SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0505-21

RICHARD OETTING,

Plaintiff-Appellant,

v.

HAGEMAN ROOFING and COUNTY LINE ELECTRIC, CORP.,

Defendants,

and

SCHIFF FOODS PRODUCTS, CO., INC., 994 RIVERVIEW REALTY, LLC, and GREEN POWER DEVELOPERS, LLC,

Defendants-Respondents.

Submitted October 24, 2022 – Decided December 1, 2022

Before Judges Whipple and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-6517-18.

Sheffet & Dvorin, PC, attorneys for appellant (Ethan Jesse Sheffet, on the brief).

McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys for respondents Schiff Food Products Co., Inc., and 994 Riverview Realty, LLC (Edward J. DePascale, of counsel and on the brief; Michael D. Celentano, on the brief).

Haworth Barber & Gerstman, LLC, attorneys for respondent Green Power Developers, LLC (John J. Megjugorac, on the brief).

PER CURIAM

Plaintiff Richard Oetting appeals from a September 3, 2021 order granting summary judgment in favor of defendants 994 Riverview Realty, LLC (Riverview); Schiff Foods Products Co., Inc. (Schiff); and Green Power Developers, LLC (Green Power). We affirm.

Riverview owns a building in Totowa, which it leases to Schiff, a spice manufacturer. In 2016, Riverview and Schiff hired defendant Hageman Roofing (Hageman) to replace the roof prior to a subsequent installation of Green Power's solar panels. Testimony established that Schiff hired Hageman directly, though Green Power was listed on the contract as a general contractor. Several witnesses, including those for Hageman, testified that this was a typographical error.

The roof measured about 147,000 square feet and contained forty skylights. These skylights had a domed style which protruded significantly from the surface of the roof. They were unguarded.

Plaintiff was employed by Hageman as a roofer. On the morning of September 13, 2016, plaintiff was tasked with removing portions of the old roof. To that end, he began ripping and tearing a piece of old roofing material, which suddenly gave way. Plaintiff lost his balance and fell backwards, onto a skylight. It cracked and he fell through. He landed fifteen feet below and was seriously injured.

Plaintiff sued on a negligence theory. He claimed Schiff and Riverview were responsible for his injuries, as the skylights were a hazardous condition of the property, and he was their business invitee. Plaintiff also asserted a claim against Green Power, arguing that the solar company served as the general contractor for the job and was therefore liable.

Following discovery, Schiff, Riverview, and Green Power moved for summary judgment on the basis that they owed no duty of care to plaintiff. Plaintiff cross-filed his own motion for summary judgment on the issue in opposition.

After oral argument, on September 3, 2021, the motion judge entered an order granting defendants' motions and dismissing plaintiff's cross-motion with prejudice. In doing so, the court noted the skylights were not dangerous in and of themselves, and only became hazardous when workers were present on the roof. The accident, therefore, would not have happened if plaintiff had not lost his balance. Additionally, Riverview and Schiff were entitled to rely on the skill of Hageman in performing the contracted roofing work and "had nothing to do with the way Hageman went about its business to replace the roof." They owed no duty.

Similarly, the motion judge found that Green Power owed no duty because it was a separately engaged independent contractor, which did not control the "means, manner, and method" of Hageman's work.

We review summary judgment decisions on a de novo basis. Conley v. Guerrero, 228 N.J. 339, 346 (2017). Summary judgment is appropriate where "there is no genuine issue of material fact and 'the moving party is entitled to a judgment or order as a matter of law.'" Ibid. (quoting Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016)). "An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate

inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." R. 4:46-2(c). Accordingly, we defer "to the supported factual findings of the trial court, but review[] de novo the [trial] court's application of any legal rules to such factual findings." State v. Pierre, 223 N.J. 560, 577 (2015).

In a negligence case, a plaintiff must establish that the defendant breached a duty owed to the plaintiff, and that the breach caused injury. Townsend v. Pierre, 221 N.J. 36, 52 (2015).

Whether defendant owed plaintiff a duty – and if so, the scope of that duty – are questions of law. Carvalho v. Toll Bros. & Devs., 143 N.J. 565, 572 (1996). In determining whether a duty existed, we consider "several factors – 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 v. Fox & Lazo Realtors, 132 N.J. 426, 439 (1993).

"As a result of case law applying these core concepts, a landowner generally has a duty to maintain the safe condition of its property for the protection of persons who lawfully enter the premises." Peguero v. Tau Kappa Epsilon Loc. Chapter, 439 N.J. Super. 77, 88 (App. Div. 2015). Simultaneously, however, an employer who hires an independent contractor is generally not

liable for negligent acts of the contractor occurring in the performance of the contract. Muhammad v. N.J. Transit, 176 N.J. 185, 197 (2003).

Here, it is undisputed the plaintiff was injured because he lost his balance while performing roofing work next to the skylight. While it is true that skylights generally pose some danger to those on the roof, plaintiff was only exposed to said danger due to his involvement with the contracting project. He would not have been exposed to the danger at all if he was not involved in performing the work, therefore, premises liability alone is insufficient to establish a duty. See Hopkins, 132 N.J. at 439.

Additionally, neither Riverview, Schiff, nor Green Power had any control over Hageman's roofing work, and Hageman was not supervised by defendants in performing that work. The record also indicates that Hageman was responsible for its materials and the project's direction, and specifically conceded that it was responsible for employee safety, training, and supervision. Defendants are not liable for the negligence of their independent contractors under such circumstances. Muhammad, 176 N.J. at 197.

Finally, the record demonstrates that Green Power was unrelated to the contract beyond the initial stages, and that the company did not serve as a general contractor overseeing Hageman.

The facts do not offer support for the contention that Riverview, Schiff, or Green Power owed plaintiff a duty. Summary judgment is appropriate.

We are satisfied the remaining arguments raised on appeal lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION