SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2076-16T3

JUAN G. CALDAS,

Plaintiff-Appellant,

v.

JANARD MANAGEMENT SERVICES, INC.,

Defendant-Respondent/
Third-Party Plaintiff,

v.

BLUE KNIGHT SNOW PLOWING, LLC,

Third-Party Defendant.

Submitted March 21, 2018 – Decided April 26, 2018

Before Judges Alvarez and Nugent.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-1322-15.

Law Office of Paul Grosso, attorneys for appellant (Clark M. Sarkisian, on the brief).

Mintzer Sarowitz Zeris Ledva & Meyers, LLP, attorneys for respondent (Jeffrey S. Simons, on the brief).

PER CURIAM

Plaintiff, Juan G. Caldas, was injured at work when he slipped on ice on property his employer leased from defendant, Janard Management Services, Inc. Janard successfully moved for summary judgment. Plaintiff appealed. Because a landlord is not liable for injuries suffered by a commercial tenant's employee due to lack of maintenance of the leased premises when the lease places responsibility for such maintenance solely upon the tenant — which the lease did here — we affirm.

In February 2015, plaintiff filed a complaint against Janard. Janard answered and filed a third-party complaint against Blue Knight Snow Plowing, LLC. After the parties completed discovery, plaintiff and Janard filed cross-motions for summary judgment. The trial court denied plaintiff's motion and granted Janard's cross-motion.

The motion record contains these undisputed facts. When plaintiff fell, he worked for a company that operated its business on premises leased from Janard.[1] The lease was a fifteen-year triple net lease.

The lease required plaintiff's employer, as tenant, to "take good care of the premises and . . . at the Tenant's own cost and

[1] Plaintiff's employer was Rudox Engine & Eq. Co. when it signed the lease. It had merged with Ener-G Rudox before plaintiff fell.

expense, make all repairs . . . and maintain the entire premises, without limitation, including, but not limited to . . . driveway and parking areas." The lease stated:

> Landlord shall not be responsible for . . . injury to persons, occurring in or about the demised premises, by reason of any existing or future condition, defect, matter or thing in said demised premises . . . or for the acts, omissions or negligence of other persons or Tenants in and about the said property.

Plaintiff's employer agreed to indemnify and hold Janard harmless for liability for property damage and injury claims. The parties acknowledged "the Landlord shall not be liable for any damage or injury to person or property caused by or resulting from steam, electricity, gas, water, rain, ice or snow."

Plaintiff slipped and fell on the leased premises. He declared in the first paragraph of the statement of material facts he submitted in support of his summary judgment motion, "Plaintiff, Juan Caldas . . . slipped and fell on ice, around a Key Box on [his employer's] premises on December 16, 2013." Plaintiff had driven a truck through the gate with the key box but returned to retrieve his cellular phone and wallet. Almost immediately after turning his key in the gate's key box, he slipped and fell.

Janard and plaintiff's employer were once owned by members of the same family. The father and mother owned Janard, and the father, mother, and their three children owned plaintiff's

employer before the merger. After the merger, the father, mother, three children, and the other company to the merger held ownership interests in the company that employed plaintiff. When Janard and plaintiff's employer executed the fifteen-year lease – before the merger – the father signed on behalf of plaintiff's employer and the mother signed on behalf of Janard.

In 2013, the year plaintiff fell, the father was in charge of engineering at plaintiff's employer. The mother also worked at plaintiff's employer as a marketing manager and had an office on the premises. In her role as an owner of Janard, she collected rent from plaintiff's employer. The father was a boss at the company that employed plaintiff. The father had an office on the premises and spent long hours there most days. During each working day, he would converse with others in senior administrative and executive positions.

Plaintiff's employer contracted with third-party defendant, Blue Knight Snow Plowing, LLC, to remove snow and ice. Blue Knight's owner confirmed it performed snow and ice removal for plaintiff's employer. The owner never heard of Janard.

Based on the foregoing facts, the trial court denied plaintiff summary judgment and granted Janard summary judgment. In a January 11, 2017 letter opinion supplementing its January 6, 2017 orders, the court found controlling our decision in Geringer v. Hartz

Mountain Dev. Corp., 388 N.J. Super. 392 (App. Div. 2006). There, we held, "'there is no landlord liability' for personal injuries suffered by a commercial tenant's employee on the leased premises 'due to a lack of proper maintenance or repair, when the lease unquestionably places responsibility for such maintenance or repair solely upon the tenant.'" Id. at 401 (quoting McBride v. Port Auth. of New York and New Jersey, 295 N.J. Super. 521, 522 (App. Div. 1996)).

We affirm, substantially for the reasons expressed by the trial court in its supplemental opinion. We reject plaintiff's argument that Hopkins v. Fox & Lazo Realtors, 132 N.J. 426 (1993), compels a different result. In that case, our Supreme Court explained the factors to be considered when determining whether a duty is owed — and if so, to what extent — in a premises liability action. The factors include the relationship of the parties, the nature of the attendant risk, defendant's opportunity and ability to exercise reasonable care, and the public interest in the proposed solution. Id. at 439. In Geringer, we noted, "in light of the undisputed nature of the record germane to the maintenance and repair of the [alleged dangerous condition], such a result comports with the factors identified in Hopkins." Geringer, 388 N.J. Super. at 401. We reach the same conclusion here.

We also reject — as did the trial court — plaintiff's arguments suggesting the applicability of cases concerning a commercial landlord's duty to maintain public sidewalks abutting its premises. This case did not involve a public sidewalk. To the contrary, plaintiff acknowledged his accident occurred on the leased premises. Nothing in the record suggests members of the public ever entered upon the employer's premises at the location where plaintiff fell.

Lastly, we reject plaintiff's argument that Janard should be charged with a non-delegable duty of maintenance because of the dual ownership and employment of Janard's owners. Imposing liability under such circumstances would disregard the companies' status as separate and distinct legal entities and effectively nullify the exclusivity of the maintenance and repair obligations in the lease, thereby diminishing the value of the consideration exchanged for plaintiff's employer's exclusive possession of the premises.

Plaintiff's remaining arguments are without sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E).

Affirmed.