IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SHAWVANA SAUNDERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 11C-08-135 MMJ
	)	
PREHOLDING HAMPSTEAD, LLC MASTRIANA PROPERTY MANAGEMENT, INC., and PANTANO REAL ESTATE, INC.,	)	
	)	
Defendants.	)	

Submitted: March 12, 2012
Decided: May 23, 2012

On Defendant Mastriani Property Management, Inc.'s
Motion to Dismiss Action and Cross-Claim

GRANTED

MEMORANDUM OPINION

Peter K. Janczyk, Esquire, Edelstein Martin & Nelson, Wilmington, Delaware, Attorneys for Plaintiff

Kevin J. Connors, Esquire, Marshall, Dennehey, Warner, Coleman & Goggin, Wilmington, Delaware, Attorneys for Preholding Hampstead, LLC

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JOHNSTON, J.

Plaintiff Shawvana Saunders ("Saunders") filed suit against Defendants Preholding Hampstead, LLC ("Preholding"), Mastriana Property Management, Inc. ("Mastriana"), and Pantano Real Estate, Inc. ("Pantano") (collectively referred to as the "Defendants"), claiming simple negligence. Preholding filed a Cross-Claim against Mastriana, seeking contribution or indemnification should Preholding be held liable.

Pursuant to Superior Court Rule of Civil Procedure 12(b)(6), Mastriana moved to dismiss Plaintiff's Complaint and Preholding's Cross-Claim. The Court held oral argument on the motion on March 12, 2012.

FACTUAL BACKGROUND

For purposes of this motion, all facts are set forth in the light most favorable to the non-moving parties.

Saunders rented an apartment in Hampstead Court Apartments (the "Property") from Preholding, owner and operator of the apartment complex. Mastriana managed the Property until its contract was terminated on October 31, 2008.[1]

Saunders, who is wheel-chair bound, claims that Mastriana, while acting as Property Manager, agreed to accommodate Saunders' disability.

[1] Saunders' Complaint does not acknowledge the fact that Mastriana ceased managing the Property in 2008. However, Preholding and Mastriana agree that Mastriana's management contract terminated on October 31, 2008, after which Mastriana no longer provided management services to the Property.

Specifically, Saunders claims that Mastriana promised to install two ramps in front of Saunders' residence – one between Saunders' apartment and the sidewalk, and another between the sidewalk and the parking lot.

At some point in time prior to October 31, 2008, Mastriana constructed the ramp between Saunders' apartment and the sidewalk. Mastriana did not construct the second ramp before its contract with Preholding was terminated.

On August 17, 2009, while descending from the sidewalk to the parking lot, Saunders' wheelchair tipped over, causing her to fall and sustain serious injuries. Saunders suffered injuries to her upper and lower extremities; cervical, thoracic and lumbar strain and sprains; head injuries; cuts; and other unspecified injuries.

On August 17, 2011, Saunders filed suit against Preholding, Mastriana, and Pantano, alleging simple negligence.

STANDARD OF REVIEW

When reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court must determine whether the claimant "may recover under any reasonably conceivable set of circumstances susceptible of proof."[2] When applying this standard, the Court will accept as true all non-conclusory, well-

[2] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

pleaded allegations.[3] In addition, every reasonable factual inference will be drawn in favor of the non-moving party.[4] If the claimant may recover under that standard of review, the Court must deny the motion to dismiss.[5]

PARTIES' CONTENTIONS

Mastriana's Argument

Mastriana argues that it ceased management of the Property on October 31, 2008, nearly ten months before Saunders' injury. Mastriana claims that it had no actual or legal obligation to perform any management, maintenance, or repair relating to the Property after its contract ended, and therefore, cannot be held liable.

Preholding's Argument

Preholding acknowledges that Mastriana's management contract ended on October 31, 2008, but contends that Mastriana may still be held liable because it agreed to accommodate Saunders' disability by constructing two ramps. Because Mastriana failed to fully perform its duties, it was negligent.

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[3] *Id.*

[4] *Wilmington Sav. Fund. Soc'y, F.S.B. v. Anderson*, 2009 WL 597268, at *2 (Del. Super.) (citing *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005)).

[5] *Spence*, 396 A.2d at 968.

Saunders' Argument

Saunders argues that Mastriana owed Saunders a duty of care because Mastriana exercised "actual control" over the Property at the time of Saunders' injury.

Alternatively, Saunders claims that if Mastriana was no longer managing the Property at the time of her injury, Mastriana still may be held liable under contract law. According to Saunders, Mastriana's "promise" to construct two ramps created an independent legal duty, which was breached when Mastriana failed to construct the second ramp.

DISCUSSION

Mastriana Owed No Duty to Saunders

In order to establish a *prima facie* case of negligence, the plaintiff must establish, by a preponderance of the evidence, that a defendant's negligent act or omission breached a duty of care owed to plaintiff in a way that proximately caused the plaintiff injury.[6] In the instant action, the threshold legal question is whether Mastriana, the former Property Manager, owed a duty of care to Saunders.

In determining whether a defendant owes a duty of care to the plaintiff, the Court must engage in a case-by-case inquiry, focusing on the

[6] *Duphily v. Del. Elec. Co-op., Inc*., 662 A.2d 821, 828 (Del. 1995).

relationship between the parties at the relevant time.[7] "The relationship which gives rise to a duty may be created by contract, statute, municipal ordinance, administrative regulation, common law, or the interdependent nature of human society."[8] Unless and until some relationship exists between the person injured and the defendant, such that the community will impose a legal obligation upon one for the benefit of the other, there can be no liability for negligence.[9]

This Court has held that a property manager owes its tenants a duty of care *if* the property manager exercises "actual control" over the premises.[10] Actual control, in this context, refers to "actual management of the leased premises."[11] In determining whether a property manager is in "actual control," the Court may rely upon the written management agreement between the property owner and the property manager.[12]

Here, Saunders has failed to demonstrate that Mastriana was in "actual control" of the premises on the date of Saunders' injury – August 17,

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[7] *In re Asbestos Litig.*, 2007 WL 4571196, at *4 (Del. Super.).

[8] 57A Am. Jur. 2D *Negligence* § 82 (2004).

[9] 57A Am. Jur. 2D *Negligence* § 81 (2004).

[10] *Argoe v. Commerce Square Apartments Ltd. P'ship*, 745 A.2d 251, 255 (Del. Super. 1999).

[11] *Id.*

[12] *See id.* at 256.

2009. Both Preholding and Mastriana agree that Mastriana's management contract terminated on October 31, 2008. Once Mastriana's management responsibilities were concluded, it no longer owed a duty to Saunders.[13] To hold otherwise would expose all property managers – both prior and current – to endless liability. Public policy considerations do not favor such a result.

Because Saunders has failed to demonstrate that Mastriana was in "actual control" of the premises at the time of her injury, the Court finds that Mastriana owed no duty of care to Saunders. Therefore, Saunders' negligence claim against Mastriana must be dismissed.

Saunders' Complaint Does Not Allege Breach of Contract

Alternatively, during the hearing on this motion Saunders argued for the first time that contract law imposed an independent legal duty upon Mastriana. Saunders claimed that Mastriana's "promise" to construct a ramp between the sidewalk and the parking lot triggered a duty, which subsequently was breached by Mastriana's failure to construct the ramp.

The Court finds unavailing Saunders' attempt to expand the scope of her Complaint to include a breach of contract claim. It is well-settled that the Court may consider only the well-pleaded facts contained in the

[13] *See Pittsburgh Nat'l Bank v. Perr*, 637 A.2d 334, 336-37 (Pa. Super. Ct. 1994) (holding that property manager's duty to tenants terminated when it ceased managing the premises).

Complaint, and not issues raised in subsequent briefing or at oral argument, when ruling on a motion to dismiss.[14] Moreover, issues not addressed in briefing, and raised for the first time during oral argument, are deemed waived.[15]

Here, the Complaint does not aver the specific elements of a breach of contract claim. The Complaint makes only fleeting reference to an "agreement" between Saunders and Mastriana (not with Saunders) for the construction of a ramp. The Court finds that Saunders has failed to state a claim for breach of contract upon which relief may be granted.

CONCLUSION

The Court finds that Saunders' Complaint fails to state a valid claim of negligence, or any claim sounding in contract, against Mastriana. Pursuant to Rule 12(b)(6), Saunders' Complaint against Mastriana must be dismissed. In reaching this conclusion, the Court also must dismiss Preholding's Cross-Claim against Mastriana.

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[14] *See King Constr., Inc. v. Plaza Four Realty, Inc.*, 976 A.2d 145, 155 (Del. 2009) ("Matters outside the pleadings may not be considered upon a motion to dismiss under Superior Court Civil Rule 12(b)(6).")

[15] *Murphy v. State,* 632 A.2d 1150, 1152 (Del. 1993); *Anguilla RE, LLC v. Lubert-Adler Real Estate Fund IV, L.P.,* Del. Super., C.A. No. 11C-10-061, Johnston, J. (Mar. 28, 2012) (Op.).

THEREFORE, Mastriana Property Management. Inc.'s Motion to Dismiss Complaint and Cross-Claim is hereby **GRANTED**.

IT IS SO ORDERED.

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