IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JANE M. WEST, individually and as Executrix of the Estate of SOPHIE PIASCINSKI,	)	
Plaintiff,	)	C.A. No. 08C-11-220 JRJ
v.	)	
RAYMOND FLONARD, RENAISSANCE FAMILY PHARMACY, LLC, INGLESIDE HOMES, INC., and BOB SMITH CONTRACTORS, INC.,	)	
Defendants.	)	

Date Submitted: February 4, 2011
Date Decided: February 17, 2011

Upon Defendant Bob Smith Contractors, Inc.'s Motion for Summary Judgment and Ingleside Homes, Inc.'s Motion for Summary Judgment:
DENIED.

Patrick J. Collins, Aaronson, Collins & Jennings, LLC, 8 East 13th Street, P.O. Box 2865, Wilmington, DE 19805, Attorney for Plaintiff.

Louis J. Rizzo, Jr., Esq., Reger Rizzo & Darnall LLP, 1001 Jefferson Street, Suite 202, Wilmington, DE 19801, Attorney for Defendant Bob Smith Contractors, Inc.

Thomas J. Gerard, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, 1220 North Market Street, P.O. Box 8888, Wilmington DE 19899, Attorney for Defendant Ingleside Homes, Inc.

JURDEN, J.

I. INTRODUCTION

Before the Court is Bob Smith Contractors, Inc.'s ("Contractors") Motion for Summary Judgment and Ingleside Homes, Inc's ("Ingleside") Motion for Summary Judgment.[1] Defendants argue they should not be held liable for damages arising from a motor vehicle accident involving Raymond Flonard ("Flonard") and Sophie R. Piascinski ("Decedent"). Defendants claim Flonard's negligence was a superseding intervening cause that broke the causal link between Defendants' alleged negligence and Decedent's injuries and death. For the reasons that follow, Defendants' Motions for Summary Judgment are **DENIED.**

II. BACKGROUND

This lawsuit stems from a motor vehicle accident that occurred at a retirement home owned by Ingleside. On August 22, 2008, Flonard was delivering medications for Defendant Renaissance Pharmacy, LLC ("Renaissance") to Ingleside Retirement Apartments, located at 1005 North Franklin Street, Wilmington Delaware. Flonard parked his vehicle at the top of an incline around a circular driveway. Because his gearshift was not functioning properly, Flonard left the vehicle running, placed it in neutral, and engaged the emergency break.[2] Flonard then exited the vehicle and went inside to deliver the medications. An Ingleside van carrying residents was parked outside the construction zone approximately 20 feet downhill perpendicular to Flonard's vehicle. Decedent was disembarking from the van on its hydraulic lift when Flonard's vehicle began moving, striking the lift and pinning Decedent between the van and Flonard's vehicle. Decedent was taken to Christiana Hospital where she died three days later.

[1] For purposes of this Opinion, Contractors and Ingleside will be referred to collectively as "Defendants."
[2] Deposition Testimony of Raymond Flonard at 45-6 (May 20, 2009) (Hereinafter "Flonard Dep.") (Flonard admits that he knew of the gear malfunction for at least a month before the accident).

During this time period, Contractors was in the process of performing construction on Ingleside's main entranceway and driveway, however, that particular day no actual construction was taking place.[3] Contractors attempted to obstruct the circular driveway by placing a dumpster with a large "Bob Smith Contractors" sign in the center of the entrance to the circular driveway.[4] The dumpster did not completely cut off access to the driveway.[5] Another sign that said, "Closed – Please Use Lower Entrance" was affixed to a trashcan and placed at the exit to the circular driveway.[6] Apparently, Flonard turned off North Franklin Street, drove through the exit, past the "Closed – Please Use Lower Entrance" sign, and around the circular driveway.[7]

III. PARTIES' CONTENTIONS

Plaintiff claims that Contractors' alleged negligence in failing to adequately block off the circular driveway was a proximate cause of Decedent's injuries. Additionally, Plaintiff alleges that Ingleside was negligent in failing to provide a safe and secure unloading procedure and allowing Flonard to park in the main driveway. Contractors claims that Flonard's negligence was a superseding intervening cause that relieves Contractors from liability for the accident and that it did not owe a duty to prevent Flonard's vehicle from entering the driveway. Ingleside contends that Flonard's negligence was a superseding intervening cause that severed the causal connection between Ingleside's alleged negligence and Decedent's injuries.

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[3] Deposition Testimony of John Rozich at 5 (July 10, 2009).
[4] Deposition Testimony of Larry Cessna at 26 (July 22, 2009) (Hereinafter "Cessna Dep.").
[5] *Id.* at 34-5 (Question: "Was there enough room for a vehicle to get by the dumpster and still go into the semi-circle pathway?" Answer: "Yes.", Question: "Is there a reason why the dumpster was not placed in a position to prevent vehicles from going into the semi-circle pathway?" Answer: "Construction vehicles need to get to that area. Also fire connections are inside that circle.").
[6] *Id.* at 26; *See* Exhibits to Cessna Deposition: Police Photo 3.
[7] Flonard Dep. at 39.

IV. STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[8] In considering a motion for summary judgment, the Court must view the record in a light most favorable to the non-moving party[9] and the moving party bears the initial burden of establishing that material facts are not in dispute.[10] Summary judgment will not be granted if, after viewing the evidence in the light most favorable to the non-moving party, there are material facts in dispute or if judgment as a matter of law is not appropriate.[11]

V. DISCUSSION

To sustain a claim for negligence a plaintiff must establish that a defendant's act or omission breached a duty of care owed to the plaintiff which proximately caused plaintiff's injury.[12] Proximate cause is one "which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred."[13] An act of negligence followed by a subsequent act of negligence does not break the causal link, relieving the initial actor from liability, unless the later act of negligence was not reasonably foreseeable. In other words, if "the intervening negligence was not reasonably foreseeable, the intervening act supersedes and becomes the sole proximate cause of the plaintiff's injuries, thus relieving the original tortfeasor of liability."[14] "While the superseding causation is fact-driven and thus usually

[8] Super. Ct. Civ. R. 56(c).
[9] *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).
[10] *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).
[11] *Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 879-80 (Del. Super. 2005).
[12] *Duphily v. Delaware Elec. Co-op., Inc.*, 662 A.2d 821, 828 (Del. 1995).
[13] *Id.* at 829 (quoting *Culver v. Bennett*, 588 A.2d 1094, 1097 (Del. 1991)).
[14] *Id.* at 829.

a jury question," the determination can be made as "a matter of law if there can be 'no reasonable difference of opinion as to the conclusion to be reached on the question of whether an intervening cause is abnormal, unforeseeable, or extraordinarily negligent.'"[15]

In the case *sub judice*, reasonable minds could differ as to whether Flonard's conduct was "so extraordinarily risky and unforeseeable" that it broke the causal connection between Defendants' alleged negligence and Decedent's injury. While Flonard's conduct was risky, the Court cannot hold that as a matter of law there can be no reasonable difference of opinion as to whether Flonard's conduct was so "abnormal, unforeseeable, or extraordinarily negligent," that it broke the causal link between Defendants' alleged negligence and Decedent's injury. Consequently, the Court must deny summary judgment.[16]

Contractors argues that it did not owe a duty to prevent Flonard's vehicle from entering the driveway (and thus was not, and could not be, negligent). "A duty may be imposed upon a party where one 'who otherwise has no direct responsibility under the statute and regulations voluntarily, by agreement or otherwise, undertakes responsibility for implementing the required safety measures.'"[17] There is evidence in the record suggesting Contractors undertook responsibility for obstructing the circular entranceway

[15] *See Sims v. Stanley*, 945 A.2d 1168, at *2 (Del. April 1, 2008) (TABLE) (quoting *Duphily*, 662 A.2d at 831).
[16] *Pipher v.Parcell*, 930 A.2d 890, 892 (Del. 2007) ("Disputed issues of foreseeability and proximate cause involve factual determinations that must be submitted to a jury."); *Mazda Motor Corp. v. Lindahl*, 706 A.2d 526, 533 (Del. 1998) ("The issue of proximate cause is almost always a question for the jury.").
[17] *Figgs v. Bellevue Holding Co.*, 652 A.2d 1084, 1092 (Del. Super. 1994) (quoting *Rabar v. E.I. DuPont de Nemours & Co.*, 415 A.2d 499, 505 (Del. Super. 1980).

during construction.[18] Under these circumstances, the Court will not rule as a matter of law on the issue of Contractors' alleged negligence.

VI. CONCLUSION

After considering the facts and inferences in the light most favorable to Plaintiff, the Court finds that there are genuine issues of material fact in dispute and that the moving Defendants are not entitled to a judgment as a matter of law. Therefore, the Defendants' Motions for Summary Judgment are **DENIED.**

IT IS SO ORDERED.

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Jan R. Jurden, Judge

[18] Cessna Dep. at 25-6 (Question: "Did [Contractors and Ingleside] discuss putting up any signage, ropes, barricades, cones, et cetera?" Answer: "Yes.", Question: "And from your recollection who was responsible for taking care of that?" Answer: "Bob Smith Contractors.").