

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

GORDON FULKROD,	:	NO. 11 – 00,526
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
DOLLAR GENERAL and BUCHERT REALTY,	:	
Defendant	:	Motion for Summary Judgment

OPINION AND ORDER

Before the court is Defendant Dollar General’s motion for summary judgment, filed May 16, 2013. Argument on the motion was heard July 19, 2013.

In his Complaint, Plaintiff contends he fell in a pothole “in the parking lot of the Defendant’s store...” In its motion, Defendant Dollar General contends it leased only a portion of the real estate on which its store is located and that it had no ownership or control over the area in question, and no maintenance responsibilities for the outdoor premises, and that Plaintiff has failed to offer proof otherwise.¹ In response, Plaintiff points to certain language in the lease which, he contends, demonstrates Defendant’s ability to control the area in question (the parking lot) and thus impose on Defendant a duty to Plaintiff to maintain that area in good condition.

The relevant lease, by which Defendant Dollar General obtains from Defendant Buchert Realty the right to use the premises in question, a copy of which is attached to Defendant’s motion as Exhibit A, provides in paragraph 6, in pertinent part, as follows:

6. Maintenance. ... Lessor shall maintain at its cost and expense in good condition and shall perform all necessary maintenance, repair, and replacement to the exterior of the premises including, but not limited to, ... all paved areas ... during the term of this lease and any renewal periods. ... Lessor has the right and responsibility to enter the Demised Premises periodically, at any reasonable time, to inspect the condition of the premises and to make repairs. ... Should Lessor neglect or refuse to make or commence such repairs, restorations, or

¹ In its written motion, Defendant also contended Plaintiff had failed to offer medical evidence to establish that his alleged injuries were related to the alleged fall. At argument, counsel indicated that certain discovery provided after the motion was filed raises sufficient issues of fact to make summary judgment inappropriate, and withdrew that argument from consideration.

payments within thirty (30) days after written notice has been given by Lessee, Lessee, without liability or forfeiture of its terms or terms herein, may make or perform such construction, repairs, restorations, maintenance, or payments, and deduct the cost thereof and the cost of damage to Lessee's property from the rent or other monies thereafter payable.

Thus, while Buchert Realty may hold the ultimate responsibility for repairs to the parking lot, Dollar General has the right to make those repairs and seek reimbursement for the cost. This leaves open the question whether Dollar General thus has a duty to its customers, and the public using its parking lot, to inspect and notify and, if no repair is forthcoming from Buchert Realty, to itself repair. As the lease itself is unclear, the parties' intentions, as evidenced by their actions over the course of the lease, are relevant to a final determination of the matter. As this raises issues of fact, summary judgment is not appropriate.

ORDER

AND NOW, this 22nd day of July 2103, for the foregoing reasons, Defendant Dollar General's motion for summary judgment is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Amy Boring, Esq.
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Joseph Musto, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson