SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3162-15T3

JAMES ENGLE,

Plaintiff-Appellant,

v.

PARADISE PAVERS POND LANDSCAPING, LLC, MELISSA LARKIN and MICHAEL LARKIN,

Defendants-Respondents.

Submitted April 4, 2017 – Decided April 18, 2017

Before Judges Fisher and Ostrer.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Docket No. L-381-15.

Legome & Associates, LLC, attorneys for appellant (Vincent A. Campo, on the brief).

Kent & McBride, P.C., attorneys for respondent Paradise Pavers Pond Landscaping, LLC (Thomas J. Carney, on the brief).

Law Offices of Raymond F. Danielewicz, LLC, attorneys for respondents Melissa and Michael Larkin (Mr. Danielewicz, on the brief).

PER CURIAM

Plaintiff filed this action against defendants Michael and Melissa Larkin, and defendant Paradise Pavers Pond Landscaping, LLC, which is solely owned by Michael. Plaintiff alleged he was injured as a result of tripping on a negligently maintained sidewalk abutting property owned by the Larkins. Because the undisputed facts demonstrated that the abutting property was a residence — even though some indicia revealed Paradise Pavers' use of the property — the Larkins are entitled to the common law immunity provided by Stewart v. 104 Wallace St., Inc., 87 N.J. 146, 157 (1981). For the same reason, Paradise Pavers was entitled to dismissal.

The essential facts are undisputed. The Larkins own and reside at a home in Delran that abuts a sidewalk upon which plaintiff claims to have been injured. It is also undisputed that defendant Michael Larkin operated a business and that, according to his deposition testimony, he "randomly" placed a sign on the property's lawn "to try to generate business." Michael also routinely parked one of his business's trucks in the residence's driveway because, even though the business owns other vehicles, which are kept elsewhere when not in use, he used his business's truck to go to and from wherever his work required his presence. Michael also had in the home a telephone dedicated to customers who may call the business. And the business's website provided the home's address

as its address; Michael testified at his deposition, however, that the business had no particular business location[1] and the inclusion of his home address as the business address rendered it easier for him to receive his business's mail. He rarely met customers at his home; he instead mostly would meet customers at their homes.

The suit against the Larkins and Paradise Pavers was dismissed by separate motions. In ruling on the Larkins' motion, which was filed first, the judge determined that the undisputed facts regarding Paradise Pavers' incidental use of their residence, when compared to the circumstances in Wasserman v. W.R. Grace & Co., 281 N.J. Super. 34 (App. Div. 1995), warranted dismissal. In Wasserman, the plaintiff fell on a sidewalk abutting a residence and sued both the homeowner and his employer; the plaintiff's theory of recovery against the employer was based on the employee-homeowner's use of a room in the house as a business office. Id. at 36-37. We affirmed the grant of summary judgment in the employer's favor because of the limited degree to which the entire residence was put for the employer's benefit. Id. at 39.

The facts upon which the claim here rested demonstrates the Larkins' home was used for commercial purposes to an even lesser degree than in Wasserman. Michael merely parked his commercial

[1] Michael testified that he leased a yard where he kept other company vehicles and other materials.

vehicle in the driveway – because that is the vehicle with which he traveled to job sites and returned home – and, on occasion, he placed a sign advertising his business on the residence's lawn. Any other commercial use of the home was very limited and nothing like the circumstances in Wasserman that were also found unavailing. Although similar cases may generate difficulties for courts in ascertaining whether immunity will attach to a particular hybrid use of property, see Luchejko v. City of Hoboken, 207 N.J. 191, 206 & n.5 (2011), this case poses no difficulties. The property was predominantly – even if not exclusively – used as a residence.

The action against Paradise Pavers was dismissed by way of a subsequent motion. The judge determined the earlier grant of the Larkins' motion was conclusive on the same pivotal question that governed Paradise Pavers' alleged responsibility. We agree.

Affirmed.