IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SHEILA COOPER, Individually and as Administratrix of the Estate of JEAVON KNOTT,	)	
Plaintiff,	)	C.A. No. 08C-01-328 MMJ
v.	)	
IHOP RESTAURANTS, INC., a Delaware Corporation, IHOP CORP., a Delaware Corporation, IHOP FRANCHISING, LLC, a Delaware Limited Liability Corporation, 4780 LLC, a/k/a and/ or d/b/a IHOP, a Delaware Limited Liability Corporation, MASHOOR AWAD, a/k/a and/ or d/b/a 4780LLC, TROUT, SEGALL & DOYLE DELAWARE PROPERTIES LLC, a Foreign Limited Liability Company, TROUT, SEGALL & DOYLE, LLC, a Foreign Limited Liability Company, TROUT, SEGALL & DOYLE MANAGEMENT CO., INC, a Foreign Corporation, TROUT, SEGALL & DOYLE MID-ATLANTIC, INC. a Foreign Corporation, MARTIN LUTHER FOUNDATION OF DOVER, a Delaware Corporation, SHELTON CALDWELL, AARON CANNON, and LESHAUN INGRAM,	)	
Defendants.	)	

Submitted: September 29, 2008
Decided: December 19, 2008
Reissued: November 17, 2009

On Defendants Trout, Segall & Doyle Delaware Properties LLC, Trout, Segall & Doyle, LLC, Trout Segall & Doyle Management Co., Inc. and Trout, Segall & Doyle Mid-Atlantic, Inc.'s Motion to Dismiss. **DENIED.**

MEMORANDUM OPINION

Arthur M. Krawitz, Esquire, Matthew R. Fogg, Esquire, Doroshow, Pasquale, Krawitz & Bhaya, Wilmington, Delaware; Mark J. LeWinter, Esquire, Miriam Benton Barish, Esquire, Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley, P.C., Philadelphia, Pennsylvania (of counsel), Attorneys for Plaintiffs

Thomas J. Gerard, Esquire Marshall, Dennehey, Warner, Coleman & Goggin, Wilmington, Delaware Attorney for Defendants Trout Segall & Doyle Delaware Properties, LLC, Trout Segall & Doyle LLC, Trout Segall & Doyle Management Co., Inc. and Trout Segall & Doyle Mid-Atlantic, Inc.

William J. Cattie, III., Esquire, George T. Lees, III., Esquire, Rawle & Henderson, LLC., Wilmington, Delaware, Attorneys for Defendants IHOP Restaurants, Inc., IHOP Franchising, LLC and Mashhor Awad

Rochelle L. Gumpac, Esquire, Reger Rizzo & Darnell LLP, Wilmington, Delaware Attorney for Defendant Martin Luther Foundation of Dover

JOHNSTON, J.

STATEMENT OF UNDISPUTED FACTS

This litigation arises from the murder of Jeavon Knott. On April 21, 2006 at approximately 1:00 a.m., Knott entered the Dover Crossing Shopping Center parking lot. At the time Knott entered the premises, all of the businesses within the shopping center were closed. Knott entered the parking lot for the purpose of "hanging out" with friends. While in the parking lot, Knott suffered several fatal gunshot wounds inflicted by another individual hanging out in the lot.

At the time of the incident, the Dover Crossing Shopping Center and its parking lot were owned, maintained, and/or managed by Trout, Segall & Doyle Delaware Properties LLC; Trout, Segall & Doyle, LLC; Trout, Segall & Doyle Management Co., Inc.; Trout, Segall & Doyle Mid-Atlantic, Inc. ("Trout Segall"). At the time of the incident, Trout Segall provided no security or warning signs in the parking lot. However, one of Trout Segall's tenants, International House of Pancakes, maintained video surveillance of the parking lot.

In a newspaper article published after the incident, the Dover police characterized Trout Segall's parking lot as a popular "hang out" after the local nightclubs and bars closed. According to several police reports, the following crimes were reported on the parking lot within the last few years:

(1) on January 22, 2005 at 1:48 a.m., a car was vandalized;

(2) on February 27, 2005 at 2:00 a.m., a fight broke out on the premises;

(3) on September 18, 2005 at 2:00 a.m., a gang assaulted and injured three individuals;

(4) on September 25, 2005 at 2:19 a.m., a large crowd loitered on the lot;

(5) on November 13, 2005 at 2:07 a.m., a fight broke out on the premises;

(6) on December 11, 2005 at 2:04 a.m., a large crowd loitered on the lot;

(7) on December 18, 2005 at 3:01 a.m., a fight broke out on the premises; and

(8) on February 20, 2006 at 6:52 p.m., a shooting occurred, seriously injuring one individual.

PROCEDURAL CONTEXT

Plaintiffs filed the initial complaint on January 31, 2008 against IHOP Restaurants, Inc., IHOP Corp., IHOP Franchising, LLC, Mashhoor Awad ("IHOP"); Trout Segall; Martin Luther Foundation of Dover (the "Martin Luther Foundation"); Shelton Caldwell; Aaron Cannon; and Leshaun Ingram (collectively, the "Defendants"). The initial complaint alleged that IHOP, Trout Segall, and the Martin Luther Foundation were negligent when they failed to protect Jeavon Knott, a business invitee, from dangerous criminal activity on their property. The original complaint stated that Knott entered the premises for the purpose of dining at the IHOP restaurant.

On April 4, 2008, IHOP filed a motion to dismiss under Delaware Superior Court Civil Rule 12(b)(6), asserting that plaintiffs had failed to state a claim upon which relief could be granted. IHOP argued that the suit should be dismissed because "no Delaware Court has ever extended the duty owed by the occupier of land to invitees to provide security from the criminal acts of third persons to acts which occurred after the business had closed and all employees had been off the premises for an appreciable period of time." Further, IHOP provided an affidavit of its operator stating that the IHOP closed at 10:00 p.m. on April 20, 2008 and did not re-open until 6:00 a.m. the following day. IHOP provided copies of credit card transactions and employee time sheets to verify that the last customer paid at 9:59 p.m. and that the last employee left at 11:29 p.m. IHOP claimed that Knott was a trespasser to whom they owed no duty to protect from criminal acts.

On April 9, 2008, Trout Segall filed a motion to dismiss plaintiffs' claim for failure to state a claim upon which relief could be granted. Trout Segall's motion set forth the same assertions as IHOP's motion, nearly verbatim. Trout Segall also relied on the IHOP operator's affidavit that stated the IHOP was closed at the time of the incident. On May 23, 2008, Trout Segall filed a supplement to its motion to dismiss. The supplement included affidavits from several of the other stores within the shopping center. Each affidavit stated that its store was closed at the time of the incident.

On April 21, 2008, plaintiffs filed a motion to amend the complaint to: (1) add two additional plaintiffs, Tyrek Laquay Knott, decedent's minor child, and his guardian, Tamkia Butler; (2) dismiss IHOP; and (3) amend certain factual allegations, including correcting plaintiffs' previous contention that Knott entered the parking lot with the intention of dining at the IHOP. Plaintiffs requested to amend the complaint to claim that Trout Segall and the Martin Luther Foundation acted willfully and wantonly when they failed to provide adequate security measures and warnings to Knott, knowing that criminal activity occurred on their premises after hours.

On May 22, 2008, the Martin Luther Foundation filed a motion to dismiss alleging that plaintiffs' claim failed to state a claim upon which relief could be granted. The Martin Luther Foundation asserted that "there are no facts that can be developed which will show that the Martin Luther Foundation was ever responsible and/or owned the property in question." The Martin Luther Foundation asserted that they owned the property across the street, and had no control over the activities that occurred on the parking lot at issue.

On May 30, 2008, plaintiffs filed a response to Trout Segall's motion to dismiss. Plaintiffs asserted that "no Delaware court has ever specifically precluded imposing liability on a landowner or property manager who knew of prior criminal incidents on its property but failed to provide adequate security." Additionally,

plaintiffs explained that even if the decedent were deemed a trespasser, Trout Segall still owed Knott a duty to refrain from willful or wanton conduct.

On June 4, 2008, Trout Segall filed opposition to the Martin Luther Foundation's motion to dismiss, to the extent that Trout Segall's motion to dismiss is not granted. Trout Segall asserted that discovery might show that the altercation began off site, and possibly on the Martin Luther Foundation's property. Trout Segall contends that they will seek contribution from the Martin Luther Foundation if they are able to do so.

On June 6, 2008, the Court heard oral argument on the then-pending motions. The Court granted plaintiffs' motion to amend the complaint. Plaintiffs filed the Amended Complaint on July 15, 2008. Additionally at oral argument, plaintiffs voluntarily agreed to dismiss both IHOP and the Martin Luther Foundation. After finding that plaintiffs were free to dismiss any party it wished and that Trout Segall could then pursue contribution, the Court permitted both parties' dismissals. As to Trout Segall's motion to dismiss, the Court reserved its decision. The Court invited the parties to submit additional briefing to support the positions posited in both their written and oral arguments. Specifically, the Court asked the parties to address whether Trout Segall owed Knott a duty and whether, if a duty existed, that duty was superseded by the third party criminal acts. Both parties filed additional supporting memoranda.

DISCUSSION

Standard of Review

At the outset, the Court must determine the standard of review. Both parties rely on submissions outside of the pleadings to support their positions as to whether the Trout Defendants Motion to Dismiss should be granted. The Court must determine whether to review the motion as presented or to convert it to a motion for summary judgment.

A motion to dismiss must be reviewed as a motion for summary judgment under Rule 56 where "matters outside the pleading are presented to and not excluded by the Court."[1] Since both parties are relying on materials outside of the pleadings and the Court is not excluding those materials, the Court will treat the motion as a motion for summary judgment.

This Court will grant summary judgment only when no material issues of fact exist. The moving party bears the burden of establishing the nonexistence of material issues of fact.[2] Once the moving party meets its burden, the burden shifts to the non-moving party to establish the existence of material issues of fact.[3] Where the moving party produces an affidavit or other evidence sufficient under Superior Court Civil Rule 56 in support of its motion and the burden shifts, the non-moving party may not rest on its own pleadings, but must provide evidence

[1] Super. Ct. Civ. R. 12(c).
[2] *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).
[3] *Id.*

showing a genuine issue of material fact for trial.[4] If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of the case, summary judgment must be granted.[5]

A court deciding a summary judgment motion must identify disputed factual issues whose resolution is necessary to decide the case, but the court must not decide those issues.[6] The court must evaluate the facts in the light most favorable to the non-moving party.[7] Summary judgment will not be granted under circumstances where the record reasonably 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 law to the circumstances.[8]

Parties' Contentions

Trout Segall asserts that plaintiffs' complaint should be dismissed because it owed no legal duty to Knott at the time of the incident. Trout Segall claims that because no special relationship existed between Trout Segall and Knott, Trout Segall was under no legal duty to prevent intentional criminal acts of third parties. In the alternative, Trout Segall contends that if a duty was owed to Knott, it was the duty owed by a landowner to a trespasser – to refrain from willful or wanton conduct. Trout Segall maintains that plaintiffs' claim should be dismissed because

[4] Super. Ct. Civ. R. 56(e); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).
[5] *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991), *cert. denied*, 504 U.S. 912 (1992); *Celotex Corp.*, 477 U.S. at 322-23.
[6] *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99 (Del. 1992).
[7] *Id.*
[8] *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962).

"there is no basis for finding that Trout Segall was guilty of willful or wanton conduct." Additionally, Trout Segall "believes that plaintiff is barred from recovery in this case based on the principle of superseding cause."[9]

Plaintiffs argue that Trout Segall's contention, that it owed no duty to Knott because they had no special relationship, is irrelevant. Plaintiffs assert that they never contended that Trout Segall owed a duty to Knott based on a special relationship. Rather, plaintiffs contend that Trout Segall owed Knot a duty arising from its status as the landowner of the parking lot in which Knott was murdered. Plaintiffs assert that a landowner owes a trespasser the duty to refrain from willful or wanton conduct. Plaintiffs argue that Trout Segall "acted willfully and wantonly by knowing of the regular criminal activity on its property, and failing to take any steps to prevent it." Additionally, plaintiffs assert that the causal connection was not broken by the criminal acts of the third parties because they were reasonably foreseeable.

In order to determine whether summary judgment is appropriate in this case, there are two issues the Court must consider: (1) whether as a matter of law Trout Segall owed Jeavon Knott a duty of care; and (2) whether, if a duty existed, that duty was superseded by criminal acts of third parties.

[9] However, Trout Segall declined to brief this issue, stating that the Court need not address it because the other issues are dispositive of the motion, but requesting the reservation of the right to argue the issue.

Landowner's Duty to Trespassers

Out of all of the categorical entrants on land, landowners owe trespassers the least amount of a duty. However, a duty does exist. Landowners owe trespassers a duty to refrain from willful or wanton conduct.[10] "Willful or wanton conduct involves a conscious awareness of one's conduct and the realization that the conduct will result in a particular harm."[11]

It is undisputed that at the time of the incident Knott was a trespasser on Trout Segall's premises. Both parties acknowledge that Knott entered Trout Segall's parking lot without invitation and after business hours. Thus, at the time of the shooting, Trout Segall owed Knott a duty to refrain from willful or wanton conduct.

Intervening Third Party Criminal Acts

Contrary to Trout Segall's contentions, a landowner's duty is not automatically superseded by an intervening criminal act of a third party. Generally a landowner owes no duty to those injured on its property by third parties, over whom the landowner has no control.[12] However, a duty may arise where the landowner knew or should have known of the risk created on its property and

[10] *Hoesch v. Nat'l R.R Passenger Corp.*, 677 A.2d 29, 32 (Del. 1996); *see also Butler v. Newark Country Club*, 909 A.2d 111, 113 (Del. 2006).
[11] *Dittman v. Williams*, 1998 WL 960753, at *2 (Del. Super.).
[12] *Higgins v. Walls*, 901 A.2d 122, 139 (Del. Super. 2005).

where it did nothing to prevent it.[13] "This duty has been extended even when the source of the known risk is a trespasser."[14] The determination of whether a criminal act of a third party supersedes a landowner's liability turns on two inquiries: (1) whether the landowner had actual knowledge of the prior criminal activities occurring on its premises; and (2) whether the landowner's actions or lack thereof created or encouraged a dangerous condition on the property.[15]

Viewing the facts in the light most favorable to plaintiffs, the Court finds that genuine issues of material fact exist. First, a factual issue exists as to whether Trout Segall had actual knowledge of the reported criminal activity occurring on its premises after hours. Additionally, a genuine issue of material fact exists as to whether Trout Segall's actions or lack thereof created or encouraged the criminal activity on its premises. Plaintiffs have presented police reports and newspaper articles detailing several crimes occurring in Trout Segall's parking lot after business hours. Photographs of video surveillance taken by IHOP, one of Trout Segall's retail tenants, show a large gathering of vehicles in the parking lot after business hours. Discovery has not yet closed.

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[13] *Id.*
[14] *Id.*
[15] *Dittman*, 1998 WL 960753, at *2 (granting landowner's motion for summary judgment where there was no evidence that the landowner "willfully created a dangerous environment or encouraged anyone to congregate after closing" and the evidence did not show that the landowner was "actually aware of any criminal or harmful activity on its premises after hours"); *see also Higgins*, 901 A.2d at 139-41 (finding summary judgment appropriate where the landowner denied having actual or constructive knowledge of the alleged danger on his land (unauthorized hunting) and where the plaintiff failed to show any evidence to rebut landowner's testimony that he lacked actual knowledge of the alleged dangerous activities occurring on his property).

Conclusion

Pursuant to Superior Court Civil Rule 12(c), this motion to dismiss has been treated as a motion for summary judgment under Rule 56. The Court finds that plaintiffs have demonstrated genuine issues of material fact for claims against Trout Segall. **THEREFORE**, Trout Segall's Motion to Dismiss is hereby **DENIED**.

IT IS SO ORDERED.

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