STATE OF MICHIGAN

COURT OF APPEALS

EDWARD KHOURY,

Plaintiff-Appellant,

v

D'ANGELO CONSTRUCTION COMPANY,

Defendant-Appellee,

and

SOBANIA, INC.,

Defendant.

UNPUBLISHED
May 6, 2008

No. 277993
Oakland Circuit Court
LC No. 2006-071840-CZ

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Plaintiff Edward Khoury appeals as of right the trial court's order granting defendant D'Angelo Construction Company's motion for summary disposition. We affirm. This appeal is being decided without oral argument under MCR 7.214(E).

Khoury had his law office in a building that he also managed. One of the building tenants, Morgan Stanley, had hired D'Angelo to remodel a portion of the building. On November 4, 2004, Khoury arrived at his office around 11:00 a.m. or noon. He noticed three stacks of new doors leaning on their sides against the hallway wall. Previously during this remodel, Khoury had asked D'Angelo's representative, Christopher D'Angelo, to not leave materials in the hallway. However, whenever Khoury had had a problem in the past, he would discuss it with Christopher, who would then correct the problem.

On the day in question, Khoury could not find Christopher or any other workers to take care of the doors, and Khoury worried that the doors would gouge the wall. To prevent damage to the wall, Khoury successfully placed some paper towels between the first stack of two doors and the wall. When he attempted to pull the second stack of three or four doors toward him to place paper towel between them and the wall, the stack fell and broke his foot in two places.

Khoury sued D'Angelo claiming that D'Angelo's negligence caused his injury. D'Angelo moved for summary disposition, which the trial court granted on the ground that

Khoury's actions constituted an intervening superseding cause of his injury that relieved D'Angelo of liability. More specifically, the trial court determined that it was not reasonably foreseeable that the building manager would attempt to move the doors himself when in the past he had complained to D'Angelo.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Hazle v Ford Motor Company*, 464 Mich 456, 461; 628 NW2d 515 (2001). A summary disposition motion brought under MCR 2.116(C)(10) is reviewed in the light most favorable to the nonmoving party and tests the factual support of a claim. *Id.* The moving party is entitled to judgment as a matter of law if there is no genuine issue concerning any material fact. *Id.* When reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, affidavits, depositions, admissions, and other documentary evidence presented. *Helmus v Michigan Dep't of Transportation*, 238 Mich App 250, 252; 604 NW2d 793 (1999).

To establish a prima facie case of negligence a plaintiff must prove: "(1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages." *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). Both cause in fact and legal or proximate causation are required to prove the element of causation. *Id.* at 6 n 6. Proximate cause is generally a factual issue to be decided by a trier of fact, but it may be an issue of law for the court to decide if the facts are not in dispute and if reasonable minds could not differ about applying the legal concept of proximate cause to those facts. *Rogalski v Tavernier*, 208 Mich App 302, 306; 527 NW2d 73 (1995).

"Proximate cause is that which operates to produce particular consequences without the intervention of any independent, unforeseen cause, without which the injuries would not have occurred." *Helmus*, *supra* at 256. Proximate causation "normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences." *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). The connection between the wrongful conduct and injury must be determined to be of "such a nature that it is socially and economically desirable to hold the wrongdoer liable." *Helmus*, *supra* at 256.

"An intervening cause breaks the chain of causation and constitutes a superseding cause which relieves the original actor of liability, unless it is found that the intervening act was 'reasonably foreseeable.'" *McMillian v Vliet*, 422 Mich 570, 576; 374 NW2d 679 (1985). An intervening cause is "'one which actively operates in producing harm to another after the actor's negligent act or omission has been committed.'" *Id.*, quoting 2 Restatement Torts, § 441, p 465.

The facts of this case are not in dispute. D'Angelo's alleged negligent act was leaving the doors in the hallway. Khoury's act of pulling the doors away from the wall produced the injury to his foot. The question then is whether Khoury's act of pulling the doors toward himself in an effort to protect the wall was reasonably foreseeable or constituted a superseding cause of his injury.

Khoury had requested multiple times that D'Angelo not leave materials in the hallway. With each complaint, D'Angelo's representative took care of the matter. At no time had Khoury previously tried to move any materials that were in the hallway. Khoury's decision to move the

doors himself was not reasonably foreseeable under these circumstances. And Khoury's actions actively operated to produce his injury.

We conclude that reasonable minds could not differ when applying the legal concept of proximate cause to these facts. Khoury's actions were not reasonably foreseeable, and his actions actively operated to produce the injury. Accordingly, the trial court properly granted summary disposition in favor of D'Angelo on the ground that Khoury's actions were an intervening superseding cause of his injury.

Affirmed.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski