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Yanku v. Walgreen Co., 224 A.3d 1130 (R.I. 2020)

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Property Law. *Yanku v. Walgreen Co.*, 224 A.3d 1130 (R.I. 2020). In Rhode Island, a commercial landlord owes a duty of care to their tenant's invitees only in three narrow circumstances: (1) where the landlord beaches a repair provision of the lease; (2) where the landlord is aware of a defect, but the tenant or guest is not; or (3) where the landlord voluntarily "assume[s] the duty to repair."[1] Where no genuine issue of material fact exists as to whether the landlord owed a duty of care to the tenant's invitees, and the plaintiff presented no evidence that the slip and fall resulted from unseen danger, a grant of summary judgment is proper. Further, the failure to obtain a transcript of the summary judgment hearing where no written decision was issued by the trial justice will be fatal to any appeal.

FACTS AND TRAVEL

On December 31, 2019, Esther Yanku, an eighty-three-year-old woman, sustained injuries after tripping "over a speed bump in the parking lot of a Walgreens Pharmacy" in Cranston.[2] The plaintiff filed suit against the property tenant, Walgreen Company and Walgreen Eastern Company, and also the property owners and landlords, Jean Farmanian-Ricci and Joan Frattarelli.[3] The plaintiff brought a "six-count complaint against the defendants, alleging two counts of negligence based on premises liability, one count of vicarious liability, one count of negligent training and supervision, one count of negligent hiring and retention, and one count of negligent failure to exercise ordinary care."[4]

The plaintiff alleged that she could not distinguish between the yellow parking space lines and the yellow lines on the speed bump,

1. Yanku v. Walgreen Co., 224 A.3d 1130, 1133 (R.I. 2020) (quoting Berard v. HCP, Inc., 64 A.3d 1215, 1219 (R.I. 2013)).
2. *Id.* at 1131.
3. *Id.*
4. *Id*. at 1132.

even though she had been there on numerous prior occasions.[5] The plaintiff admitted that in her previous trips she "must have" discerned the speed bump.[6] The defendants filed a motion for summary judgment, which was granted on October 20, 2018, along with a final judgment.[7] The lower court determined that the plaintiff did not offer any evidence that the speed bump constituted a "hazardous condition . . . on the premises."[8]

On November 1, 2019, the plaintiff filed a notice of appeal.[9] The plaintiff alleged that the speed bump "is a *per se* inherently dangerous condition and can only constitute an open and obvious danger if it is properly designed, maintained, and marked with warning signs."[10] The plaintiff argued that the speed bump was "negligently constructed and maintained" because the paint color delineating the speed bump was the same as the paint color delineating the parking spots.[11] She additionally alleged poor lighting in the parking lot.[12] Lastly, the plaintiff insisted that whether the speed bump constituted a dangerous condition was a material fact of the issue "that should have been resolved by a jury rather than a trial justice."[13]

On appeal, the defendants argue that the lower court did not err because the plaintiff did not offer any evidence that the speed bump was an "unreasonable danger or that it was negligently constructed and maintained."[14] Additionally, the landlord defendants argued that their status as a commercial landlord precludes them from liability or duty of care to their tenant's invitees absent narrow circumstances.[15]

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5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.* at 1133.
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*

ANALYSIS AND HOLDING

Upon review the Rhode Island Supreme Court sought to determine whether the speed bump was an open and obvious danger or a dangerous condition on the premises.[16] Conducting a *de novo* review of the grant of summary judgment, the Court had to determine if there was a genuine issue of material fact.[17] Classifying the granting of summary judgment as "an extreme remedy," the Court acknowledged that summary judgment *is* appropriate absent genuine dispute.[18]

Further, the Court determined that the plaintiff did not prove that the commercial landlord exceptions applied.[19] The three limited circumstances where a commercial landlord maintains liability to their tenant's invitees are where the "injury results from the landlord's breach of covenant to repair in the lease, or from a latent defect known to the landlord but not known to the tenant or guest, or because the landlord subsequently has assumed the duty to repair."[20] Walgreens' lease with the landlord specifically left the parking lot maintenance to Walgreens.[21] The Court also found that the lease contract specified that the landlord is only responsible for the repair and maintenance of the "exterior and structural portions of the building and for the repairs caused either by fault of the landlord 'or by fire, casualty or the elements, or by dry rot or termites.'"[22]

Next, the Court determined that for the speed bump to constitute a latent defect the plaintiff must prove that the landlord knew or "should have known of an unsafe condition on their premises."[23] In the absence of evidence that the landlord was responsible for the parking lot, the trial court's grant of summary judgment for the defendant was correct.[24] Further, the plaintiff

16. *Id.*
17. *Id.* at 1132–33.
18. *Id.* at 1133 (quoting Ballard v. SVF Found., 181 A.3d 27, 34 (R.I. 2018)).
19. *Id.*
20. *Id.* (quoting Berard v. HCP, Inc., 64 A.3d 1215, 1219 (R.I. 2013)).
21. *Id.* at 1133–34.
22. *Id.* at 1134.
23. *Id.* (quoting Bromaghim v. Furney, 808 A.2d 615, 617 (R.I. 2002)).
24. *Id.*

was also unable to provide any evidence establishing that the injury resulted from "unseen danger."[25] To establish liability for a slip-and-fall case, the plaintiff must produce "evidence of a dangerous condition" of which the landlord "was aware or should have been aware," and that the dangerous "condition existed for a long enough [time] that the owner of the premises should have taken steps to correct the condition."[26]

Lastly, the Court pointed out that the plaintiff failed to produce the transcript from the summary judgment hearing as required by the Supreme Court Rules of Appellate Procedure.[27] The Court held that the failure to order the hearing transcript was "fatal" to the plaintiff's appeal "because it is impossible to conduct a meaningful review of [the] case" where the trial justice issued no written decision.[28] The Court found that the plaintiff's claim was based on conjecture and speculation due to lack of evidence establishing the speed bump as a dangerous condition, and, as such, the grant of summary judgment was proper.[29]

COMMENTARY

The Rhode Island Supreme Court firmly acknowledged that to survive a summary judgment, a party must establish a genuine issue as to a material fact. Merely alleging an accident on a premise will not establish premises liability. Where a plaintiff offers no evidence that establishes a genuine issue of material fact, summary judgment is appropriate. The Court clarified that to establish premises liability in a slip-and-fall case, the plaintiff must prove that the injury resulted from "an unseen danger."[30]

The Court also reiterated the limited scenarios where a commercial landlord owes a duty to their tenant's invitees. The Court made clear that if one of these limited scenarios does not exist, a commercial landlord would not be liable to the tenant's invitees. The holding reiterates that under Rhode Island case law, a commercial landlord does not automatically owe a duty of care to

25. *Id.* (quoting Voccola v. Stop & Shop Supermarket Co., 209 A.3d 558, 561 (R.I. 2019)).
26. *Id.* (quoting *Voccola*, 209 A.3d at 560–61).
27. *Id.*; *see also* R.I. SUP. CT. R. APP. P. 10(b)(1).
28. *Id.* at 1135.
29. *Id.*
30. *Id.* at 1133 (quoting *Voccola*, 209 A.3d at 561).

its tenant's invitees. Rather, according to the Court's holding in this case, where a plaintiff alleges a latent defect, the plaintiff must show that the landlord knew or should have known of an "unseen danger" on the property.[31] The Court's analysis indicates that the facts in this case clearly did not call under one of the limited scenarios where a commercial landlord would be liable for the injuries of a tenant's invitee.

In addition, the Court explained that its task was made more difficult in this particular case because of the plaintiff's failure to order the transcript from the hearing on the motions for summary judgment. The Court pointed out that it has previously stated that "the deliberate decision to prosecute an appeal without providing the court with a transcript of the trial court proceedings is risky business."[32] In its holding, the Court reiterated that the failure to provide the transcript of the summary judgment hearing, absent a written decision by the lower court, is fatal to an appeal. The Court noted that Rhode Island case law makes clear that "unless the appeal is limited to a challenge to rulings of law that appear sufficiently on the record and the party accepts the findings of the trial justice as correct, the appeal must fail."[33] The Court explained that where the plaintiff fails to order a transcript, it is impossible for the court to "conduct a meaningful review of the case."[34] The Court indicated that without the transcript its hands were essentially tied.

CONCLUSION

The Rhode Island Supreme Court held that the lower court did not err in granting summary judgment because there was no genuine dispute as to the material facts of the case. The Court held that the commercial landlord did not possess a duty of care to its

31. *Id.*
32. *Id.* at 1134–35.
33. *Id.* at 1135 (quoting Mills v. C.H.I.L.D., Inc., 837 A.2d 714, 719 (R.I. 2003)).
34. *Id.*

tenant's invitees absent an exception. Further, the plaintiff's failure to obtain the transcript of the summary judgment hearing was fatal to the appeal.

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