SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0690-16T4

BEN JIMENEZ,

Plaintiff-Appellant,

v.

STEPHEN POWELL, CONCETTA POWELL, and SMP INC.,

Defendants-Respondents,

and

ATLANTIC FREIGHT SYSTEMS, INC.,

Defendant.

Argued January 24, 2018 – Decided February 20, 2018

Before Judges Manahan and Suter.

On appeal from Superior Court of New Jersey, Law Division, Warren County, Docket No. L-0168-12.

Lisa A. Sanzalone argued the cause for appellant (Kessler, Digiovanni & Jesuele, LLP, attorneys; Lisa A. Sanzalone, on the briefs).

Patrick M. Sages argued the cause for respondents (Hack Piro, PA, attorneys; Patrick M. Sages, on the brief).

PER CURIAM

Plaintiff Ben Jimenez appeals from an order granting summary judgment in favor of defendants Stephen and Concetta Powell (the Powells). As we find that the trial judge correctly held that the Powells were not liable for plaintiff's injuries incurred while working for a tenant on the leased property, we affirm.

The Powells own commercial property located in Phillipsburg, New Jersey. Pursuant to a written lease agreement (agreement) dated May 1, 2000, the Powells, as individuals, leased the entire premises located in Phillipsburg to SMP Inc., a trucking company engaged in the transportation of freight by truck, for a term of twenty years. The property was to be used as a transportation and trucking terminal and for offices, parking, storage, and maintenance facilities. The agreement specifically provides under the paragraph entitled "Care of Property" as follows:

> The [t]enant has examined the [p]roperty, including all facilities, furniture and appliances, and is satisfied with [its] present condition. The [t]enant agrees to maintain the property in as good condition as it is at the start of the [l]ease except for ordinary wear and tear. The [t]enant must pay for all repairs, replacements and damages caused by the act or neglect of the [t]enant or the [t]enant's visitors . . . Tenant agrees to and shall pay for all utilities and maintenance costs.

The agreement was in effect on the date of plaintiff's injury.

As the landlord, the Powells did not retain any control over the property after signing the agreement. Stephen Powell signed the document as President of SMP, whereupon the corporate entity SMP assumed exclusive possession and control over the entire premises, and responsibility for "all utilities and maintenance costs."

Atlantic Freight Systems, Inc. (AFS) is a New Jersey corporation having its principal place of business at the same address as SMP. AFS is a labor leasing company of motor carrier personnel for hire. Pursuant to a contract, AFS provides tractor trailer drivers to SMP, and SMP owns the vehicles operated by AFS's drivers.

At the time of his injury, plaintiff was employed as a truck driver by AFS. Plaintiff alleges that he slipped and fell in the company yard during the course of his employment. The Powells moved for summary judgment and after oral argument, Judge Thomas C. Miller granted the motion, finding that defendants had no liability for injuries sustained by plaintiff because they individually relinquished all control and responsibility for the property to SMP under the terms of the lease. This appeal followed.

We review a grant of summary judgement under the same standard as the trial court. Rowe v. Mazel Thirty, LLC, 209 N.J. 35, 41

(2012). Summary judgment is proper where there is no genuine issue of material fact when the evidence is viewed in the light most favorable to the non-moving party, and the moving party is entitled to prevail as a matter of law. Id. at 38, 41; R. 4:46-2(c).

On appeal, plaintiff cites Monaco v. Hartz Mountain Corp., 178 N.J. 401 (2004), and contends the judge erred by relying upon our decisions in Geringer v. Hartz Mountain Development Corp., 388 N.J. Super. 392, 400 (App. Div. 2006) and McBride v. Port Authority of New York & New Jersey, 295 N.J. Super. 521, 526-27 (App. Div. 1996), in granting summary judgment to the Powells. We disagree.

In Monaco, the Court stated that a commercial landlord owes a duty to its invitees to:

> exercise reasonable care for an invitee's safety. That includes making reasonable inspections of its property and taking such steps as are necessary to correct or give warning of hazardous conditions or defects actually known to the landowner. The landowner is liable to an invitee for failing to correct or warn of defects that, by the exercise of reasonable care, should have been discovered.
>
> [Monaco, 178 N.J. at 414-15 (citing Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 429 (1993)).]

A commercial landlord's liability may extend "to cases in which the landowner had no control over the dangerous condition

and the condition was not located on its property." Id. at 415. Indeed, "neither ownership nor control is the sole determinant of commercial landlord liability when obvious danger to an invitee is implicated." Id. at 417. Instead, "whether [a commercial landlord] owes a duty of reasonable care toward another [individual] turns on whether the imposition of such a duty satisfies an abiding sense of basic fairness under all of the circumstances in light of considerations of public policy." Id. at 418 (quoting Hopkins, 132 N.J. at 439).

In Monaco, a traffic sign situated on the abutting sidewalk of the property of a commercial landlord became dislodged and the landowner's invitee was injured. Id. at 404. We held that the landlord did not have a legal duty to the invitee because the municipality owned and installed the traffic sign. Id. at 411. The Supreme Court found, however, that the landlord owed a duty to the invitee to maintain safe premises, "including areas of ingress and egress and to inspect and give warning of a dangerous condition." Monaco, 178 N.J. at 413.

The Monaco Court noted that the landlord had leased the premises to the municipal board of education, which employed the plaintiff. Ibid. The plaintiff was injured on the landlord's property, when the sign flew out of a sidewalk that the landlord had installed and maintained. Id. at 413-14. The sign had been

installed to advance the interests of the landlord and its tenants. Id. at 414.

The Court also noted that under the municipality's ordinance, the sidewalk where it was placed was the landlord's responsibility. Ibid. The plaintiff's expert opined that "a minimally competent inspection of the area" would have indicated that the sidewalk at the base of the sign was cracked. Ibid.

Monaco does not, however, address the precise issue presented here, which is whether a commercial landlord has a duty of care to invitees of its tenant, when the lease agreement between the landlord and tenant places responsibility for ordinary maintenance and repair of the premises upon the tenant. Here, as the judge recognized, that issue was specifically addressed in Geringer and McBride.

In Geringer, we held that "'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.'" Geringer, 388 N.J. Super. at 401 (quoting McBride, 295 N.J. Super. at 522).

Traditionally, a landlord is not responsible for the maintenance of leased premises; the tenant is liable for the condition of the premises. McBride, 295 N.J. Super. at 525.

However, in McBride we recognized that two exceptions to the general rule had developed, which if met, extended a landlord's duty of care to third persons injured on the leased premises. Ibid. Those exceptions pertain when: "(1) a landlord is responsible to use reasonable care with regard to portions of the leased premises which are 'not demised and remain in the landlord's control[,]'" and "(2) a landlord's covenant to repair gives rise to a duty to the tenant . . . ." Ibid. (quoting Michaels v. Brookchester, Inc., 26 N.J. 379, 383-85 (1958)).

The lease in McBride provided that the tenant "is and shall be in exclusive control and possession of the premises and the [landlord] shall not in any event be liable for any injury or damage to any property or to any person happening on or about the premises . . . ." Id. at 524. It also required the tenant to make all repairs of the premises. Ibid.

We concluded in McBride that neither of the delineated exceptions that would extend liability to the landlord were met. See id. at 526-27. The lease clearly granted the tenant exclusive control and possession of the leased premises and the landlord had no obligation to perform repairs. McBride, 295 N.J. Super. at 526-27. Therefore, the landlord had no liability for personal injuries suffered by 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 522; see also Geringer, 388 N.J. Super. at 394.

We reject plaintiff's argument here that McBride is inapposite. The lease clearly delegated the responsibility for the maintenance and repairs of the property to the tenant. The clause is specific as to the tenant's obligation to maintain and be responsible for the entire building. The judge correctly found that the Powells as the landlord and the Powells as the shareholder of the employer were separate legal entities.

We are satisfied that the substantial credible evidence in the record supports Judge Miller's determination that the lease was unambiguous, and therefore summary judgment was appropriate under McBride.

Affirmed.