

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| WILLIAM and LISA BASS, | : | NO. 10 – 01,858 |
| Plaintiffs | : | |
| | : | |
| vs. | : | |
| | : | |
| SECHRIST CONSTRUCTION & REMODELING, INC., | : | CIVIL ACTION - LAW |
| Defendant | : | |
| | : | |
| vs. | : | |
| | : | |
| CENTRE CONCRETE COMPANY, | : | |
| Additional Defendant | : | Motions for Summary Judgment |

OPINION AND ORDER

Before the Court are motions for summary judgment filed by Defendant Sechrist on December 5, 2011, and Defendant Centre Concrete on December 9, 2011. Argument on the motions was heard January 9, 2012.

In their Complaint, Plaintiffs have sued Defendant Sechrist for breach of contract, contending his remodeling work and concrete driveway installation under that contract was unworkmanlike. Plaintiffs seek damages to replace the alleged defective driveway¹ and repair the remaining alleged defective work. Defendant Sechrist in turn brought in Defendant Centre as an additional defendant, contending the concrete itself, supplied by Centre, was defective and that if Defendant Sechrist is held responsible, Defendant Centre is also responsible.

In its Motion for Summary Judgment, Defendant Centre contends that since neither Defendant Sechrist nor Plaintiffs have produced an expert opinion that the concrete was defective, it is entitled to judgment as a matter of law. Similarly, Defendant Sechrist contends in its motion that since Plaintiffs have not produced an expert opinion that the concrete installation work was not workmanlike and consistent with industry standards, it is also entitled to judgment as a matter of law with respect to the concrete installation claim. Plaintiffs argue they are not required to produce an expert opinion as Steven Sechrist (the person who actually

¹ The allegations of defectiveness include “scaling” and/or “pitting” of the one-third of the driveway closest to the road, and cracking of the driveway around the base of the garage and under the deck.

did the work for Sechrist Construction) admitted there was a problem with the driveway, and that an issue of material fact is thus presented which requires submission to a jury. The problem with this argument, however, is that it leaves the jury to simply speculate.

Under the principle of *res ipsa loquitur*, on which the Court assumes Plaintiffs are relying since that principle allows an inference of negligence without direct proof, it may be inferred that harm suffered by a plaintiff is caused by a defendant's negligence when (1) the event is of a kind which ordinarily does not occur in the absence of negligence; (2) other responsible causes, including the conduct of the plaintiff and third persons, are sufficiently eliminated by the evidence; and (3) the negligence is within the scope of the defendant's duty to the plaintiff. See Smick v. City of Philadelphia, 638 A.2d 287 (Pa. Commw. 1994). In the instant case, however, Plaintiffs have produced no evidence that the event is of a kind which ordinarily does not occur in the absence of negligence. It may well be that concrete naturally cracks, or that exposure to the elements results in the condition seen here, and there is no proffered testimony to the contrary. Further, Plaintiffs have failed to eliminate other responsible causes such as that the concrete was defective, or that salt from the winter roadway was responsible. Therefore, Plaintiffs' claim that the installation was unworkmanlike requires pure speculation and cannot be presented to a jury. See Morena v. South Hills Health System, 462 A.2d 680 (Pa. 1983).

With respect to Defendant Centre's motion, as Defendant Sechrist admits he has no evidence the concrete was defective, the motion will be granted without further discussion.

ORDER

AND NOW, this 10th day of January 2012, for the foregoing reasons, the Motion for Summary Judgment filed by Defendant Sechrist Construction is hereby GRANTED. The Motion for Summary Judgment filed by Defendant Centre Concrete is also GRANTED.

cc: Christian Frey, Esq.
Joseph Musto, Esq.
William Carlucci, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

BY THE COURT,

Dudley N. Anderson, Judge