IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

LATISHA M. JACKSON)
Plaintiff,)
,)
v.)
)
JOHN STALLINGS, ANTHONY)
DIZDAR, KATHERINE DEGLIOBIZZI) C.A. No. 08C-03-018 ALR
and PRUDENTIAL FOX & ROACH)
Defendants,)
,)
and)
)
KATHERINE DEGLIOBIZZI and)
PRUDENTIAL FOX & ROACH,)
Defendants/Third Party Plaintiffs,)
v.)
)
GRANITE INSPECTION SERVICES and)
REMAX ASSOCIATES, INC.)
Third Party Defendants,)
•)
JOHN STALLINGS)
Defendant/Third Party Plaintiff)
·)
v.)
)
DIVERSIFIED CONSTRUCTION	·)
COMPANY, LLC.	,)
,	·)
Third Party Defendant.	,)

Submitted: April 8, 2014 Decided: April 17, 2014

On Defendant Anthony Dizdar's Motion for Summary Judgment GRANTED

James J. Haley, Jr., Esquire, of FERRARA & HALEY, attorney for Plaintiff Latisha Jackson.

Michele D. Allen, Esquire, of LAW OFFICES OF MICHELE D. ALLEN, LLC, attorney for Defendant Anthony Dizdar.

Plaintiff Latisha Jackson bought a home at 1217 Lobdell Street in Wilmington, Delaware ("Property"), from John Stallings on August 10, 2007. Prior to purchasing the Property, Plaintiff visited the Property in April or May of 2007. The Property was being renovated at this time. Stallings provided Plaintiff with a Seller's Disclosure of Real Property Condition Report ("Report"). The Report stated that there were no drainage or flood problems affecting the Property, there were no problems with the walls or foundations, and there was no water leakage or dampness in the basement crawlspace. Plaintiff subsequently signed an Agreement of Sale. Stallings also signed the Agreement of Sale on June 19, 2007.

On August 3, 2007, Anthony Dizdar, an inspector for the City of Wilmington's Department of License and Inspection, signed the Certificate of Occupancy for the Property. On August 10, Plaintiff and Stallings walked through the Property and observed that the basement was wet. Plaintiff proceeded with settlement.

Plaintiff continued to observe wet conditions in the basement and Stallings attempted to repair the conditions on various occasions using "moisture dry" and a humidifier. On October 24, Plaintiff informed Stallings that the floor in Plaintiff's kitchen, dinning room, and living room were sagging. Stallings visited the Property the following day and informed Plaintiff that he would fix the problem.

No one ever came to fix the problem. When Plaintiff called Stallings, Plaintiff received a "disconnected" message at Stallings' phone number.

Plaintiff left a phone message with Wilmington's Department of License and Inspection on November 5, 2007, complaining about the deterioration of the Property. Dizdar met Plaintiff at the Property the following day. Dizdar walked through the Property and told Plaintiff that the Property was in violation and never should have passed the Certificate of Occupancy inspection. Dizdar informed Plaintiff that Plaintiff would receive a violations report within forty-eight hours and the report would be referenced to Stallings, who would be financially responsible for the repairs.

Plaintiff received the violation notice on November 9. The notice stated that the Property was vacant and gave Plaintiff a period of time to fix the violations. Plaintiff called contractors for estimates to fix the Property and two separate contractors estimated the total to be approximately \$30,000 to fix the Property.

City of Wilmington License and Inspection employees Leo Lynch and Louis Camacho visited the Property on November 12. Lynch stated that the house should not have passed inspection and an internal investigation would be completed to see who had issued the Certificate of Occupancy. Several days later, Lynch informed Plaintiff that Dizdar was the individual who signed the original

Certificate of Occupancy on August 3, 2007. From November 2 to December 2, contractors from the City of Wilmington wedged supports in the basement to support the sagging floor above it.

Plaintiff contends that, as a result of the conditions of the Property, she and her family have suffered unsafe living conditions, loss of value of the property, mental and emotional distress, loss and enjoyment of life, lost time and expenses, and consequential damages. Plaintiff claims that Dizdar is personally liable for:

(1) willful and wanton conduct, (2) violation of federal due process, and (3) violation of state due process.

Dizdar has filed a Motion for Summary Judgment, which is opposed by Plaintiff. After written submissions by the parties, the Court heard oral argument. This is the Court's decision on Defendant Dizdar's Motion for Summary Judgment.

Standard of Review for Summary Judgment

A motion for summary judgment requires the Court to examine the record to determine whether any genuine issues of material fact exist and whether the moving party is entitled to judgment as a matter of law.¹ The Court reviews the record in a light most favorable to the non-moving party and if the Court finds that

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¹ Super. Ct. Civ. R. 56(c); *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).

no genuine issues of material fact exist, summary judgment is appropriate.² Summary judgment may not be granted when the record indicates a material fact is in dispute.³

Plaintiff's Claims for Violation of Due Process

Plaintiff does not oppose summary judgment regarding her claims of violation of federal and state due process. Accordingly, Defendant Dizdar is entitled to judgment as a matter of law with respect to Plaintiff's allegations of federal and state due process violations.

Plaintiff's Claim for Willful and Wanton Conduct

Dizdar argues that he is immune from Plaintiff's claim of willful and wanton conduct under Delaware's County and Municipal Tort Claims Act ("Act") which provides that "all governmental entities and their employees shall be immune from suit on any and all tort claims seeking recovery of damages." However, an individual employee may be liable where his acts or omissions: (1) cause bodily harm, death, or property damage; and (2) such acts or omissions were not within

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² Hammond v. Cold Industries Operating Corp., 565 A.2d 558, 560 (Del. 1989).

³ Wilson v. Triangle Oil Co., 566 A.2d 1016, 1018 (Del. 1989).

⁴ 10 Del. C. § 4011(a).

the scope of employment or were performed with wanton negligence or willful and malicious intent.⁵

To overcome the Act's immunity, Plaintiff must establish that Dizdar's actions or omissions caused physical injury, death, or property damage. Delaware adheres to a "but-for" proximate cause standard.⁶ Under Delaware law, proximate cause is defined as "that direct cause without which the accident would not have occurred." Further, Delaware law recognizes that there may be more than one proximate cause for an injury.⁸

Dizdar contends that he is immune from Plaintiff's claims because Plaintiff has failed to allege that Dizdar proximately caused bodily injury, death, or property damage. It is undisputed that Dizdar did not cause death or physical injury to Plaintiff. Dizdar argues that Plaintiff has failed to establish that Dizdar caused any property damage. Plaintiff, in her deposition, admitted that Dizdar was not involved with the construction of the Property and merely issued the Certificate of Occupancy. Dizdar contends that the alleged incorrect issuance of the Certificate of Occupancy was not the proximate cause of the property damage, rather, Stallings caused the damage.

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⁵ 10 Del. C. § 4011(c).

⁶ RHA Constr., Inc. v. Scott Eng'g, Inc., 2013 WL 3884937, at *7 (Del. Super. July 24, 2013).

⁷ Spicer v. Osunkoya, 32 A.3d 347, 350 (Del. 2012); RHA Constr., Inc. (citing Culver v. Bennett, 588 A.2d 1094, 1097 (Del. 1991)).

⁸ Culver, 588 A.2d 1094, 1097.

⁹ Jackson Dep. at 93.

Dizdar further argues that the floors in the Property did not sag until after the issuance of the Certificate. To support his argument, Dizdar references Plaintiff's deposition in which Plaintiff admits that, at the time of the issuance of the Certificate of Occupancy, the floors in the Property were sturdy and not sagging. 10 Plaintiff also admits in her deposition that the floors became weak due to Stallings' placing of a dehumidifier which allegedly dried the floors out.¹¹

Plaintiff alleges that but for Dizdar's negligent issuance of the Certificate of Occupancy, she would not have obtained a mortgage loan or purchased the Property. Plaintiff argues that Dizdar's actions combined with Stallings' actions proximately caused the property damage.

It is undisputed that Dizdar's acts or omissions did not cause Plaintiff bodily harm or death. However, even viewing the facts in the light most favorable to Plaintiff, Dizdar's acts or omissions were not the proximate cause of damage to the Although injury can result from more than one proximate cause, Property. Plaintiff has failed to establish how Dizdar's alleged negligence in issuing the Certificate of Occupancy proximately caused the physical damage to the Property. Instead, Plaintiff has only established that Dizdar's alleged negligence "caused" her to purchase the Property. At most, Plaintiff claims financial loss as a result of

¹⁰ Jackson Dep. at 68. ¹¹ Jackson Dep. at 39.

Dizdar's Certificate of Occupancy issuance; however, financial loss cannot constitute property damage.¹² There is no genuine issue of fact that Dizdar is not responsible for the water damage or the sagging floors. Accordingly, Plaintiff cannot claim that Dizdar's acts or omissions were the "direct cause without which the [damage] would not have occurred" so as to satisfy Delaware's "but-for" analysis of proximate cause and thus meet the requirements of the Act.¹³

Plaintiff cannot establish that Dizdar caused bodily harm, death, or property damage to survive the immunity the Act provides Dizdar. Accordingly, the Court need not address whether Dizdar acted with wanton negligence or willful and malicious intent. Therefore, Dizdar is entitled to judgment as a matter of law because he is immune from suit as a city employee.

NOW, THEREFORE, IT IS HEREBY ORDERED THIS 17th day of April, 2014, that Defendant Dizdar's Motion for Summary Judgment is GRANTED. JUDGMENT shall enter in favor of Defendant Dizdar and against Plaintiff.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli

¹² See Carr v. Town of Dewey Beach, 730 F. Supp. 591, 602 (D. Del. 1990) (holding that Plaintiff's mere lost profits did not satisfy Section 4011(c) of the Act where there was otherwise no claim of property damage).

¹³ Spicer, 32 A.3d 347, 350; RHA Constr., Inc. (citing Culver, 588 A.2d 1094, 1097).