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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 07-15-2010
PHILIP G. URRY, CLERK
BY: GH

DIANA GUYTON, a married) 1 CA-CV 09-0471
individual,)
) DEPARTMENT D
Plaintiff/Appellant,)
) **MEMORANDUM DECISION**
v.) (Not for Publication-
) Rule 28, Arizona
VAN WAGNER & COMPANY, INC.,) Rules of Civil
a Colorado corporation doing) Appellate Procedure)
business in Arizona; ROGER VAN)
WAGNER and JANE DOE VAN WAGNER,)
husband and wife; LANNETTE)
GLOVER and JOHN DOE GLOVER, as)
husband and wife; LORIE CORRADO)
and JOHN DOE CORRADO, as)
husband and wife,)
)
Defendants/Appellees.)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. CV 2007-092971

The Honorable Joseph Kreamer, Judge

AFFIRMED

Branham Law Offices, P.C.
By Marlon E. Branham
and
Law Offices of David L. Abney
By David L. Abney
Attorneys for Plaintiff/Appellant

Mesa

Phoenix

T H O M P S O N, Judge

¶1 Plaintiff Diana Guyton appeals the grant of summary judgment in favor of defendants Van Wagner & Company, Inc., Roger and Jane Doe Van Wagner, Lannette and John Doe Glover, and Lorie and John Doe Corrado (collectively, Van Wagner). For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Guyton was employed as a teacher at a Tutor Time Child Care and Learning Center facility, which leased its building and land from Van Wagner. Tutor Time had leased the building and land since 1998, and continued to do so after Van Wagner purchased the property in December 2005. As part of her job duties, Guyton regularly disposed of trash in a gated dumpster located in the facility's parking lot. On December 27, 2006, as Guyton turned to leave after disposing of the trash, the gates and a concrete support post fell and a metal door struck her leg.

¶3 The facility director had previously noticed that the gates were rusty, and she had complained to the corporate office. According to her deposition testimony, the director passed by the gates regularly, but she noticed only on the

morning of the accident that the gates were bent and that the hooks to the support post were not secure. She contacted the company office and facility maintenance personnel and began to go from class to class to warn teachers not to use the dumpster, but she did not reach Guyton before the accident.

¶14 Guyton acknowledges that there is no evidence that Van Wagner had actual notice of the danger posed by the gates, but Guyton argues that Van Wagner had constructive notice due to the time necessary for rust to develop in Arizona's arid climate. Guyton argues that Van Wagner, as the owner of the property, had a nondelegable duty to make the property safe for invitees, such as herself, and to inspect for and warn of dangerous conditions on the property. Guyton further argues that Van Wagner's failure to inspect the property in the year between the purchase and the accident would allow a reasonable jury to find that Van Wagner breached its duty of reasonable care. She argues that summary judgment was inappropriate because breach is generally a jury question.

¶15 Van Wagner moved for summary judgment on the basis that there was no evidence it knew of or should have discovered the dangerous condition in time to prevent the accident. For the purposes of summary judgment, Van Wagner assumed it owed a duty to Guyton and consequently argued only that Guyton lacked any genuine evidence of breach of that duty. Van Wagner notes

that the facility director stated in her deposition that she believed the damage to the gate had been caused by a city sanitation vehicle, based on a subsequent incident where a city vehicle striking the gate caused the gate to fall in a similar manner. The court granted Van Wagner's motion, and Guyton timely appealed.

DISCUSSION

¶6 Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(c). We review the grant of summary judgment de novo to determine whether any genuine issue of material fact exists, and we view the evidence and all reasonable inferences in favor of the nonmoving party. *Chalpin v. Synder*, 220 Ariz. 413, 418, ¶ 17, 207 P.3d 666, 671 (App. 2008) (citation omitted). Summary judgment should be granted "if the facts produced in support of [a] claim . . . have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim. . . ." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990).

¶7 Guyton has presented no evidence beyond mere speculation that the rust caused the gate to fall, nor has she presented evidence to rebut Van Wagner's evidence, in the form

of the facility director's deposition testimony, that the enclosure became dangerous only slightly prior to Guyton's accident. Guyton thus cannot carry her burden on either breach of duty or causation.

¶18 Moreover, we have previously recognized the general rule of landlord non-liability for dangerous conditions on leased premises, and requiring that lessees take appropriate precautions for such conditions. *Piccola ex rel. Piccola v. Woodall*, 186 Ariz. 307, 312, 921 P.2d 710, 715 (App. 1996). Where a lessee has been in possession long enough to assume the obligations of due care, such obligations devolve to the lessee. *Id.* Additionally, while land owners are required to inspect premises when they have reason to suspect that defects exist at the time a tenant takes possession, they are not required to do so absent such suspicion. *Id.* at 310, 921 P.2d at 713. Here, Guyton's employer had leased the property for more than ten years, and Guyton presented no evidence that Van Wagner was ever informed of any problems with the enclosure that would trigger a suspicion that a dangerous defect existed.

¶19 For the foregoing reasons, we affirm the grant of

summary judgment in favor of Van Wagner.

/s/

JON W. THOMPSON, Judge

/s/

PATRICIA A. OROZCO, Presiding Judge

/s/

DIANE M. JOHNSEN, Judge