SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3562-21

RONNY BESHAY,

Plaintiff-Appellant,

v.

DEEDEE'S APARTMENTS, LLC, a New Jersey Limited Liability Company, FOREST CITY RESIDENTIAL MANAGEMENT, LLC, an Ohio Limited Liability Company, GS FC JERSEY CITY PEP I URBAN RENEWAL, LLC, a New Jersey Limited Liability Company, NIBBIN THOMAS, and RACHEL HECHAVARRIA,

Defendants-Respondents.

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Argued October 23, 2023 – Decided November 6, 2023

Before Judges Mawla, Marczyk, and Vinci.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-5033-18.

Joshua M. Lurie argued the cause for appellant (Lurie Strupinsky, LLP, attorneys; Joshua M. Lurie, on the briefs).

Matthew G. Minor argued the cause for respondent Deedee's Apartments, LLC (Piasecki & Whitelaw, LLC, attorneys; Matthew G. Minor, on the brief).

PER CURIAM

Plaintiff Ronny Beshay filed a sixteen-count complaint in the Law Division against his landlord and its agents, who are not a part of this appeal,[1] and defendant Deedee's Apartments, LLC, a company which offered short-term rentals of apartments it controlled in the landlord's building. Plaintiff appeals from: a May 8, 2020 order granting partial summary judgment on counts alleging slander and libel; an August 31, 2020 order granting partial summary judgment of a count alleging conspiracy and striking defendant's jury demand; a September 3, 2021 order denying relief from the August order; an October 12, 2021 order granting partial summary judgment on a count alleging negligence and vicarious liability and one seeking injunctive relief; and a June 14, 2022 order dismissing counts for private nuisance and punitive damages following a bench trial. We affirm in all respects, except we reverse the portion of the

[1] Plaintiff settled his claims against the landlord.

August and September orders regarding the jury waiver, and the June order adjudicating the two remaining counts because they must be presented to a jury.

Plaintiff leased a luxury apartment in Jersey City from March 2018 to March 2020. The building had various amenities, including a pool, gym, billiard room, and views of the Manhattan skyline. Defendant leased the apartments located on either side of plaintiff's unit. At the time, Jersey City's ordinance permitted short-term rentals in residential buildings. The ordinance was later amended to phase them out. Pursuant to the new ordinance, defendant was permitted to continue its short-term rental business for the remaining duration of its lease with the landlord.

Soon after plaintiff moved into the building, he claimed he began to experience difficulties with defendant, its employees, and its guests. Plaintiff testified that in May 2018, defendant began moving into its units, obstructed the hallway, and made noise. Plaintiff spoke to the landlord's assistant property manager, who assured him defendant would be "held within the standards as any other resident . . . ."

Plaintiff testified the walls between the units were "very thin," and he could hear "people's voices almost as if they were in the room with [him]." He "could hear conversations in the hallway through a closed door . . . and . . . hear

. . . voices traveling very easily through . . . the gaps in the walls and in the doorways . . . ."

In July 2018, plaintiff called the front desk to complain about noise, but no one responded. As he made his way to the front desk to make the complaint in person, he saw the door to one of defendant's apartments was open and he heard music in the hallway. Plaintiff knocked on the door and alleged a man emerged and assaulted him. Defendant's employee removed the man from the building. The building manager informed plaintiff the matter was between plaintiff and defendant.

Plaintiff complained about the noise of vacuuming emanating from defendant's units, but building management informed him that was ordinary noise. Plaintiff claimed he continued to make complaints through October 2018, but the landlord did not help.

Plaintiff complained about the smell of cigarette smoke during President's Day weekend in 2019, but building management could not determine its origin. During Memorial Day weekend 2019, plaintiff complained to the landlord about noise emanating from defendant's apartments. He was advised to make a formal complaint through the building's internal email system. Defendant's guests left the Tuesday following Memorial Day, but plaintiff testified the noise ruined his

holiday. In September 2019, plaintiff reported the sound of an argument emanating from one of defendant's units, but the front desk did not address it. During the last week of December 2019 and the first week of January 2020, plaintiff testified about problematic guests in both of defendant's units, but claimed he received no help from the landlord.

In February 2020, police were called because an occupant of one of defendant's units experienced a mental health episode during the night causing plaintiff to lose sleep. He reported several occasions in which the occupants of defendant's units mistakenly knocked on his door thinking it was their apartment.

Plaintiff presented video evidence of the noise and his interactions with the landlord's staff and defendant's housekeeping crews. He claimed the housekeepers made noise by vacuuming and moving furniture, causing the walls to vibrate. He alleged they used noxious chemicals, and the odor entered his unit. The housekeeping continuously disturbed him due to the constant turnover of renters in defendant's units. He asserted defendant's employee once saw him in front of the building, exited her car, yelled at plaintiff, and chased and bumped him.

Plaintiff testified the building was crowded due to defendant's renters and staff and he could not enjoy either the apartment or the amenities, including the pool. He adduced testimony from a fellow resident who repeated his claims.

The building manager testified there were 421 units, and occupants were permitted to have guests. There were also commercial tenants, such as defendant, who were permitted to operate pursuant to a lease agreement with the landlord. He explained the landlord's efforts to address plaintiff's complaints. He also testified about defendant's operations in the building. Typically, defendant's representative would wait for guests to arrive, and in other cases would arrive shortly thereafter and escort them to the apartment being rented. From 2018 to 2020, the landlord did not receive any complaints about defendant's operations, other than by plaintiff.

Defendant's employee testified her job duties included managing the housekeeping team. She explained the housekeepers would clean defendant's units in the morning, she would then inspect the units, check-in guests, and explain the house and building rules to guests before departing. Check-in time was 3:00 p.m. and checkout was 10:00 a.m. Housekeeping would arrive about fifteen minutes after checkout and take approximately three hours to clean an

apartment. Other than plaintiff's complaints, there was never a complaint about the housekeeping staff.

The house rules were if the apartment had been booked through Airbnb, there would be a 10:00 p.m. "quiet time," which meant no parties, gatherings, smoking, marijuana smoking, or excessive drinking. She verified and kept a record of the number of guests who were present, to ensure they were the same people who booked the apartment.

Defendant's employee denied having an altercation with plaintiff in front of the building. Rather, she claimed plaintiff walked up to her car and started taking pictures. She explained she addressed any complaints she received from the landlord relating to defendant's units.

On May 8, 2020, the court granted defendant summary judgment on the slander and libel counts. These claims were based on an assertion that defendant's employee told a police officer who responded to the assault incident that plaintiff is "a problem, he always complains and starts trouble—we have a file on him, officer." Plaintiff alleged defendant's owner and its employee slandered and libeled him by claiming he: assaulted the guest, attempted to break into one of defendant's "illegal" hotel rooms, and harassed defendant's staff.

The court found the statement to the officer was not defamatory because the employee made the statement "as a witness to facilitate a resolution of the alleged altercation between [p]laintiff and [the] renter." Further, defendant could maintain a file on plaintiff for many reasons, including to "compile all relevant complaints received." The claim that plaintiff assaulted the guest, the statements regarding defendant's illegal hotel rooms, and statements about plaintiff harassing defendant and its staff, were made during the employee and the owner's depositions. Therefore, they were entitled to absolute immunity because they were made in a judicial proceeding and were not defamatory.

On August 31, 2020, the court dismissed the count, which alleged defendant conspired with the landlord to violate the law by operating an illegal hotel inside the building. The court also granted the landlord's motion to strike the jury demand in defendant's answer to the complaint and answer to the crossclaims. The court held "[a]ll parties are hereby [barred] from relying on the [j]ury [d]emand contained in [d]efendant['s] . . . [a]nswer."

Regarding the conspiracy count, the court held "no New Jersey statute or regulation prohibits lessees of apartments from leasing them to others on a short-term basis." Because "[a]t the time that [defendant] rented apartments in the . . . building[] there was no law expressly denying its ability to do so[,] . . . there

was no 'underlying wrong' which the [d]efendants allegedly conspired to commit." Further, "[t]o the extent that [p]laintiff argues the conduct of [d]efendants violated N.J.S.A. 55:13A-3(j)[2], nothing in the [s]tatute provides for a private right of action by [p]laintiff against these defendants."

The landlord moved to strike the jury demand pursuant to jury waivers contained in plaintiff's and defendant's leases with the landlord. Plaintiff opposed the motion, arguing 500 Columbia Turnpike Associates v. Haselmann,[3] and Rule 4:35-1(d) required the consent of all parties before a jury demand could be withdrawn. Plaintiff also argued the jury waiver did not apply to claims between him and defendant, which should be bifurcated and tried before a jury.

The leases contained the following language: "Notice to Resident: THIS LEASE CONTAINS WAIVERS OF CONSUMER RIGHTS, AS ALLOWED BY LAW RESIDENT WAIVES CERTAIN RIGHTS BY SIGNING THIS LEASE. No Jury Trial: Landlord and Resident waive and give up any right to any jury trial for any claim or matter concerning this Lease or the Apartment[.]"

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[2] This section of the Hotel and Multiple Dwelling statute defines what a hotel is and excludes a building registered as a multiple dwelling with the Commissioner of Community Affairs—like defendant's building—from the law.

[3] 275 N.J. Super. 166 (App. Div. 1994).

The court found this language "clear and unambiguous. It plainly provides that there will be no jury trial in 'any' claim concerning the lease or the apartment. Plaintiff's [claims] fall[] under the lease and the apartment." The court found the case cited by plaintiff inapplicable because it was "not striking the jury demand based upon technical requirements of [Rule] 4:35-1(d) but the contract between the parties." It rejected plaintiff's argument there was no jury waiver between him and defendant because "[t]he waiver does not state by any means that it only applies to [p]laintiff's claims against [the l]andlord . . . , nor only to [defendant's] possible claims against [the l]andlord . . . ." The court concluded "[b]ifurcation would only create delay, confusion, and spend unnecessary resources in litigating claims where this matter can be litigated summarily without a jury."

Pursuant to Rule 4:50-1, plaintiff moved for relief from the jury waiver ruling in the August 2020 order. The court denied the motion on September 3, 2021.

Defendant moved for summary judgment dismissal of the count alleging it was negligent and vicariously liable for the assault committed by its guest and failed to protect the building's residents from its guests. It also moved to dismiss a count seeking to enjoin defendant from violating the Consumer Fraud Act by

operating an illegal hotel in a residential building. Defendant provided the court with plaintiff's deposition, which showed no record or report of the alleged assault. The deposition of defendant's employee likewise noted "there was never a police report made" of the incident. The employee stated she learned plaintiff was the assailant.

The court granted defendant summary judgment finding "no evidence to show . . . defendant knew or should have known of violent propensity on the part of the . . . [guest] who allegedly assaulted . . . plaintiff causing him personal injuries" and dismissed these counts on October 12, 2021. The injunctive relief count was dismissed as moot given the prior court order finding defendant was not operating an illegal hotel.

As a result of the rulings regarding the jury waiver, the court conducted a two-day bench trial on the remaining counts for private nuisance and punitive damages. The trial judge—who was not the one who made the jury waiver ruling—issued a written opinion making detailed credibility and factual findings and conclusions of law. She concluded plaintiff failed to meet his burden of proof and dismissed the remaining counts.

I.

Plaintiff challenges the August 2020 order striking the jury waiver and the September 2021 order denying his Rule 4:50-1 motion. He asserts the court should have bifurcated the matter and permitted a jury trial. Plaintiff avers the matter was ready to be tried before a jury once the landlord was dismissed from the litigation. He claims the court violated his constitutional right to a jury trial.

"A basic tenet of contract interpretation is that contract terms should be given their plain and ordinary meaning." Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301, 321 (2019). We review de novo a trial court's interpretation of a contract, including issues of contract formation. Kieffer v. Best Buy, 205 N.J. 213, 222-23 (2011) ("The interpretation of a contract is subject to de novo review by an appellate court."); NAACP of Camden Cnty. E. v. Foulke Mgmt. Corp., 421 N.J. Super. 404, 430 (App. Div.) (reviewing de novo trial court's determination regarding contract formation), certif. granted, 209 N.J. 96 (2011). We owe no deference to the "trial court's interpretation of the law, and the legal consequences that flow from established facts . . . ." Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995).

We review a decision on a Rule 4:50 motion for an abuse of discretion. U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). An abuse of discretion exists "when a decision is 'made without a rational explanation,

inexplicably departed from established policies, or rested on an impermissible basis.'" Id. at 467-68 (internal quotation marks omitted) (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123, (2007)). However, if a judge makes a discretionary decision but acts under a misconception of the applicable law or misapplies the law to the facts, we "need not extend deference." Johnson v. Johnson, 320 N.J. Super. 371, 378 (App. Div. 1999).

Our review of the record convinces us the part of the August 31, 2020 order regarding the jury waiver and the September 3, 2021 order denying relief from the August order were entered in error. Plaintiff was not a signatory to defendant's lease with the landlord, and likewise defendant did not sign the lease plaintiff had with the landlord. Therefore, the jury waiver contained in each lease did not apply to claims between plaintiff and defendant because there was no privity of contract between them at all, let alone on this issue.

For these reasons, the August 2020 and September 2021 orders are reversed, and plaintiff is entitled to a jury trial on the private nuisance and punitive damages claims. Because these claims must be re-tried before a jury, we do not reach plaintiff's arguments regarding the court's reasons for dismissing these claims because the June 14, 2022 order is also reversed. Also, we do not reach the plaintiff's constitutional arguments because we have

resolved this issue on different grounds. See Grant v. Wright, 222 N.J. Super. 191, 197-98 (App. Div. 1988) (citing State v. Salerno, 27 N.J. 289, 296 (1958)) ("Constitutional questions should not be addressed unless they are imperative for the disposition of the litigation.").

II.

Plaintiff challenges the dismissal of his claims for assault, negligence, and vicarious liability. He argues defendant was responsible for the alleged assault committed by its guest because defendant created the dangerous condition by failing to properly screen its guests. He asserts defendant relied upon double hearsay to convince the court an assault did not occur and there were disputes in fact, which could not be resolved on summary judgment.

Plaintiff contends summary judgment should not have been granted on the conspiracy claim because defendant and the landlord were operating an illegal hotel. He asserts he had "cognizable and judiciable claims" because the hotel operation harmed him by depriving him of the ability to use his apartment, and he suffered the assault.

Plaintiff asserts the court erred by dismissing the defamation claim and prohibiting him from amending his complaint to include information he received in discovery, which he claims defendant and the landlord refused to provide. He

argues the discovery showed "secret, undisclosed meetings between the co-defendants . . . and emails about the same . . . were not produced[,]" which proved defendant intended to defame him.

Plaintiff contends it was error to dismiss the injunctive relief claim because the court did not find that defendant was operating an illegal hotel, but instead that plaintiff lacked a cause of action under N.J.S.A. 55:13A-3(j). He asserts the operation of an illegal hotel is a separate argument, which should not have been dismissed.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). The determination requires the motion judge consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995). "[W]hen the evidence 'is so one-sided that one party must prevail as a matter of law,' . . . the trial court should not hesitate to grant summary judgment." Ibid. (quoting Anderson v.

Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)). "[W]e review the trial court's grant of summary judgment de novo[,] under the same standard as the trial court." Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016).

Pursuant to these principles and having thoroughly reviewed the record, we affirm for the reasons expressed in the trial court's orders adjudicating plaintiff's claims. We add the following comments regarding plaintiff's claims of vicarious liability and negligence relating to the assault claim.

"With respect to the basic concept of vicarious liability, it will suffice . . . that a party 'who expects to derive a benefit or advantage from an act performed on [that party's] behalf by another must answer for any injury that a third person may sustain from it.'" Pantano v. N. Y. Shipping Ass'n, 254 N.J. 101, 105 (2023) (alteration in original) (quoting Galvao v. G.R. Robert Constr. Co., 179 N.J. 462, 471-73 (2004)). A plaintiff must also prove that the alleged tortious conduct took place within the scope of that relationship. Carter v. Reynolds, 175 N.J. 402, 409 (2003).

The record here is clear there was no agency relationship between defendant and its guests, and the alleged assault did not fall within the scope of

defendant's relationship with its guests. For these reasons this claim could not survive summary judgment.

Under a negligence theory, plaintiff "must prove, as an element of the cause of action, that the defendant had actual or constructive knowledge of the dangerous condition that caused the accident." Troupe v. Burlington Coat Factory Warehouse Corp., 443 N.J. Super. 596, 601 (App. Div. 2016). The absence of actual or constructive notice of a dangerous condition "is fatal to [a] plaintiff's claims of premises liability." Arroyo v. Durling Realty, LLC, 433 N.J. Super. 238, 243 (App. Div. 2013).

Negligence also requires "there must be some breach of duty, by action or inaction, on the part of the defendant to the individual complaining, the observance of which duty would have averted or avoided the injury." Bratka v. Castles Ice Cream Co., 40 N.J. Super. 576, 584 (App. Div. 1956). "The mere showing of an incident causing the injury sued upon is not alone sufficient to authorize the finding of an incident of negligence." Long v. Landy, 35 N.J. 44, 54 (1961). A duty may be found if a defendant had reason to know of "a risk of harm posed by third persons." Est. of Campagna v. Pleasant Point Props., LLC, 464 N.J. Super. 153, 179 (App. Div. 2020).

The negligence claim was properly dismissed because there is no indication, constructive or actual, defendant had reason to know a guest would assault plaintiff. The allegation of an assault did not prove defendant owed a duty to plaintiff. This count was properly dismissed.

Plaintiff's remaining arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part and reversed and remanded in part for further proceedings consistent with this opinion. We do not retain jurisdiction.