

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

BRET AND PATTY SHEPARD and	)	
JASON, BRYAN, LOUISE AND	)	C.A. No. 99C-06-030
PATRICK PAULEY,	)	00C-08-042
	)	(Consolidated)
Plaintiffs,	)	
	)	
v.	)	
	)	
KIMBERLY A . REINOEHL, et al.,	)	
	)	
Defendants.	)	

*Submitted: August 23, 2002*

*Decided: September 6, 2002*

Richard E. Poole, Esq., Wilmington, Delaware. Attorney for Plaintiffs.

Kevin J. Connors, Esq., Wilmington, Delaware. Attorney for Defendant London Fog.

*Upon Consideration of Defendant London Fog's  
Motion for Summary Judgment*

**GRANTED**

**VAUGHN, Resident Judge**

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## **OPINION**

The plaintiffs were injured in an accident involving their car and a state police car driven by Officer Kimberly A. Reinoehl. At the time, the officer was in the process of responding to a burglar alarm at a London Fog store in the Ocean Outlets III shopping center near Rehoboth Beach. A police investigation revealed evidence that the alarm was false and had been set off accidentally by a shopping center maintenance supervisor. The plaintiffs<sup>1</sup> filed suit against a number of defendants including London Fog. London Fog has moved for summary judgment, contending that, as a matter of law, it owed no duty of care to the plaintiffs, that it breached no duty, and that its conduct was not the proximate cause of harm to the plaintiffs.

## **THE FACTS**

The pertinent facts, viewed in the light most favorable to the plaintiffs, are as follows.

London Fog is one of about 65 retail outlet stores in Ocean Outlets III. The shopping center abuts the northbound lanes of Route 1, a multilane highway from which it takes its access.

On August 24, 1998, Robert Hludzinski, a maintenance supervisor at Ocean Outlets III, was power washing the sidewalks in front of the stores. Power washing of sidewalks was performed three or four times a week, usually in the morning. At 8:15 a.m., when Mr. Hludzinski was in front of the London Fog store, spray from the

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<sup>1</sup> The plaintiffs are Jason, Bryan, Louise and Patrick Pauley. The parents of Brett Cooper Shepard, who died in the accident, were plaintiffs, but have settled their claims.

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power washer struck the store and set off the burglar alarm. London Fog had not yet opened and no one was in the store.

The alarm went to the alarm company, ADT. Following established procedure, ADT notified Suscom (the emergency communications center for Sussex County). ADT then called the store. Since the store was closed and no one was there, it received no answer. It then called the state police. After calling the state police, ADT called the numbers of London Fog employees which it had on a call list. On the morning in question, it received no answer to any of the numbers on the call list. In the meantime, Officer Reinoehl was dispatched to respond to the alarm. She proceeded southbound down Route 1 to the intersection at the entrance to Ocean Outlets III. As she was making a left turn against a red light at the intersection of Route 1 and the shopping center entrance, she collided with the plaintiffs' vehicle which was proceeding directly through the intersection on Route 1 northbound under a green light. One occupant of the plaintiffs' vehicle was killed, and others received serious injuries.

When an officer is notified that an alarm is false, the officer may still proceed to the alarm to verify that fact. Officer Reinoehl testified in her deposition that if she had been notified that the alarm was false, however, she would not have gone through the red light at the intersection. The accident occurred about twenty minutes after the alarm went off.

The London Fog store had several false alarms previously in 1998. The store management was aware of these false alarms. ADT periodically provided reports of alarm activity. The record does not contain a detailed account of exactly how each

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false alarm occurred, but it appears likely that some may have been caused accidentally by employees opening or closing the store while others may have been from other causes. On one occasion approximately two weeks before, the state police were notified of an alarm but did not respond because a follow-up notification was given that the alarm was false. London Fog did not have any policy or system for dealing with false alarms other than the call list mentioned above.

**STANDARD OF REVIEW**

Summary judgment should be rendered if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.<sup>2</sup> The facts must be viewed in the light most favorable to the non-moving party.<sup>3</sup> Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.<sup>4</sup> However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.<sup>5</sup>

**DISCUSSION**

Whether or not a duty of care exists, or does not exist, if a certain set of facts

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<sup>2</sup> Superior Court Civil Rule 56(c).

<sup>3</sup> *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. 1995); *Figgs v. Bellevue Holding Co.*, 652 A.2d 1084, 1087 (Del. Super. 1994).

<sup>4</sup> *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

<sup>5</sup> *Wooten v. Kiger*, 226 A.2d 238 (Del. 1967).

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are true, is a question of law to be decided by the Court.<sup>6</sup> In deciding this question, the Court should determine whether “such a relation exists between the parties that the community will impose a legal obligation upon one for the benefit of the other – or, more simply, whether the interest of the plaintiff which has suffered invasion was entitled to legal protection at the hands of the defendant.”<sup>7</sup> This determination should be made “by reference to the body of statutes, rules, principles and precedents which make up the law.”<sup>8</sup> Where a duty of care does exist, it is measured in terms of reasonableness; and one’s duty is to act reasonably and protect against reasonably foreseeable events.<sup>9</sup> The determination of duty must be formulated based upon the facts of each case.<sup>10</sup>

The plaintiffs have alleged that London Fog was solely responsible for the installation and maintenance of the security alarm on its premises; that London Fog had exclusive control over the security alarm, that employees or agents of London Fog were in a position to, or should have been in a position to, prevent the alarm from activating, or deactivate the alarm, or notify the proper authorities if the alarm was false; that London Fog failed to institute procedures or protocols concerning the

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<sup>6</sup> *Fritz v. Yeager*, 790 A.2d 469, 471 (Del. 2002).

<sup>7</sup> *Naidu v. Laird*, 539 A.2d 1064, 1070 (Del. 1988); W. Page Keeton et al., *Prosser and Keaton on the Law of Torts* § 37, at 236 (5<sup>th</sup> ed. 1984).

<sup>8</sup> *Fritz*, 790 A.2d at 471; Keeton, *supra*, § 37.

<sup>9</sup> *Delmarva Power & Light Co. v. Burrows*, 435 A.2d 716, 718 (Del. 1981).

<sup>10</sup> *Naidu*, 539 A.2d at 1070.

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prevention of false alarms and how employees should respond to the activation of false alarms; that London Fog failed to properly train and supervise its employees concerning how to prevent the activation of or how to respond to false alarms, and that London Fog should have had an employee always available to receive any call that the alarm has been activated and notify the police of any false alarms. The plaintiffs contend that the issues of duty, negligence and proximate cause present jury issues which preclude summary judgment.

It is undisputed that the alarm was caused or allegedly caused by a maintenance worker for the shopping center, not a London Fog employee. It is also undisputed that the store was closed and no store employee was there. If ADT had been able to reach one of the store employees on the call list, there is no reason to believe that the employee would have known whether the alarm was false or real. If an employee on the call list had received the ADT's call and gone to the store, there is no reason to believe that the employee would have reached the store before the accident occurred or in time to notify the police that the alarm was false.

The plaintiffs seek to hold this defendant to a duty and standard of care which cannot be justified on any set of facts in this case. While it is true that London Fog had several false alarms during 1998, the facts do not lead to a conclusion that their nature was such that London Fog should have taken unusual measures to prevent the false alarm which occurred on August 24. The accident was unforeseeable from London Fog's viewpoint. The Court is being asked to impose an unrealistic, retrospective standard of conduct on this defendant, one having no precedent of which the Court is aware. I agree with the defendant's contentions that, as a matter

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of law, it did not owe the plaintiffs a duty of the kind claimed by them and breached no duty owed.

Therefore, the defendant's motion for summary judgment is *granted*.

**IT IS SO ORDERED.**

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Resident Judge

oc: Prothonotary  
cc: Order Distribution