

NOTICE
The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the discussion of the same.

Fourth Division
January 24, 2008

No. 1-06-3624

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CLYDE YOUNG,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 03 L 7703
)	
PRAIRIE MANAGEMENT & DEVELOPMENT, INC.,)	
an Illinois corporation, et al.,)	Honorable
)	Abishi C. Cunningham,
Defendants-Appellees ¹ .)	Judge Presiding.

O R D E R

The plaintiff, Clyde Young, appeals from an order of the trial court granting summary judgment in favor of defendants, Redevelopment Services Corporation (RSC) and 46th & Vincennes Limited Partnership (the Partnership). The Partnership owned the apartment building in which plaintiff lived, and RSC was responsible for maintenance of the building. Plaintiff filed a negligence action against defendants after he was shot in the building's hallway by a gunman who entered through the front door. On appeal, plaintiff contends that the trial court erred when it

¹Effective with his fourth amended complaint, plaintiff withdrew his claim against Prairie Management and proceeded with his case against Redevelopment Services Corp. and 46th & Vincennes Limited Partnership. Prairie Management was not a party to this case in the circuit court and is not a party in this appeal.

granted the defendants' motion for summary judgment because a genuine issue of material fact existed as to the defendants' duty to provide properly functioning locks on the outer door of the apartment building. We affirm.

The dispositive facts in this case are undisputed. The pleadings and depositions contained in the record establish that on November 3, 1999, plaintiff, then 13 years old, was standing in the hallway on the first floor of the apartment building at 4556 South Vincennes Avenue in Chicago where he lived with his mother. While plaintiff was talking with his friend, a gunman entered the apartment building through the front door and began shooting. Plaintiff was shot in his upper leg and the bullet traveled through his body, lodging in his liver, where it remains today.

In May 2005, plaintiff filed his fourth amended complaint against defendants alleging that he was shot and injured due to a defective front door or door lock which was an unreasonably dangerous condition that existed due to defendants' negligence. He claimed that the defective door lock was the dangerous condition that was the proximate cause of his injuries. Plaintiff further alleged that defendants owed him a duty to refrain from negligent conduct that would endanger his safety, and that defendants breached that duty when they failed to adequately maintain the exterior door or to provide the locks or security devices required by the City of Chicago Municipal Code.

Defendants moved for summary judgment arguing that they had no duty to protect their tenants from the unpredictable and unforeseen actions of a third-party tortfeasor. Defendants further argued that they did not engage in any voluntary undertaking to protect plaintiff from the criminal acts of a third party. In addition, defendants argued that there was no evidence that they had promised to maintain the door locks, but even if they had, a promise to maintain locks in working condition did not rise to a voluntary undertaking to protect tenants from criminal activity.

Attached to defendants' motion was plaintiff's deposition in which he testified that prior to the day he was shot, he never used his key to enter the building because the lock was broken. He further testified that RSC fixed the lock the morning after he was shot, and since then the lock worked and he had to use a key every time he entered the building.

In his response to defendants' motion, plaintiff argued that summary judgment was improper as defendants were liable for his injury because the broken lock was a dangerous condition on the premises. Plaintiff also argued that defendants had notice that trespassers were entering the building and engaging in criminal activity therein due to the broken door lock, and therefore, defendants owed him a duty to fix the defective lock to guard against the foreseeable criminal acts of third persons. Plaintiff claimed that due to defendants' breach of this duty, the gunman

entered the building and caused plaintiff's injury. Plaintiff asserted that at the very least, there was a question of fact as to whether or not the broken lock was the proximate cause of his injury.

Plaintiff further argued that defendants were negligent in repairing the lock, and due to their negligence, the gunman entered the building and shot plaintiff. Plaintiff noted that defendants' employee, Alfred Digs, testified in his deposition that management was aware that gang members were entering the building through the door with the broken lock and engaging in criminal activity therein. Digs further testified that gang members used knives to break the lock and enter the building. Consequently, plaintiff argued that there was a question of fact as to whether the door lock was negligently repaired or installed which allowed gang members to repeatedly enter the building, and that defendants could have installed a locking system that withstood such activity.

In addition, plaintiff argued that defendants had a duty to secure the building entrance with a deadbolt lock under the City of Chicago Municipal Code, and that there was a question of fact as to whether such locking system had been installed. Plaintiff noted that defendants' director of building operations, Stephanie Williams, testified in her deposition that it was a requirement of the Department of Housing and Urban Development (HUD) and defendants' policy to have locking exterior doors, and that it was

also defendants' policy to fix all broken doors and locks immediately. Plaintiff also argued that under the lease signed by his mother, defendants were responsible for maintaining the common areas of the building in a safe condition, and that he relied on defendants to secure the doors to prevent criminals from entering the building. Accordingly, plaintiff argued that defendants owed him a duty to properly secure the door based on HUD regulations, defendants' own policy, and the lease agreement. Plaintiff attached to his response the depositions from Digs and Williams and a copy of the apartment lease.

In their reply, defendants asserted that it was undisputed that plaintiff was shot by an unknown and unforeseen third-party assailant, and that he suffered injuries as a direct and proximate cause of the gunshot inflicted by that assailant. Defendants argued that there was no evidence that any other tenants were shot by an unknown assailant prior to the shooting of plaintiff, nor was there any evidence that the attack on plaintiff was foreseeable. Defendants further argued that plaintiff cited no caselaw to support his conclusion that the duty to provide a lock pursuant to the Chicago Municipal Code translated into a duty to protect tenants from unforeseen attacks by third-party tortfeasors. Defendants maintained that they had no duty to protect their tenants from the unpredictable and unforeseen criminal acts of a

third-party offender, and thus, their motion for summary judgment should be granted.

In a written order, the trial court found that plaintiff failed to establish any facts that imposed a duty on defendants to protect him from third-party criminal attacks. The court found that there was no special relationship between plaintiff and defendants, and that there was no evidence that defendants voluntarily undertook a duty to protect plaintiff or provide security measures. The court specifically found that defendants' policy to repair broken locks was not sufficient to establish that they voluntarily undertook a duty to install or provide security for plaintiff. Based on these findings, the trial court granted defendants' motion for summary judgment.

Plaintiff subsequently filed a motion to reconsider arguing that the trial court failed to address whether defendants had contractually assumed a duty to protect plaintiff when it agreed to provide security in the lease. Plaintiff further argued that Williams testified in her deposition that defendants' failure to properly maintain working security locks would violate their contractual agreement with HUD. In addition, plaintiff argued that there was new evidence provided in an attached affidavit from a new witness that there had been prior violent activity in the building where plaintiff was shot, which created a genuine issue of material fact regarding the foreseeability of the criminal attack. Attached

to plaintiff's motion was an affidavit from Latoya Dunn averring that, although she did not live in defendants' building, she frequently visited her aunt who lived there, and prior to the day plaintiff was shot, there had been several occasions of "violent activity" in the building. Dunn stated that police came to the building in response to violence approximately once a month.

In their response to plaintiff's motion to reconsider, defendants argued that Dunn's affidavit provided no new facts establishing that the shooting was foreseeable, and that her affidavit would have been available prior to the trial court's ruling on the motion for summary judgment. Defendants argued that because there had been no changes in the law, and the trial court did not err when it applied the existing law, plaintiff's motion to reconsider should be denied.

The trial court found that the contractual language in the lease did not give rise to a duty to protect, and that Dunn's affidavit was insufficient to establish that the violence in this case was foreseeable. Based on those findings, the trial court denied plaintiff's motion to reconsider.

The sole issue on appeal is whether or not defendants owed plaintiff a duty of care. Plaintiff contends that the trial court erred when it granted defendants' motion for summary judgment because there was a genuine issue of material fact as to whether or

not defendants had a duty to provide properly functioning locks on the outer door of the apartment building.

Summary judgment should be granted when the pleadings, depositions, admissions, and affidavits on file reveal that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2006); Bagent v. Blessing Care Corp., 224 Ill. 2d 154, 162 (2007). Summary judgment can aid in the expeditious disposition of a lawsuit, but it is a drastic measure and should be allowed only when the right of the moving party is clear and free from doubt. Bagent, 224 Ill. 2d at 163. In considering a summary judgment motion, the court has a duty to construe the evidence strictly against the movant and liberally in favor of the nonmoving party. Bagent, 224 Ill. 2d at 162. If plaintiff fails to establish any element of his claim, summary judgment for the defendant is appropriate. Bagent, 224 Ill. 2d at 163. Our review of a summary judgment ruling is *de novo*. Bagent, 224 Ill. 2d at 163.

Plaintiff first contends that defendants voluntarily undertook a duty to provide properly functioning locks on the outer door to the apartment building. Plaintiff argues that defendants retained access and control over the door locks, had a policy to check the locks daily and repair any broken locks immediately, had knowledge that the locks were continuously being broken, yet failed to fix the locks with due care which resulted in the injury to plaintiff.

Plaintiff further argues that defendants should have been aware of the risk of unauthorized entry and criminal attacks by third parties as a proximate result of the faulty door locks.

In a negligence action, plaintiff must allege facts that establish the existence of a duty that the defendants owed the plaintiff, that the duty was breached, and that plaintiff suffered an injury as a proximate result of defendants' breach of that duty. Vesey v. Chicago Housing Authority, 145 Ill. 2d 404, 411 (1991). Whether a duty existed because of the relationship between the parties requiring a legal obligation to be imposed on one for the benefit of the other parties is a question of law that is determined by the court. If the court finds that no duty exists, then summary judgment for defendants is proper. Vesey, 145 Ill. 2d at 411.

Generally, a landlord has no duty to protect its tenants from criminal attacks by third parties absent a special relationship between the parties. Rowe v. State Bank of Lombard, 125 Ill. 2d 203, 216 (1988). However, a landlord that voluntarily undertakes a legal duty to protect its tenants by providing security measures may be found liable if it negligently performs the undertaking and if the negligence is the proximate cause of the injury to the plaintiff. Rowe, 125 Ill. 2d at 217. Whether defendants voluntarily undertook a legal duty to protect plaintiff is a question of law that must be determined by the court. Bourgonje v.

Machev, 362 Ill. App. 3d 984, 995 (2005). This court has previously held that because door locks are commonplace items furnished by every landlord, a promise by the landlord to maintain the locks in working condition does not constitute a voluntary undertaking to protect its tenants from criminal attacks. N.W. v. Amalgamated Trust & Savings Bank, 196 Ill. App. 3d 1066, 1074 (1990).

Here, we find no evidence in the record that defendants voluntarily undertook a duty to protect plaintiff from criminal acts by third parties. Significantly, plaintiff does not allege that defendants undertook such a duty. Instead, he asserts that defendants voluntarily undertook a duty to provide properly functioning locks on the outer door to the apartment building, and argues that defendants should have been aware of the risk of criminal attacks as a proximate result of the faulty locks. The evidence in the record shows that defendants were aware that the door locks were being tampered with and broken by tenants as well as gang members, and in response to that problem, defendants made substantial efforts to check the locks regularly and repair any broken locks as quickly as possible. We find that the defendants' checking and repairing the broken locks does not constitute a voluntary undertaking to protect plaintiff from a criminal attack by an unknown third party.

Plaintiff next contends that, under the terms of the rental lease, defendants contractually assumed a duty to protect him from criminal acts of third parties by providing working locks on the exterior doors of the building. Plaintiff notes that the provisions in the lease provide that the landlord agrees to maintain common areas and facilities in a safe condition, maintain all equipment and appliances in a safe and working order, and make all necessary repairs with reasonable promptness. Based on these terms, plaintiff claims that defendants owed him a duty of care.

This court has previously held that a landlord's promise in a lease to provide a "safe condition" did not encompass safety from third-party criminal attacks. Shea v. Preservation Chicago, Inc., 206 Ill. App. 3d 657, 666 (1990). Under a "safe condition" provision, a landlord is obligated to maintain and repair the premises so that its tenants are not injured by a condition on the premises. Shea, 206 Ill. App. 3d at 666. Following Shea and giving the terms in the lease their plain and ordinary meaning, we find that the lease between defendants and plaintiff's mother did not obligate defendants to maintain the door locks in order to protect plaintiff from the criminal attack by the unknown gunman.

Finally, plaintiff contends that defendants owed him a duty to provide properly functioning door locks under the City of Chicago's Residential Landlord Tenant Ordinance (RLTO). Plaintiff argues that pursuant to section 5-12-070 of the RLTO, a landlord must

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maintain its property in accordance with the Chicago Municipal Code, which requires that every building entrance be secured by a door equipped with a "deadlocking latch." Chicago Municipal Code §13-164-040 (2006). Plaintiff then concludes, without supporting facts, that it is "clear" that the door to the apartment building did not meet these requirements.

Although the RLTO and the Municipal Code require that building entrance doors be "equipped" with a lock, plaintiff fails to cite an ordinance that imposes a duty on a landlord or building owner to protect its tenants from third-party criminal attacks. Accordingly, we hold that the defendants did not owe plaintiff a duty to protect him from third-party attacks.

For the foregoing reasons, we affirm the judgment of the circuit court of Cook County granting summary judgment in favor of defendants.

Affirmed.

NEVILLE, P.J., with CAMPBELL, J., and MURPHY, J., concurring.