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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2036-21

NASSA ANN CLAGETT,

Plaintiff-Appellant,

v.

MACK-CALI REALTY CORPORATION d/b/a MACK PARAMUS AFFILIATES,

Defendant,

and

BOROUGH OF PARAMUS,

Defendant-Respondent.

Submitted February 28, 2024 – Decided May 22, 2024

Before Judges Currier and Vanek.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-3003-21.

Sergei Orel, PC, attorneys for appellant (Sergei Orel, on the brief).

Law Offices of John L. Schettino, LLC, attorneys for respondent (LisaAnne Rega Bicocchi, on the brief).

PER CURIAM

Plaintiff Nassa Ann Clagett appeals from the February 18, 2022 order granting defendant Borough of Paramus (Paramus) summary judgment and the March 4, 2022 order denying her motion to reinstate her complaint against defendant Mack-Cali Realty Corporation doing business as Mack Paramus Affiliates (Mack).[1] We affirm the order granting Paramus summary judgment. However, because plaintiff established she timely served Mack with the complaint, there was good cause to reinstate the complaint. Therefore, we reverse the March 4, 2022 order and remand to the trial court for reinstatement of the complaint against Mack.

Plaintiff sent a notice of claim for damages under the New Jersey Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 12-3, to the Paramus City Clerk, the Paramus municipal attorney, the Bergen County Clerk, the Bergen County Counsel, and the New Jersey Office of the Attorney General on May 28, 2019. The notice stated that plaintiff fell "at the premises located on 601 From Road, in Paramus, New Jersey." The place of incident was listed as the "Paramus

[1] Mack did not submit a brief or participate in the appeal.

Police Department, Fairfield Inn Suites by Mariott in Paramus, NJ." The public entity causing the injury was listed as the "State of New Jersey, Bureau of Risk Management, County of Bergen City of Bloomfield."

In the complaint, plaintiff alleges she tripped on a defective area of sidewalk on May 8, 2019, in front of 630-650 From Road in Paramus, which was owned by Mack. Plaintiff served Mack with the complaint on May 7, 2021; Paramus was served on May 10, 2021. The affidavits of service were filed with the court on May 7 and 10, respectively.

Paramus filed its answer. In her answers to interrogatories, plaintiff stated she fell on the sidewalk in front of 630-650 From Road, a commercial property owned by Mack. In the police report prepared the night of the incident, the officer stated plaintiff told him, "[S]he was walking through the parking lot in between the Fairfield Inn Suites and Hampton Inn when she tripped on an uneven section of the sidewalk." The accident occurred at approximately 10:08 p.m. The officer also reported he could not locate the exact location of the fall, but it was later determined the fall occurred on the property of 650 From Road.

Plaintiff retained an engineering expert who prepared a report. The report stated that plaintiff fell "on the concrete public sidewalk abutting the

commercial property located at 650 From Road, Paramus, New Jersey." The expert stated plaintiff tripped and fell on "a raised uneven sidewalk joint."

The Paramus Borough Administrator submitted a certification in support of Paramus's summary judgment motion. The Administrator stated that 601 From Road is owned by Paul Schmidt, Sr. et al. and a Marriott Fairfield Inn & Suites is located on the property. 630-650 From Road is owned by 650 From Road LLC c/o Onyx Management Group.[2] 625 From Road is owned by Hashemi Group LLC, and a Hampton Inn is located there. The three properties are zoned as commercial property.

On October 15, 2021, the court notified plaintiff it would dismiss the case against Mack for lack of prosecution, pursuant to Rule 1:13-7, if no action was taken by December 14, 2021. On December 17, 2021, the court dismissed the case without prejudice against Mack for lack of prosecution.

On December 30, 2021, Paramus moved for summary judgment, asserting it was immune under the TCA, that plaintiff could not establish a claim under the TCA because she had not served a notice of claim on Paramus, and that plaintiff fell on a sidewalk owned by a commercial property owner. Plaintiff

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[2] Plaintiff alleges 630-650 From Road was owned by Mack at the time of her fall and it may have subsequently been sold to the Onyx Management Group.

opposed the motion for summary judgment and cross-moved for summary judgment and sanctions and attorney's fees, contending Paramus's motion was frivolous.

In an oral decision issued on February 18, 2022, the motion judge granted Paramus's motion for summary judgment, finding the notice of claim was deficient because Paramus was not named in it, and the sidewalk plaintiff fell on abutted a commercial property for which Paramus had no responsibility. A written order on the same date dismissed plaintiff's claims against Paramus with prejudice.

On February 11, 2022, plaintiff moved to reinstate her complaint against Mack. The submission included the affidavit of service filed May 7, 2021 and a letter plaintiff's counsel sent to Mack in May 2021 advising of his representation in the suit. On March 4, 2022, the court denied plaintiff's motion. The order stated: "Denied per the provisions of Rule 1:13-7."

On appeal, plaintiff contends the court erred in denying her motion to reinstate the complaint against Mack because she provided proof that Mack was timely served. Plaintiff further asserts the court erred in granting Paramus summary judgment because there remained an issue of fact as to the location of her fall.

The complaint was initially dismissed against Mack for lack of prosecution under Rule 1:13-7. In a case with multiple defendants, if at least one defendant has been served, the parties may file a consent order for reinstatement within sixty days of the order of dismissal. R. 1:13-7(a). If more than sixty days have passed, plaintiff must file a motion for reinstatement within ninety days of the order of dismissal, which the court "shall" grant if good cause is shown. Ibid. If the motion is filed after ninety days have passed from the dismissal, the plaintiff must demonstrate exceptional circumstances for reinstatement. Ibid.

Plaintiff moved for reinstatement less than sixty days after the court dismissed the complaint. Therefore, plaintiff only needed to show good cause for reinstatement. When a court applies the good cause standard, it "must exercise '"sound discretion in light of the facts and circumstances of the particular case considered in the context of the purposes of the Court Rule being applied."'" Est. of Semprevivo by Semprevivo v. Lahham, 468 N.J. Super. 1, 14 (App. Div. 2021) (quoting Ghandi v. Cespedes, 390 N.J. Super. 193, 196 (App. Div. 2007)).

In considering Rule 1:13-7 dismissals without prejudice, we have held that "the right to 'reinstatement is ordinarily routinely and freely granted when

plaintiff has cured the problem that led to the dismissal even if the application is made many months later.'" Ghandi, 390 N.J. Super. at 196 (quoting Rivera v. Atl. Coast Rehab. & Health Care Ctr., 321 N.J. Super. 340, 346 (App. Div. 1999)). In determining whether good cause exists, courts also consider whether the plaintiff was blameless and if the other party would be prejudiced. Est. of Semprevivo, 468 N.J. Super. at 15; see also Ghandi, 390 N.J. Super. at 197 ("[W]e are satisfied that, absent a finding of fault by the plaintiff and prejudice to the defendant, a motion to restore under the rule should be viewed with great liberality.").

Mack was timely served with the complaint. Plaintiff presented proof of the filed affidavit of service with her reinstatement motion. Mack cannot show prejudice as it was served with the complaint and plaintiff's counsel sent a letter advising of the suit and his representation. Plaintiff demonstrated good cause to reinstate her complaint. We reverse the March 4, 2022 order and remand for the court to reinstate the complaint against Mack.

We turn to the order granting Paramus summary judgment. Plaintiff contends the notice of tort claim was sent to Paramus's attorney and city clerk. Therefore, any error in it was immaterial as Paramus was aware of the claim. In addition, plaintiff states there were issues of material fact that precluded the

court from granting summary judgment. Specifically, plaintiff states she is still unsure of the location of her fall.

N.J.S.A. 59:8-4 lists the components of a proper notice of claim and specifies that it must include "[t]he name or names of the public entity, employee or employees causing the injury, damage or loss, if known." A claim that does not follow the procedures of the TCA is barred by N.J.S.A. 59:8-3(a). Additionally, N.J.S.A. 59:8-8 establishes that a notice of claim must be filed with a "public entity within [ninety] days of accrual of the claim" and that the action is barred if it has been longer than two years since the claim accrued. A court may grant an individual that misses the ninety-day deadline permission to file the notice of claim "within one year after the accrual of [their] claim" as long as the public entity "has not been substantially prejudiced." N.J.S.A. 59:8-9.

The motion judge relied on Madej v. Doe, 194 N.J. Super. 580 (Law Div. 1984), overruled on other grounds by Milacci v. Mato Realty Co., 217 N.J. Super. 297 (App. Div. 1987), in determining the notice of claim was deficient as to Paramus. There, the plaintiff fell on a sidewalk and filed a notice of claim against the City of Newark. Id. at 582. The notice listed Newark as the responsible party; it did not list the State of New Jersey. Id. at 582-83.

However, the plaintiff sent a copy of the notice of claim to the State. Id. at 583. The State replied to the plaintiff, stating that "[a] review of your notice indicates quite clearly that the claim is against a local public entity and does not involve the State of New Jersey or any of its agencies." Ibid. The State further advised that "[t]he only time the State of New Jersey . . . is involved in claims under the [TCA] is when a claim is being made against the State, one of its agencies[,] or a State employee." Ibid. After the State was named as a defendant in the complaint, it moved for summary judgment. Id. at 582.

The court held that the notice of claim was only legally sufficient as to Newark, stating "[t]he fact that the State received a copy of the notice of claim . . . against the city is of no consequence." Id. at 587. It reasoned that the TCA considered states and cities to be different public entities and therefore, a notice of claim against one was not a notice of claim against the other. Id. at 587-88.

The court also addressed the argument that the plaintiff provided the State with sufficient information to investigate the complaint. Id. at 588. The court found that since there was no notice of claim against the State, there was nothing for it to investigate, reasoning that a public entity was not responsible for investigating claims against a different public entity. Ibid. Therefore, it concluded the State was prejudiced because it could not investigate the

circumstances until the complaint was filed. Ibid. The court also held that "[t]he filing of the complaint is not substantial compliance with the notice requirement." Id. at 589; see also Cnty of Hudson v. State, Dep't of Corr., 208 N.J. 1, 23 (2011) ("[E]ven the most generous application of the substantial compliance doctrine has rejected the notion that filing a complaint is itself a substitute for notice.").

The circumstances here are similar to those in Madej. Although the notice of claim was sent to Paramus's municipal attorney and city clerk, Paramus was not listed as a responsible party in the notice. Therefore, Paramus was not on notice of any claim against it and had no reason to investigate a claim it was not involved in. The court properly granted summary judgment on the grounds of the deficient notice of claim.

The court also did not err in granting Paramus summary judgment due to the immunity afforded it under the TCA. All of the locations plaintiff has proffered as the site of her fall are commercial properties.

N.J.S.A. 59:2-1 provides public entities with general immunity from tort claims. However, N.J.S.A. 59:4-2 excepts a public entity from immunity for an "injury caused by a condition of its property if the plaintiff establishes that the property was in dangerous condition at the time of the injury," the dangerous

condition was the proximate cause of the injury, there was "a reasonably foreseeable risk of the kind of injury which was incurred" and either "an employee of the public entity within the scope of [their] employment created the dangerous condition" through their negligence, wrongful act, or omission or the "public entity had actual or constructive notice of the dangerous condition" and sufficient time to protect against it.

In Stewart v. 104 Wallace Street, Inc., 87 N.J. 146, 157 (1981), the Supreme Court held "that commercial landowners are responsible for maintaining in reasonably good condition the sidewalks abutting their property and are liable to pedestrians injured as a result of their negligent failure to do so." All of the properties on which plaintiff may have fallen are commercial properties. Each of the properties was located in a "Highway Commercial Corridor" zone. Therefore, Paramus is not liable for any injuries sustained by plaintiff on those properties.

Although plaintiff concedes all of the properties are owned by different private entities, she asserts she "needs to have her day in court" and that she should be allowed to file an amended complaint to add all of the potential defendants. However, this argument has no bearing on whether Paramus can be held liable for plaintiff's fall and injuries. Plaintiff has not presented a "genuine

issue as to any material fact" regarding Paramus's liability for her fall. R. 4:46-2(c). As stated, Paramus cannot be liable for plaintiff's fall on a commercial property that is owned by private entities. See Stewart, 87 N.J. at 157.

In sum, we affirm the order granting Paramus summary judgment, reverse the order denying reinstatement of the complaint against Mack, and remand to the trial court for reinstatement of the complaint.

Affirmed in part, reversed, and remanded in part. We do not retain jurisdiction.

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

CLERK OF THE APPELLATE DIVISION