

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

PEGGY STOKES

Plaintiff,

v.

RUPPERT LANDSCAPE, INC and
DIXON CONTRACTING, INC.,

Defendant.

C.A. No: N10C-09-203 CLS

Date Submitted: June 28, 2012

Date Decided: August 24, 2012

On Defendant's Motion for Summary Judgment.
DENIED without prejudice.

ORDER

L. Vincent Ramunno, Esq., Ramunno & Ramunno, P.A., 903 North French Street,
Wilmington, Delaware 19801. Attorney for Plaintiff.

Ronald W. Hartnett, Jr., Esq., Law Offices of Chrissinger & Baumburger, 3 Mill
Road, Suite 301, Wilmington, DE 19806. Attorneys for Defendant.

J. Scott

Introduction

Defendant, Dixon Contracting, Inc., (“Dixon”) filed this motion for summary judgment claiming that it owed no duty to Plaintiff, Peggy Stokes, (“Plaintiff”) for her injuries. This Court finds that a question of material fact exists as to whether Dixon, as a subcontractor of co-defendant, Ruppert Landscape, Inc. (“Ruppert”), properly performed its snow removal duties, which may give rise to a duty to Plaintiff and joint and several liabilities. Therefore, Defendant Dixon’s Motion for Summary Judgment is **DENIED without prejudice**.

Facts

Ruppert was responsible for all phases of snow and ice removal in the JP Morgan Chase & Co. (“JP Morgan”) parking lot, where the Plaintiff suffered injuries. Ruppert’s responsibilities included snow plowing, salting and site inspection. Ruppert subcontracted the plowing and snow removal duties to Dixon; Dixon was responsible for plowing the parking lot and performing a subsequent “clean up” of the parking spots.

On March 1, 2009, Dixon alleges that it plowed the snow in the JP Morgan Chase parking lot and returned the following day, March 2, 2009, to “clean up” the parking spots. On March 5, 2009, Plaintiff suffered physical injuries when she slipped and fell while getting out of her car in JP Morgan’s parking lot. She claims that her fall was caused by the snow and ice that covered the parking lot.

Parties' Contentions

Dixon claims that it did not owe a duty to Plaintiff as it was not responsible for maintaining the area at the time of Plaintiff's fall. Dixon argues that Ruppert was solely responsible for the site maintenance that day, specifically for the ice checks, salting and supervision of the site. Plaintiff argues that Dixon assumed a duty to Plaintiff because both Dixon and Ruppert performed site maintenance. Further, Plaintiff contends that multiple questions, including whether Dixon properly performed their duties and whether Dixon should be held jointly and severally liable, are questions of fact for the jury to decide.

Standard of Review

The Court may grant summary judgment 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 and that the moving party is entitled to summary judgment as a matter of law.”¹ The moving party bears the initial burden of showing that no material issues of fact are present.² Once such a showing is made, the burden shifts to the non-moving party to demonstrate that there are material issues of fact in dispute.³ In considering a motion for summary judgment, the Court must view the record in a light most favorable to the

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

² *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

³ *Id.* at 681.

non-moving party.⁴ “Summary judgment will not be granted when a more thorough inquiry into the facts is desirable to clarify the application of the law to the circumstances.”⁵

Discussion

“In order to be held liable in negligence, a defendant must have been under a legal obligation- a duty- to protect the plaintiff from the risk of harm which caused his injuries.”⁶ Delaware follows the Restatement (Second) of Torts, which defines duty as:

the fact that the actor is required to conduct himself in a particular manner at the risk that if he does not do so he becomes subject to liability to another to whom the duty is owed for any injury sustained by such other, of which that actor's conduct is a legal cause.⁷

The Restatement also explains that one who “does an affirmative act is under a duty to others to exercise the care of a reasonable person to protect those others against an unreasonable risk of harm arising out of the act.”⁸ In determining whether a duty exists, the Court must determine, “whether such a relation exists between the parties that the community will impose a legal obligation upon one for the benefit of the other.”⁹ In other words, “was the interest of the plaintiff which

⁴ *Burkhart*, 602 A.2d at 59.

⁵ *Phillip-Postle v. BJ Prods., Inc.*, 2006 WL 1720073, at *1 (Del. Super. Apr. 26, 2006).

⁶ *Fritz v. Yeager*, 790 A.2d 469, 471 (Del. 2002).

⁷ *Smith v. First State Action Agency*, 2011 WL 607110, at *2 (Del. Super. Jan. 26, 2011). (quoting Restatement (Second) of Torts §4).

⁸ *Id.*

⁹ *Naidu v. Laird*, 539 A.2d 1064, 1070 (Del. 1988).

has suffered invasion entitled to the legal protection at the hands of the defendant.”¹⁰

This Court has held that the existence of a duty is a question of law to be decided by the Court and, “in appropriate situations, the trial court is authorized to grant judgment as a matter of law because no duty exists.”¹¹ The presence of a legal duty must be determined on a case by case basis.¹² However, in a negligence action, summary judgment will be granted only when the moving party establishes the absence of any genuine issue of material fact and provides “evidence of necessary certitude” sufficient to negate the Plaintiff’s claim.¹³

The Plaintiff asserts that her fall was caused by the snow and ice that covered the parking lot. A question of fact exists as to whether there was snow and ice in the parking lot and whether the condition of the parking lot was due, in part, to the negligence of Dixon in performing its snow removal duties three days prior to the fall. Additionally, Dixon may have assumed a duty, or may owe a duty to Plaintiff, but that determination is not dispositive of summary judgment at this juncture because material facts remain in dispute. Moreover, additional facts may be recovered through discovery, which may guide the Court in determining the extent of Dixon’s duty. Thus, based on the existence of material facts in dispute

¹⁰ *Smith*, 2011 WL 607110, at *2 (quoting *Shepard v. Reinoehl*, 830 A.2d 1235, 1238 (Del. Super. Sept. 6, 2002)).

¹¹ *Id.*

¹² *Naidu*, 539 A.2d at 1070.

¹³ *Id.*

necessary to determine duty, Summary Judgment is **DENIED without prejudice.**

Conclusion

Based on the foregoing, Defendant's Motion for Summary Judgment is
DENIED without prejudice.

IT IS SO ORDERED.

/s/Calvin L. Scott
Judge Calvin L. Scott, Jr.