

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

STEVEN J. ROCKEY and	:	NO. CV2022-00791
ELAINE M. ROCKEY,	:	
Plaintiffs,	:	
vs.	:	
	:	CIVIL ACTION
NANCY A. STEARNS, et al.,	:	
Defendants.	:	Summary Judgment

OPINION AND ORDER

The matter captioned above came before the Court on February 21, 2024, for argument on Defendants’ Motion for Summary Judgment. The Court hereby issues the following OPINION and ORDER on that Motion.

I. Background:

This matter was commenced by Writ of Summons filed August 17, 2022. After a Rule, Plaintiff filed their Complaint on October 6, 2022. After close of the pleadings, Defendants filed a Motion for Summary Judgment on January 11, 2024, which is now before the Court.

II. The Record Evidence:

The events which gave rise to Plaintiffs’ claims are substantially undisputed. Plaintiffs claim that Plaintiff Steven Rockey sustained injuries on August 28, 2020, as a result of falling off a porch at the former residence of Defendant Nancy A. Stearns (now deceased). Steven J. Rockey was on the premises at the invitation of Nancy A. Stearns, for the purpose of painting a porch at the home. Plaintiff contends that both Steven Rockey and Nancy A. Stearns fell from the porch when an allegedly defective porch railing broke loose from a structural post, causing the railing to collapse. The gravamen of Plaintiffs’ claim is that Defendant Nancy A. Stearns permitted a porch railing to exist on her real property in a defective condition, and that the defective condition of that porch railing was the proximate cause of its collapse, and of Plaintiff’s damages.

III. The Test for Summary Judgment:

In Pennsylvania, a party may move for summary judgement “whenever there is no genuine issue of any material fact as to a necessary element of the cause of action...” Pa.R.C.P. No. 1035.2(1). In response, the adverse party may not rest on denials but must

respond to the motion. Pa.R.C.P. No. 1035.3(a). The non-moving party can avoid an adverse ruling by identifying “one or more issues of fact arising from evidence in the record...” Pa.R.C.P. No. 1035.3(a)(1).

In considering a motion for summary judgment, it is not the Court’s function to decide issues of fact. Rather, is it our function to decide whether an issue of fact exists. *Fine v. Checcio*, 582 Pa. 253, 273, 870 A.2d 850, 862 (2005).

Summary judgment is appropriate only when the record clearly shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. The reviewing court must view the record in the light most favorable to the nonmoving party and resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Only when the facts are so clear that reasonable minds could not differ can a trial court properly enter summary judgment.

Hovis v. Sunoco, Inc., 2013 Pa.Super. 54, 64 A.3d 1078, 1081, quoting *Cassel-Hess v. Hoffer*, 44 A.3d 84-85 (Pa. Super. Ct. 2012); accord *Khalil v. Williams*, 278 A.3d 859, 871 (2022), citing *Bourgeois v. Snow Time, Inc.*, 242 A.3d 637, 649 (2020).

In the matter of *Accu-Weather, Inc. v. Prospect Commc'ns, Inc.*, 435 Pa. Super. 93, 644 A.2d 1251 (Pa. Super. Ct. 1994), the Court described the proper test for a grant of summary judgment as follows:

First, the pleadings, depositions, answers to interrogatories, admissions on file, together with any affidavits, must demonstrate that there exists no genuine issue of fact. Pa.R.C.P. 1035(b). Second, the moving party must be entitled to judgment as a matter of law. *Id.* The moving party has the burden of proving that no genuine issue of material fact exists. *Overly v. Kass*, 382 Pa.Super. 108, 111, 554 A.2d 970, 972 (1989). However, the non-moving party may not rest upon averments contained in its pleadings; the non-moving party must demonstrate that there is a genuine issue for trial. The court must examine the record in the light most favorable to the non-moving party and resolve all doubts against the moving party. *Stidham v. Millvale Sportsmen's Club*, 421 Pa.Super. 548, 558, 618 A.2d 945, 950 (1992), *appeal denied*, 536 Pa. 630, 637 A.2d 290 (1993) (citing *Kerns v. Methodist Hosp.*, 393 Pa.Super. 533, 536–37, 574 A.2d 1068, 1069 (1990)). Finally, an entry of summary judgment is granted only in cases where the right is clear and free of doubt. *Ducko v. Chrysler Motors Corporation*, 433 Pa.Super. 47, 48, 639 A.2d 1204, 1205 (1993) (citing *Musser v. Vilsmeier Auction Co., Inc.*, 522 Pa. 367, 370, 562 A.2d 279, 280 (1989)). We reverse an entry of summary judgment when the trial court commits an error of law or abuses its discretion. *Kelly by Kelly v. Ickes*, 427 Pa.Super. 542, 547, 629

A.2d 1002, 1004 (1993) (citing *Carns v. Yingling*, 406 Pa.Super. 279, 594 A.2d 337 (1991)).

IV. Question Presented:

Whether Defendants are entitled to summary judgment on Plaintiffs' Complaint.

V. Response:

Defendants are not entitled to summary judgment on Plaintiffs' Complaint, based upon the presence of a number of material issues of fact for trial.

VI. Discussion:

In the matter of *Blackman v. Federal Realty Investment Trust*, 444 Pa.Super. 411, 664 A.2d 139 (Pa. Super. Ct. 1995), our Superior Court described the elements of premises liability to an invitee as follows:

A party is subject to liability for physical harm caused to an invitee if: he knows of or reasonably should have known of the condition and the condition involves an unreasonable risk of harm, he should expect that the invitees will not realize it or will fail to protect themselves against it, and the party fails to exercise reasonable care to protect the invitees against the danger. Restatement (Second) of Torts § 343 (1965). This section of the Restatement has been adopted by the Pennsylvania courts. See *Palenscar v. Michael J. Bobb, Inc.*, 439 Pa. 101, 266 A.2d 478 (1970); *Bowman v. Fretts & Leeper Construction Company*, 227 Pa.Super. 347, 322 A.2d 719 (1974).

444 Pa.Super. at 415, 664 A.2d at 141.

From the face of Defendants' Motion for Summary Judgment, it appears that Defendants contend that the railing was ornamental in nature, and thus that Steven Rockey was more than 50% negligent as a matter of law in choosing to lean against it. Further, Defendants contend that the record lacks any evidentiary basis upon which the finder of fact could conclude that Nancy A. Stearns had notice of the railing's condition.

Plaintiffs filed their brief in opposition to Summary Judgment on February 20, 2024. Plaintiffs assert that the Defendants have misrepresented the facts. Attached to Plaintiff's brief in a black and white photograph of the subject railing, which illustrates a railing constructed of pressured-treated dimension lumber, supported by 4 inch square posts. However unsound the railing might have been, it is obviously not "ornamental" in

its nature. Plaintiffs contend that the photograph supports the conclusion that the railing had been previously repaired, and thus that Nancy A. Stearns had actual notice of its defective condition. It is equally plausible that the evidence of repair establishes that Nancy A. Stearns was aware that the railing had been repaired, and therefore that she believed it to be in sound condition. Since Nancy A. Stearns was leaning on the rail at the time that it collapsed, she obviously did not believe that it was defective.

The Court notes that Nancy A. Stearns took title to her home on November 1, 1979, and owned that home until her death on June 6, 2022. The testimony of Steven J. Rockey and Tyler Rockey, contained within Plaintiff's brief in opposition to Summary Judgment, suggests that the railing collapsed at a time when Steven J. Rockey and Nancy A. Stearns were merely leaning on it. Steven J. Rockey testified that the railing was in a defective condition, in that it lacked the tongue required for a tongue and mortise. Tyler Rockey testified that the railing was held together by only four screws.

The fact that the railing collapsed under only light load, and its condition as described by Steven J. Rockey and Tyler Rockey, both support the conclusion that it was in a defective condition. The fact that it had been repaired earlier, and the fact that Nancy A. Stearns owned the home for over forty (40) years, both support the conclusion that she had either actual or constructive notice of its defective condition. The fact that repairs to the railing were earlier completed, and the fact that Nancy A. Stearns was leaning on the railing when it collapsed, both support the conclusion that she had full confidence in the strength of the railing, at the time of the collapse.

ORDER

And now, this 29th day of February, 2024, the Court finds that the record in this matter reveals multiple disputed issues of material fact for trial. For that reason, Defendants' Motion for Summary Judgment is DENIED.

By the Court,

William P. Carlucci, Judge

WPC/aml

CC:

Court Administrator
Harry T. Coleman, Esquire
41 North Main Street
3rd Floor, Suite 316
Carbondale, PA 18407
Gregory A. Stapp, Esquire