IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ALFRED L. BAKER,	)	
	)	
Plaintiff,	)	
	)	C.A. No. N09C-11-144 MMJ
v.	)	
	)	
EAST COAST PROPERTIES, INC. d/b/a GREENWOOD ACRES APARTMENTS, a Delaware corporation,	)	
	)	
Defendant.	)	

Submitted: November 7, 2011
Decided: November 15, 2011

On Defendant's Motion for Summary Judgment
GRANTED
Defendant's Motion to Exclude Plaintiff's Expert Testimony at Trial
DENIED AS MOOT

OPINION

Gary S. Nitsche, Esquire, David A. Arndt, Esquire (argued),Weik, Nitsche & Dougherty, Wilmington, Delaware, Attorneys for Plaintiff

Dennis A. Mason, II, Esquire, Mintzer, Sarowitz, Zeris, Ledva & Meyers, LLP, Wilmington, Delaware, Attorneys for Defendant

JOHNSTON, J.

Plaintiff Alfred Baker ("Baker") rented an apartment in Greenwood Acres Apartments ("Greenwood Acres") from Defendant East Coast Properties, Inc. ("East Coast"). Baker brought suit, claiming that he sustained injuries as a result of negligence on the part of East Coast. Baker contends that East Coast's unannounced and unauthorized entry into his apartment triggered an audible self-installed alarm attached to his front door. According to Baker, the sound of the alarm startled him awake, causing him to get out of bed and subsequently fall as he attempted to get to the front door.

East Coast moves for summary judgment against Baker, arguing that it was not reasonably foreseeable that East Coast's entry into Baker's apartment would result in Baker falling and sustaining injuries. East Coast further argues that even if its actions were negligent, Baker's installation of the alarms constitutes an intervening and superseding cause.

The Court finds that the alarm, which Baker himself placed on the front door, constitutes an intervening and superseding cause, breaking the causal chain stemming from any negligence on the part of East Coast. In any event, Baker's own contributory negligence, which the Court finds as a matter of law to be greater than any negligence on the part of East Coast,

bars him from recovery. Therefore, East Coast's Motion for Summary Judgment is granted.

FACTUAL BACKGROUND

The following facts are set forth in the light most favorable to Baker, as the non-moving party. Baker rented an apartment in Greenwood Acres from East Coast, owner and landlord of the apartment complex. Greenwood Acres provides housing specifically for the elderly and those with ambulatory difficulties. Baker, himself, is legally blind and suffers from numerous health problems, including COPD, diabetes[1], prostate cancer, and low back pain. Baker has also been diagnosed with Parkinson's disease. As a result of his Parkinson's disease, Baker exhibits ambulatory dysfunction which causes him to fall down frequently because his knees buckle.

Since moving to Greenwood Acres in 2000, Baker claimed that maintenance personnel employed by East Coast repeatedly had entered his apartment without permission. During one of these unauthorized visits, Baker claimed that his cable box had been stolen. As a result of the numerous unauthorized entries into his apartment, Baker purchased and installed an audible motion-sensitive alarm to hang on the interior front doorknob. When activated, the alarm would sound only if the door was

[1] As a side effect of his diabetes, Baker suffers from diabetic neuropathy, which causes sensation problems in his lower extremities.

opened.[2] Therefore, according to Baker, he would only set the alarm if he was home so that he could be alerted when someone entered his apartment.

On March 13, 2009, at approximately 9:00 a.m., Louis Desposito ("Desposito"), East Coast's maintenance man, arrived outside Baker's apartment. Desposito, who was accompanied by a fire technician from Simplex Grinnell, planned to conduct maintenance and inspections of the complex's fire suppression system, including equipment in Baker's unit. Baker contends that he never received oral or written notice that maintenance personnel would need to access his unit.

The parties dispute whether Desposito knocked on the door or rang the door bell before using the master key to enter Baker's unit. Viewing the facts in the light most favorable to Baker, however, the Court will assume that Desposito's entry in Baker's apartment was unannounced and unauthorized. As Desposito unlocked Baker's front door and opened it, the alarms immediately sounded.[3] According to Baker, he was startled awake by the sound of the alarm and jumped out of bed to see who was in his apartment. Baker took about three steps and fell to the ground when his legs gave way. As a result of the fall, Baker claimed to have sustained head and

[2] The alarm does not prevent access into the apartment – it merely emits a sound when the front door is opened.

[3] Baker also refuted Desposito's contention that he yelled "maintenance" as he opened Baker's front door.

neck injuries. Baker managed to get back on his feet and proceeded to the front door to see who was attempting to enter his apartment.

STANDARD OF REVIEW

Summary judgment is granted only if the moving party establishes that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.[4] All facts are viewed in a light most favorable to the non-moving party.[5] Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to the specific circumstances.[6] When the facts permit a reasonable person to draw only one inference, the question becomes one for decision as a matter of law.[7] If the non-moving party bears the burden of proof at trial, yet "fails to make a showing sufficient to establish the existence of an element essential to that party's case," then summary judgment may be granted against that party.[8]

DISCUSSION

Common Law Negligence

In order to establish a *prima facie* case of negligence, the plaintiff must show that the defendant's negligent act or omission breached a duty of

[4] Super. Ct. Civ. R. 56(c).
[5] *Hammond v. Colt Indus. Operating Corp.*, 565 A.2d 558, 560 (Del. Super. 1989).
[6] Super. Ct. Civ. R. 56(c).
[7] *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).
[8] *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

care owed to plaintiff in a way that proximately caused plaintiff injury.[9] "Summary judgment can be appropriate in a negligence action if [the] [p]laintiff[] fail[s] to establish the elements of negligence by a preponderance of the evidence."[10]

Here, in determining whether summary judgment is appropriate, the Court's inquiry must focus on two issues: (1) whether East Coast breached any duty it owed to Baker; and (2) if so, whether its breach was the proximate cause of Baker's injuries.

Duty and Breach

Under Delaware law, one's "duty of care" is measured in terms of reasonableness.[11] One has a duty to act as a reasonably prudent person would act.[12] In defining the parameters of one's duty, the Court has incorporated the principle of foreseeability.[13] The duty encompasses protecting against reasonably foreseeable events.[14]

Here, the relevant inquiry is whether it was reasonably foreseeable that East Coast's conduct – that is, East Coast's allegedly unauthorized and

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[9] *Duphily v. Del. Elec. Co-op, Inc*., 662 A.2d 821, 828 (Del. 1995) (citing *Culver v. Bennett*, 588 A.2d 1094, 1096-97 (Del. 1991)).
[10] *Roberts v. Delmarva Power & Light Co*., 2 A.3d 131, 144 (Del. Super. 2009).
[11] *Delmarva Power & Light Co. v. Burrows*, 435 A.2d 716, 718 (Del. 1981).
[12] *Id.*
[13] *Kuczynski v. McLaughlin*, 835 A.2d 150, 154 (Del. Super. 2003). *See also Burrows,* 435 A.2d at 718; *In re Asbestos Litigation*, 2007 WL 4571196, at *7 (Del. Super.).
[14] *Burrows*, 435 A.2d at 718.

unannounced entry into Baker's apartment – would result in Baker's injuries. Absent a finding that such a result was reasonably foreseeable, East Coast cannot be said to have breached any duty to Baker under the circumstances.

East Coast argues that it was not reasonably foreseeable that Desposito's "knocking on the door and ringing [Baker's] doorbell for several minutes and opening his door yelling 'maintenance', would result in Baker's self installed alarms going off, startling him awake, resulting in his attempt to walk when he was not physically capable to do so." Therefore, East Coast contends that it owed no duty to Baker under these circumstances.

Baker disputes East Coast's account of events, claiming that Desposito neither knocked on the door nor rang the doorbell. Instead, Baker claims that without authorization or announcement, Desposito entered Baker's apartment, triggered the alarm and caused injury by startling Baker. According to Baker, because East Coast was aware of his ambulatory difficulties as well as his prior complaints regarding unauthorized intrusions into his apartment, it was reasonably foreseeable that Baker may be injured due to East Coast's unannounced entry.

Intervening and Superseding Causation

Although a question of fact exists as to the manner of East Coast's entry into Baker's apartment, the Court need not resolve this factual dispute. Even if the Court were to find that East Coast's entry was unauthorized and unannounced, Baker has failed to establish that the injuries he sustained were proximately caused by East Coast's conduct.

Delaware applies the traditional "but for" definition of proximate cause.[15] Proximate cause is that which "brings about or produces, or helps to bring about or produce the injury and damage, and but for which the injury would not have occurred."[16] In other words, proximate cause exists if "a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred."[17]

The mere occurrence of an intervening cause, however, does not automatically relieve the original tortfeasor of liability.[18] In determining whether the chain of causation stemming from the original tortious conduct is broken, the relevant inquiry is whether the intervening act was reasonably

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[15] *Jones v. Crawford*, 1 A.3d 299, 302 (Del. 2010) (citing *Wilmington Country Club v. Cowee*, 747 A.2d 1087, 1097 (Del. 2000)).
[16] *Nutt v. GAF Corp*., 526 A.2d 564, 567 (Del. Super. 1987) (citing *Biddle v. Haldas Bros*., 190 A. 588, 596 (Del. Super. 1937)).
[17] *Duphily*, 662 A.2d at 829 (citing *Culver*, 588 A.2d at 1097).
[18] *Duphily*, 662 A.2d at 829.

foreseen or reasonably anticipated by the original tortfeasor.[19] If the intervening act was not reasonably foreseeable, then the act constitutes a superseding cause and the initial tortfeasor is relieved of liability.[20]

East Coast argues that Baker's actions constitute an intervening cause that supersedes any alleged negligent conduct by East Coast. According to East Coast, Baker's installation of the alarm on his front door was neither anticipated nor reasonably foreseeable by East Coast. Baker's own conduct, East Coast contends, was the sole proximate cause of Baker's injuries.

In response, Baker claims that East Coast's negligence – that is, East Coast's unauthorized and unannounced entry into his apartment – was the proximate cause of his injuries.

At his deposition, Baker acknowledged that the sole reason he fell was because he was startled out of bed by the sound of the alarm. The alarm operated precisely as Baker intended. When the door opened, the alarm sounded. According to Baker, when the alarm sounded, "it woke [him] up and startled [him]." In response to the sound of the alarm, Baker testified that he "jumped out of bed, made about three steps and fell" because his "legs gave way."

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[19] *McKeon v. Goldstein*, 164 A.2d 260, 262 (Del. 1960) (citing *Stucker v. American Stores Corp*., 171 A. 230, 233 (1934)).
[20] *Nutt*, 526 A.2d at 567.

The Court finds that Baker's act of installing the alarm on the front door was neither reasonably foreseeable nor reasonably anticipated by East Coast. Baker testified that he saw no reason to inform East Coast that he had installed the alarm on the front door.

Viewing the facts in the light most favorable to Baker, the Court finds that the sounding of the alarm constitutes an intervening cause which relieves East Coast of liability. While it is undisputed that the alarm would not have sounded but for East Coast's entry into the apartment, it was the audible sound emitted from the alarm that directly caused Baker's injuries. It was not reasonably foreseeable that Baker would install a device that would cause him to panic to such an extent that he would forget that he was unable to walk without assistance. Therefore, the causal chain of liability stemming from any negligence on behalf of East Coast was effectively broken by Baker's intervening and superseding act.

Comparative Negligence

Even absent the intervening and superseding cause, the Court finds that Baker's own contributory negligence bars his recovery. Under Delaware's comparative negligence law, a plaintiff cannot recover if he

acted more negligently than the defendant.[21] In other words, "if the plaintiff's contributory negligence is 51% or greater, it is an absolute bar to recovery according to the Delaware statute."[22] However, "if the plaintiff's contributory negligence is 50% or less, the plaintiff is permitted to recover, although the recovery is reduced proportionally."[23] Summary judgment may be granted in favor the defendant if the trial judge determines that "no reasonable juror could find that the plaintiff's negligence did not exceed the defendant's."[24]

At his deposition, Baker acknowledged that his ambulatory dysfunction, a side effect of his Parkinson's disease, posed significant problems with his ability to stand and walk. According to Baker, he would fall frequently as a result of his condition. Baker was keenly aware of the physical limitations caused by his Parkinson's.

The Court finds, as a matter of law based on undisputed facts, that Baker's contributory negligence – installing the alarm without notice to East Coast, which caused him to jump up out of bed and take "three steps" despite the fact that he suffered from physical limitations which prevented

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[21] 10 *Del. C*. § 8132. The Court notes that Delaware's comparative negligence statute does not change Delaware's adherence to the "but for" test of proximate causation. *Culver v. Bennett*, 588 A.2d 1094, 1099 (Del. 1991).
[22] *Culver*, 588 A.2d at 1098.
[23] *Id.*
[24] *Jones*, 1 A.3d at 303.

him from walking without assistance – is greater than any negligence allegedly committed by East Coast.

CONCLUSION

Baker has failed to establish a *prima facie* case of negligence on the part of East Coast. Having considered the facts in the light most favorable to the non-moving party, the Court finds that the alarm, installed by Baker, constitutes an intervening and superseding cause which relieves East Coast of liability. The Court is cognizant of the fact that but for East Coast's entry into the apartment, the alarm would not have been triggered. However, the Court finds, as Baker conceded, that the sound emitted from the self-installed alarm (of which East Coast had no notice) directly caused Baker's injuries.

Additionally, the Court finds as a matter of law based on undisputed facts, that Baker's contributory negligence – installing the alarm and attempting to walk without assistance despite his physical limitations – exceeds any negligence of East Coast. Therefore, pursuant to Delaware's comparative negligence statute, Baker is barred from recovery.

THEREFORE, East Coast's Motion for Summary Judgment is hereby **GRANTED**.

THEREFORE, East Coast's Motion *in Limine* to Exclude Baker's Expert Testimony at Trial is hereby **DENIED AS MOOT**.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston