NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0344

LUCRETIA L. GARRETT

VERSUS

STATE FARM FIRE AND CASUALTY COMPANY,
DIRECT GENERAL INSURANCE COMPANY OF LOUISIANA,
BRIDGET A. LECO AND THE STATE OF LOUISIANA, THROUGH
THE LOUISIANA DEPARTMENT OF TRANSPORTATION AND
DEVELOPMENT

Judgment Rendered: DEC 05 2013

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APPEALED FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF LIVINGSTON
STATE OF LOUISIANA
DOCKET NUMBER 123468

HONORABLE WAYNE RAY CHUTZ, JUDGE

* * * * * * *

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BEFORE: WHIPPLE, PETTIGREW, AND McDONALD, JJ.

J. Pettigrew, J. concurs and assigns Reasons
~~Ellen~~ Whipple, C.J. concurs for the reasons assigned by J. Pettigrew

McDONALD, J.

In this appeal, the plaintiff in a personal injury suit challenges the trial court's judgment, granting summary judgment in favor of a property insurer, and dismissing the insurer as a defendant in plaintiff's suit. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On April 9, 2008, Billy and Constance Garrett and their 44-year-old daughter, Lucretia Garrett, were temporarily staying at a house owned by Mrs. Garrett in Maurepas, Louisiana. (R68, 121, 128) The house was located in a curve of Louisiana Highway 22, a rural two-lane roadway, and sat approximately 60 feet from the road. (R4, 170) Near dusk (R135), as Mr. Garrett and Lucretia sat on the front patio of the house, Bridget A. Leco was driving on Highway 22, when she failed to negotiate the curve in front of the house, left the highway, and struck Lucretia and the house. (R4) Lucretia sustained serious injuries, including fractures of her left leg, knee, and ankle, as well as a compression fracture of her spine. (R82) She underwent multiple surgeries, and, approximately two years after the accident, Lucretia continued to suffer chronic pain and had been unable to return to her job as an electrician. (R84, 98-99)

On March 31, 2009, Lucretia filed this suit for damages against Ms. Leco; Direct General Insurance Company of Louisiana (Direct General), Ms. Leco's automobile insurer; State Farm Fire and Casualty Company (State Farm), Mrs. Garrett's rental property insurer; and the State of Louisiana, through the Department of Transportation and Development (State).[1] (R3) Lucretia did not name her mother, Mrs. Garrett, as a defendant in the suit; however, State Farm's alleged liability was based on Mrs. Garrett's (its insured's) failure to notify

[1] Although we do not consider assertions made in briefs in rendering a decision of appeal, according to Lucretia's appellate brief, she settled her claims against Ms. Leco and Direct General, and these parties were dismissed from the suit. (Appellant brief at p3.)

Lucretia, as an invitee, that the house had a "defective condition," because it sat in the curve on Highway 22 where Mrs. Garrett knew prior accidents had occurred. (R6)

In due course, State Farm filed a motion for summary judgment seeking dismissal of Lucretia's claims against it. (R52) The trial court held a hearing on State Farm's motion at which it considered evidence regarding Mrs. Garrett's knowledge of prior accidents on Highway 22 near her house. (R328) The trial court ultimately determined that, under the facts presented, Mrs. Garrett had no duty to warn Lucretia of a dangerous condition created by the house's proximity to a dangerous curve of Highway 22. (R349, 350, 353-354) On October 10, 2012, the trial court signed a judgment granting State Farm's motion for summary judgment and dismissing State Farm as a defendant from the suit. (R318)

Lucretia appeals from the adverse judgment, essentially contending there are disputed factual issues regarding the scope of Mrs. Garrett's duty, specifically relevant to whether the accident was foreseeable.

DISCUSSION

Appellate courts review a judgment granting or denying a motion for summary judgment *de novo*. A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B). The summary judgment procedure is favored and is designed to secure the just, speedy, and inexpensive determination of actions. La. C.C.P. art. 966(A)(2). Thus, we ask the same questions the trial court does in determining whether summary judgment is appropriate: whether there is any genuine issue of material fact, and whether the mover is entitled to judgment as a matter of law. **Bernard v. Ellis**, 2011-2377 (La. 7/2/12), 111 So.3d 995, 1002. Because it is the

applicable substantive law that determines materiality, whether or not a particular fact in dispute is material can be seen only in light of the substantive law applicable to the case. **Smith v. Kopynec**, 2012-1472 (La. App. 1 Cir. 6/7/13), 119 So.3d 835, 837.

Generally, the owner of immovable property has a duty to keep such property in a reasonably safe condition. **Vinccinelli v. Musso**, 2001-0557 (La. App. 1 Cir. 2/27/02), 818 So.2d 163, 165, writ denied, 2002-0961 (La. 6/7/02), 818 So.2d 767. He must discover any unreasonably dangerous condition on his premises and either correct the condition or warn potential victims of its existence. **Id.** This duty is the same under the strict liability theory of La. C.C. art. 2317.1 and 2322, see **Rainey v. Steele,** 2010-2154 (La. App. 1 Cir. 8/17/11), 2011 WL 3629360 (unpublished), writ denied, 2011-2013 (La. 11/18/11), 75 So.3d 466, and the negligence liability theory of La. C.C. art. 2315. **Vinccinelli**, 818 So.2d at 165. Under either theory, the plaintiff has the burden of proving that: (1) the property that caused the damage was in the "custody" of the defendant; (2) the property had a condition that created an unreasonable risk of harm to persons on the premises; (3) the unreasonably dangerous condition was a cause in fact of the resulting injury; and (4) the defendant had actual or constructive knowledge of the risk. **Id.**

After a *de novo* review of the evidence, we find the trial court correctly granted summary judgment in favor of State Farm in this case. Although a homeowner has a duty to discover and either correct or warn a guest of any unreasonably dangerous conditions on his premises, this duty does not make the owner an insurer of his guests against all possibility of accident. **Breaux v. Fresh Start Properties, L.L.C.**, 11-262 (La. App. 5 Cir. 11/29/11), 78 So.3d 849, 853. The summary judgment evidence shows that, in her history as a resident and/or owner of the house, which was built by her parents in the late 1940s (R251), and donated to her in the late 1990s (R116), Mrs. Garrett was aware

that motorists often had difficulty negotiating the curve in front of the house, and on multiple occasions, this difficulty had resulted in vehicles leaving Highway 22 near and on the property where the house was located (R138, 251). However, even if Mrs. Garrett's awareness of the dangerous curve gave her a duty to warn guests that it was possible that vehicles might leave Highway 22 and enter her property, the evidence does not create a material issue of fact that her duty encompassed the risk that a vehicle would strike a person sitting on the front patio of the house. In other words, the risks encompassed within the scope of Mrs. Garrett's duty included only those risks that were probable and foreseeable, not those risks that were merely possible and foreseeable. See **Mayeur v. Time Saver, Inc.**, 484 So.2d 192, 195 (La. App. 4 Cir.), writs denied, 486 So.2d 751, 753 (La. 1986). Thus, because the incident causing Lucretia's injuries was not reasonably foreseeable, Mrs. Garrett had no duty to warn her of this possible harm, and the trial court correctly granted summary judgment in favor of State Farm.

CONCLUSION

For the above reasons, we affirm the trial court's judgment granting State Farm's summary judgment and dismissing State Farm as a defendant in Lucretia Garrett's suit. Costs of this appeal are assessed to Lucretia Garrett.

AFFIRMED.

LUCRETIA L. GARRETT

VERSUS

STATE FARM FIRE AND CASUALTY COMPANY OF LOUISIANA, BRIDGET A. LECO AND THE STATE OF LOUISIANA, THROUGH THE LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

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BEFORE: WHIPPLE, PETTIGREW, AND McDONALD, JJ.

PETTIGREW, J., CONCURS, AND ASSIGNS REASONS.

I agree with the majority. I further point out that there is no evidence of a dangerous condition on Mrs. Garrett's property as required under the strict liability theory or negligence theory.