

IN THE SUPERIOR COURT OF THE STATE DELAWARE

IN AND FOR KENT COUNTY

MARLENE ZAK, individually, and THE)
ESTATE OF ASHLEY M. CALL, by and) C.A. No. K12C-02-010 JTV
through its Administrator Jonathon Contant,)
)
Plaintiffs,)
)
v.)
)
GPM INVESTMENTS, LLC, d/b/a SHORE)
STOP, a Delaware Limited Liability)
Company; LIBERTY HOLDING CORP-)
ORATION, an unincorporated association;)
GOLDEN EAGLE PROPERTIES, an unin-)
corporated association; VALERO ENERGY)
CORPORATION, a Delaware Corporation;)
THE STATE OF DELAWARE, a govern-)
ment entity, THE STATE OF DELAWARE)
DEPARTMENT OF TRANSPORTATION,)
an agency of the State of Delaware; and)
DAWN D. BARR, individually,)
)
Defendants.)

Submitted: July 22, 2013

Decided: October 14, 2013

William D. Fletcher, Jr., Esq., and B. Brian Brittingham, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorneys for Plaintiffs.

Norman H. Brooks, Jr., Esq., Marks, O'Neill, O'Brien & Courtney, Wilmington, Delaware. Attorney for Defendant GPM.

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Michael J. Logullo, Esq., and Katherine L. Hemming, Esq., Heckler & Frabizzio, Wilmington, Delaware. Attorneys for Defendants GPM and Liberty Holdings Corp.

David A. Felice, Esq., and Sean J. Bellew, Esq., Ballard Sparh, LLC, Wilmington, Delaware. Attorneys for Defendants Valero.

*Upon Consideration of
Defendant Valero Energy Corporation's
Motion for Summary Judgment*
GRANTED

VAUGHN, President Judge

ORDER

Upon consideration of Defendant Valero Energy Corporation's Motion for Summary Judgment, plaintiffs opposition, extensive discovery, and the record of the case, it appears that:

1. Defendant Valero Energy Corporation ("Valero") filed a motion for summary judgment on the basis that Valero did not own, operate, and/or control the property which forms the basis of the underlying claim and, thus, cannot be held liable for the death of Ashley Call.

2. This is a wrongful death action that arose as a result of a February 9, 2010 motor vehicle collision on Route 13 in Townsend, Delaware. The decedent, Ashley M. Call, went to a Shore Stop gas station to cash a paycheck and fuel her Neon Plymouth on her way to work. As decedent attempted to leave Shore Stop and

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make a right hand turn onto Route 13, her vehicle was struck on the driver's side by defendant Dawn D. Barr. Decedent died on impact due to blunt force injuries to her chest and neck. The Delaware State Police investigation report stated that three snow mounds "could have possibly obscured the victim's sight line as she was in the exit lane of the [Shore Stop]."

3. On February 3, 2012, Marlene Zak, mother of the decedent and the Estate of Ashley M. Call ("plaintiffs") filed a complaint against GPM Investments LLC ("GPM") d/b/a Shore Stop, Liberty Holding Corporation, Golden Eagle Properties, Valero Energy Corporation, the State of Delaware, the State of Delaware Department of Transportation ("DelDOT"), and Dawn D. Barr.¹ In their complaint, plaintiffs' allege that "Defendants GPM, Liberty, Golden Eagle and Valero, as the owners, operators and/or controllers of the Shore Stop premises, had a duty to protect their customers and business invitees, including decedent, from unreasonably unsafe and dangerous conditions," and defendants were negligent in not providing a safe method egress.

4. On January 4, 2013, Valero filed a Motion for Summary Judgment Pursuant to Superior Court Civil Rule 56(c). Valero argued that it is entitled to summary judgment because "defendant Valero did not own, operate and/or control the Shore Stop gas station." Valero supports this contention by referencing the Distributor Marketing Agreement entered into by co-defendant GPM and Valero

¹ On April 30, 2013, I granted the State of Delaware and DelDOT's Motion for Summary Judgment, which removed them as defendants in this case. *See Zak v. GPM Investments, LLC*, 2013 WL 1859344 (Del. Super. Apr. 30, 2013).

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Marketing and Supply Company, a subsidiary of Valero, which states the property is owned and operated by GPM and only uses “Valero” brand name and products. Pursuant to the Distributor Marketing Agreement, GPM is required to secure liability insurance for the gas station, and have Valero named as an additional insured. In addition, there is an indemnification provision that obligates GPM to defend and indemnify Valero in this action. Lastly, Valero contends that because GPM has ample insurance coverage, there is no need for plaintiffs to maintain their claims against Valero.

5. In response, plaintiffs contended that Valero is not entitled to summary judgment because the Distributor Marketing Agreement required GPM to comply with Valero’s “Basic Operation Requirements” and allowed for Valero to inspect or review GPM procedures in any reasonable manner that Valero determined. Furthermore, plaintiffs argued that additional discovery was necessary to fully understand the contractual implications, including property maintenance, the Distributor Marketing Agreement imposed on Valero.

6. On January 28, 2013, I heard oral arguments in reference to this motion for summary judgment and allowed plaintiffs to conduct additional discovery on the specific contractual relationship between GPM and Valero. Plaintiffs took additional depositions which failed to reveal any additional information that would support maintaining Valero as a party to this litigation.

7. Summary judgment should be granted when there are no genuine issues

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of material fact and the moving party is entitled to judgment as a matter of law.² “[T]he moving party bears the burden of establishing the non-existence of material issues of fact.”³ If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.⁴ In considering the motion, the facts must be viewed in the light most favorable to the non-moving party.⁵ Thus, the court must accept all undisputed factual assertions and accept the non-movant’s version of any disputed facts.⁶ Summary judgment is inappropriate “when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.”⁷

8. In the present case, in order for plaintiffs to recover damages under the Delaware Wrongful Death Statute, plaintiffs must first show that Valero was negligent.⁸ To succeed under a negligence claim, the plaintiff must prove that “defendant owed plaintiff a duty of care; defendant breached that duty; and

² Super. Ct. Civ. R. 56(c).

³ *Gray v. Allstate Ins. Co.*, 2007 WL 1334563, at *1 (Del. Super. May 2, 2007).

⁴ *Id.*

⁵ *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99 (Del. 1992).

⁶ *Id.* at 99-100.

⁷ *Mumford & Miller Concrete, Inc. v. New Castle Cnty.*, 2007 WL 404771, at *1 (Del. Super. Jan. 31, 2007).

⁸ *Rogers v. Christina Sch. Dist.*, 2013 WL 3722554, at *3 (Del. July 16, 2013).

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defendant's breach was the proximate cause of plaintiff's injury."⁹ The first step in a negligence analysis is whether the defendant owed the plaintiff a duty- a legal obligation to protect the plaintiff from the risk of harm.¹⁰ The question of whether a duty exists is entirely a question of law, determined by the court after reviewing the body of statutes, rules, principles and precedents which create the law.¹¹ If the court determines that no duty exists the court is authorized to grant judgment as a matter of law.¹²

9. Valero asserts that it does not owe a duty of care to decedent because it does not "own, operate, and/or control the Shore Stop gas station." Valero supports this assertion, by examining the language of the Distributor Marketing Agreement, which establishes the relationship between Valero and GPM: GPM owned, operated and controlled the property and, in turn, was able to operate under the "Valero" brand. I conclude that the Distributor Marketing Agreement firmly demonstrates that Valero does not own, operate, and/or control the Shore Stop gas station. Because Valero does not own, operate, and/or control the premise, I find that Valero does not owe a duty to decedent and therefore, plaintiffs cannot establish a negligence claim against Valero.

⁹ *Pipher v. Parsell*, 930 A.2d 890, 892 (Del. 2007).

¹⁰ *Id.* (citing *Fritz v. Yeager*, 790 A.2d 469, 471 (Del. 2002)).

¹¹ *Id.*

¹² *Id.*

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10. Accordingly, Valero's Motion for Summary Judgment is ***granted***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc: Prothonotary
cc: Order Distribution
File