was incorrect in finding there were genuine issues of material fact relative to the accident and the control of staircase. Seltzer fell on the staircase at Bloomingdale's property. There is no question that the COREA is a valid agreement concerning Riverside Square's responsibility and obligations toward Bloomingdale's property. Because there are no genuine issues of fact, we next address whether Riverside Square is entitled to dismissal of the suit as a matter of law. See R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-29 (1995).

To establish a prima facie case of negligence, a plaintiff must establish: (1) a duty of care; (2) breach of that duty; (3) proximate cause; and (4) damages. Filipowicz v. Diletto, 350 N.J. Super. 552, 558 (App. Div. 2002). "Business

owners owe to invitees a duty of reasonable or due care to provide a safe environment for doing that which is within the scope of the invitation." Nisivoccia v. Glass Gardens, Inc., 175 N.J. 559, 563 (2003) (citing Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 433 (1993)). "It is well settled that whether a party owes a duty to another party is a question of law for the court to decide, not the fact finder." Rivera v. Cherry Hill Towers, LLC, 474 N.J. Super. 234, 240 (App. Div. 2022).

"The duty of due care to a business invitee includes an affirmative duty to inspect the premises and 'requires a business owner to discover and eliminate dangerous conditions, to maintain the premises in safe condition, and to avoid creating conditions that would render the premises unsafe.'" Troupe v. Burlington Coat Factory Warehouse Corp., 443 N.J. Super. 596, 601 (App. Div. 2016) (quoting Nisivoccia, 175 N.J. at 563). Our Supreme Court has made it clear that whether a duty is owed depends on "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." Hopkins, 132 N.J. at 439. To further clarify, the Court held that imposing a common law duty must "satisf[y] an abiding sense of basic fairness under all of the circumstances in light of considerations of public policy." Ibid.

Riverside Square did not owe a duty to Seltzer. The staircase where Seltzer was injured was part of Bloomingdales' premises when the department store was built, long before the mall was constructed. There is no support in the record for Seltzer's contention that Riverside Square "retained some degree of control and responsibility over issues such as repairs and maintenance, even on property of its admitted tenant Bloomingdale's." Under the clear terms of the COREA, Riverside Square had no obligation to maintain any aspect of Bloomingdale's premises. See Karl's Sales & Serv., Inc. v. Gimbel Bros., 249 N.J. Super. 487, 493 (App. Div. 1991) ("[W]here the terms of a contract are clear and unambiguous there is no room for interpretation or construction and the courts must enforce those terms as written."); see also Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 4:46-2 (2023) ("An issue regarding interpretation of a contract clause presents a purely legal question that is particularly suitable for decision on a motion for summary judgment."). And there are no facts indicating Riverside Square exercised any control or maintenance over the staircase that would contradict its interpretation of the COREA. See Michaels v. Brookchester, Inc., 26 N.J. 379, 388 (1958) (recognizing that "[w]here ambiguity exists, the subsequent conduct of the parties in the performance of the agreement may serve to reveal their original

understanding"). Hence, Seltzer's liability expert's opinion concerning the construction and maintenance of the staircase is of no import because Riverside Square, as well as its predecessor in interest, did not construct the staircase and had no duty to ensure it could be safely traversed.

In sum, there are no genuine material facts in dispute, and Riverside Square is entitled to summary judgment as a matter of law. We therefore reverse the motion court's order denying summary judgment and remand for entry of an order granting summary judgment dismissal of Seltzer's action.

Reversed and remanded.