

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 CA 0152

TERRY AND JO ANN FALCON, INDIVIDUALLY AND
AS HUSBAND AND WIFE AND JOYCE FALCON

VERSUS

CLARENDON INSURANCE COMPANY, STEVE KENT
TRUCKING, INC., MARTIN R. LEGER, JR., DANNY CHILDERS, OIL
MOP, L.L.C., MASTER VAC HYDRO SERVICES, L.L.C., MASTER
VAC INDUSTRIAL SERVICES, L.L.C. AND STATE OF LOUISIANA,
DEPARTMENT OF ENVIRONMENTAL QUALITY

Judgment Rendered: September 14, 2007.

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On Appeal from the
23rd Judicial District Court,
In and for the Parish of Assumption,
State of Louisiana
Trial Court No. 28,065

Honorable Guy Holdridge, Judge Presiding

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BEFORE: CARTER, C.J., PETTIGREW AND WELCH, JJ.

*2008 Pettigrew, J. concurs in the result
Welch J. concurs*

CARTER, C. J.

Property owners, Terry Falcon, Jo Ann Falcon, and Joyce Falcon (“Plaintiffs”), who suffered property damage when a trucking company spilled chemicals onto their property, appeal a judgment granting summary judgment and dismissing their claims against Master Vac Industrial Services, L.L.C. (“Master Vac”), relating to the cleanup of the spill. For the following reasons, we affirm in part and reverse in part.

FACTS AND PROCEDURAL HISTORY

This appeal is a companion to that of **Falcon v. Clarendon Ins. Co.**, 06-2418 (La. App. 1 Cir. 9/14/07), which considers summary judgment rendered in favor of a similarly situated co-defendant, Oil Mop, Inc. (“Oil Mop”). Steve Kent Trucking hired both Master Vac and Oil Mop to clean plaintiffs’ properties of chemicals spilled thereon when one of its trucks overturned in a single vehicle accident. After the cleanup was completed, soil sampling determined that no further cleanup was required by Louisiana’s Department of Environmental Quality guidelines.

Plaintiffs named both Master Vac and Oil Mop as defendants in the resulting suit alleging, *inter alia*: trespass; property damages due to the original chemical spill and its inadequate cleanup; damage to a driveway caused by heavy equipment used in the cleanup; and further damage to the driveway as well as personal injury to one plaintiff caused by unstable gravel that was poured over the driveway. Master Vac answered the petition, then moved for summary judgment contending there was no proof that it owed any duty to plaintiffs, that its actions were the cause-in-fact of plaintiffs’ damages, or that plaintiffs suffered damages due to any action of

Master Vac. The trial court granted the motion for summary judgment and dismissed plaintiffs' claims against Master Vac. Plaintiffs now appeal.

DISCUSSION

Summary judgments are reviewed on appeal *de novo*, with the appellate court using the same criteria that govern the trial court's determination of whether summary judgment is appropriate. A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine issue of material fact. The motion should be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, show that there is no genuine issue as to material fact and that mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B).

The initial burden of proof is on the moving party. However, on issues for which the moving party will not bear the burden of proof at trial, the moving party's burden of proof on the motion is satisfied by pointing out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the nonmoving party must produce factual support sufficient to establish that it will be able to satisfy its evidentiary burden of proof at trial; failure to do so shows that there is no genuine issue of material fact. LSA-C.C.P. art. 966(C)(2); **Southern Silica of Louisiana, Inc. v. Louisiana Ins. Guar. Ass'n**, 06-2023 (La. App. 1 Cir. 7/13/07), ___ So.2d ___, ___.

For the reasons set forth in the companion case cited above, we find that the essential cause-in-fact and damages elements are missing from plaintiffs' negligence claims against Master Vac arising from the chemical spill caused by Steve Kent Trucking and Master Vac's actions in cleaning

that spill. Master Vac, like Oil Mop, is entitled to summary judgment dismissing plaintiffs claims against it that arise from the original spill and its cleanup. The trial court's judgment is affirmed insofar as it dismisses those claims.

However, the trial court dismissed *all* of plaintiffs' claims against Master Vac, which included claims above and beyond those caused by Steve Kent Trucking, such as claims for damages to a driveway and a claim for personal injury damages suffered when one plaintiff slipped on loose gravel that had been poured over the driveway during the cleanup. Master Vac's motion for summary judgment states it is seeking dismissal of "all claims against [it] by the plaintiffs." However, Master Vac does not, in its motion or supporting memorandum, attack or point out a lack of factual support for the claims for driveway damage or personal injury due to slip and fall.

After careful review of the record, we conclude that Master Vac did not move for summary judgment on those claims. As the mover for summary judgment, Master Vac failed to adequately place those claims before the court. A court cannot render a motion for summary judgment dismissing claims that were not challenged by the pleading. **Hoover v. Hoover**, 01-2200 (La. 4/3/02), 813 So.2d 329, 334. The trial court's judgment must be reversed insofar as it dismisses the claims for property damage to the driveway and for personal injuries allegedly caused by a slip and fall.

CONCLUSION

For these reasons, the trial court's judgment is affirmed insofar as it dismisses those claims related to the original chemical spill and its cleanup. The trial court's judgment is reversed insofar as it dismisses plaintiffs'

claims for property damage to the driveway and for personal injuries due to slip and fall. This matter is remanded for further proceedings consistent with this opinion. One half of the costs of this appeal are assessed to Master Vac Industrial Services, Inc., with the other half assessed to Terry Falcon, Jo Ann Falcon, and Joyce Falcon.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.