

NOT DESIGNATED FOR PUBLICATION COURT OF APPEAL,
FIFTH CIRCUIT

JAYANNE CRAWLEY, D/B/A
SOUTHLANDS PREMIUM TROPICALS

FILED DEC 30 2002
NO. 02-CA-933

FIFTH CIRCUIT

VERSUS

COURT OF APPEAL

COASTAL BRIDGE CO., INC. AND
LOUISIANA GRAIN SERVICES, INC.

STATE OF LOUISIANA

ON APPEAL FROM THE 40TH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 43370, DIVISION "A"
HONORABLE MADELINE JASMINE, JUDGE PRESIDING

DECEMBER 30, 2002

**THOMAS F. DALEY
JUDGE**

Panel composed of Judges James L. Cannella,
Thomas F. Daley, and Marion F. Edwards

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Coastal Bridge Co., Inc.

AFFIRMED

T.D.
JC
JK

Plaintiff, Jayanne Crawley (Crawley), appeals the trial court's grant of partial summary judgment in favor of defendant, Coastal Bridge Co., Inc. (Coastal Bridge). After thorough consideration of the facts and law, we affirm the judgment.

Crawley sued Coastal Bridge for property damage and personal injuries she alleged she sustained following her eviction from a parcel of land she had leased from Louisiana Grain Services. This summary judgment concerns only her cause of action for personal injuries. Crawley's Petition alleged that she leased a parcel of land from Louisiana Grain Services for a term beginning November 1, 2000 though April 30, 2000, which she used for her business of growing tropical plants, including some 3,000 sago palms, for resale. Her petition alleges that she was evicted from the land on July 19, 2001, when Coastal Bridge, pursuant to a lease it entered with Louisiana Grain Services, went on the property and removed and

destroyed Crawley's plants and other business property. On July 23, 2001, while engaged in salvaging the remaining plants and property ("mitigation" of her damages), Crawley alleged that she broke her ankle. She argued that since the defendants breached their legal duty not to evict her, they are legally at fault for her personal injuries.

Coastal Bridge filed a Motion for Summary Judgment, arguing that they breached no legal duty to Crawley because Crawley's petition and deposition stated that there was no ruin or unsafe condition in the property, and that the accident occurred in properly maintained grass, not a defective condition in the land. Coastal Bridge's motion shows that it assumed the injury occurred on the leased premises. Crawley filed a Memorandum in Opposition with attachments, clarifying that her injury did not occur on the leased premises, but on adjacent property not owned or maintained by either defendant. She clarified that her claim of liability was not based upon the defendant's custody of the leased premises, but was based upon the fact that they breached a legal duty not to evict her and that her personal injuries were sustained as a result of the eviction.

The trial court heard arguments, and following the hearing, Coastal Bridge submitted a Post Trial Memorandum that argued a different legal theory than the one asserted in their Motion for Summary Judgment and at the hearing. Crawley filed a Motion to Strike, protesting this new theory of legal "causation," which was denied. The trial court rendered judgment in favor of the defendant, finding that under the facts of this case, the defendant owed plaintiff no legal duty to protect her from an injury on premises not in its custody.

Plaintiff asserts three Assignments of Error. Crawley argues that there are genuine issues of material fact in dispute and that as a matter of law Coastal Bridge is not entitled to summary judgment on the personal injury claim. The thrust of plaintiff's arguments on appeal are that Coastal Bridge should not have been

allowed to assert one legal argument in its Motion for Summary Judgment and a different legal argument at the hearing and in its Post Trial Memorandum. Crawley asserts that even though it appears that the trial court did not consider the argument asserted by Coastal Bridge in its motion, Coastal Bridge's mistaken belief that the injury occurred on the leased premises creates a genuine issue of material fact that precludes summary judgment in favor of Coastal Bridge.

Crawley argues that she was sandbagged by Coastal Bridge's post-hearing memorandum, and that the trial court should have granted her Motion to Strike. Plaintiff argues that she did not have an opportunity to respond to the defendant's "new" theory or defense at the trial court. Courts of Appeal review the grant of summary judgment *de novo*. Though plaintiff might not have had the opportunity to fully respond to the defendant's post-hearing memorandum and new argument in the trial court, she has briefed it fully to this court and has the benefit of our *de novo* review of the facts and evidence. We have fully considered her position.

Though apparently Coastal Bridge was mistaken at the time it filed its Motion for Summary Judgment, by the time of the hearing, well before judgment, the facts were not in dispute: The injury clearly occurred on the adjacent property, not the leased property. Therefore, there were no factual issues in dispute. The fact that Coastal Bridge was mistaken as to the place where the injury occurred when they filed their Motion for Summary Judgment does not create a genuine issue of material fact. The trial court's factual finding is correct in this regard.

The remaining legal arguments of plaintiff on appeal can be summarized as follows: Defendant owed Crawley the legal duty not to evict her, and because it breached that duty, Coastal Bridge is liable for Crawley's broken ankle, which Crawley sustained while mitigating her damages (salvaging her property) that were the result of the eviction.

Whether a defendant owes a plaintiff a legal duty is a question of law and whether a defendant breached a legal duty is a question of fact. As the Fourth Circuit stated in Haydin v. Crescent Guardian, Inc., (2001-1986 La. App. 4 Cir. 5/15/02), 818 So.2d 1033, 1039:

Duty is a question of law. The question of whether a duty exists in a particular set of circumstances is a question of law for the court to decide. Mathieu v. Imperial Toy Corp., 94-0952 (La.11/30/94) 646 So.2d 318, 322. Simply put, the inquiry is whether the plaintiff has any law--statutory, jurisprudential or arising from general principles of fault--to support his claim. Faucheaux v. Terrebonne Consolidated Government, 615 So.2d 289, 292 (La.1993).

In this case, we find that the trial court was correct in granting summary judgment in favor of defendant Coastal Bridge. Plaintiff argues that Coastal Bridge breached the legal duty not to evict her from property of which she was the legal occupant. The wrongful eviction issue was not addressed in this Summary Judgment Motion. We find that, even assuming *arguendo* that Coastal Bridge had and breached a legal duty to Crawley not to evict her, there is no ease of association between the eviction and her personal injuries. The question is “How easily does one associate the plaintiff's complained of harm with the defendant's conduct?” or the scope of the duty inquiry is ultimately a question of policy as to whether the particular risk falls within the scope of the duty. It is not likely or even reasonably certain or foreseeable that one who is evicted from immovable property will sustain personal injuries as a result thereof. Personal injury is not within the scope of the risk in an eviction, again even assuming that Coastal Bridge had a legal duty not to evict Crawley and breached that duty. There is no temporal association between Coastal Bridge's conduct and Crawley's injuries. Coastal Bridge's removal of Crawley's property was already several days old and finished by the time Crawley injured herself. Crawley's deposition testimony clarifies that she was not engaged in mitigating her damages when she was injured: she was conversing with her neighbor adjacent to the rented property and had walked along

talk with him. She was not actively engaged in salvaging her property when she sustained a broken ankle. We find that the trial court's judgment is correct, and affirm.

AFFIRMED



EDWARD A. DUFRESNE, JR.
CHIEF JUDGE

SOL GOTHARD
JAMES L. CANNELLA
THOMAS F. DALEY
MARION F. EDWARDS
SUSAN M. CHEHARDY
CLARENCE E. MCMANUS
WALTER J. ROTHSCHILD
JUDGES

Court of Appeal

FIFTH CIRCUIT
STATE OF LOUISIANA

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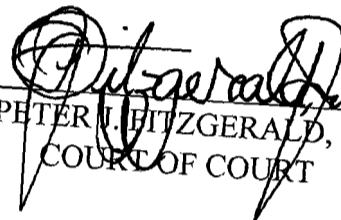
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CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY DECEMBER 30, 2002 TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:


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