NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2015 CA 0703

SHANNON M. RODRIGUE

VERSUS

THE BATON ROUGE RIVER CENTER D/B/A RIVERSIDE PERFORMING CENTROPLEX, DEF INSURANCE COMPANY & THE CITY OF BATON ROUGE

Judgment Rendered: NOV 0 9 2015

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number C553645

Honorable Donald Johnson, Presiding

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BEFORE: GUIDRY, HOLDRIDGE, AND CHUTZ, JJ.

GUIDRY, J.

Plaintiff, Shannon Rodrigue, appeals from a judgment of the trial court, granting summary judgment in favor of defendants, Spectator Management Group (SMG) and its insurer, Federal Insurance Company (Federal), and dismissing her claims against them with prejudice. For the reasons that follow, we affirm in part and reverse in part.

FACTS AND PROCEDURAL HISTORY

On March 26, 2006, Ms. Rodrigue attended a concert at the Riverside Performing Centroplex (Centroplex) in Baton Rouge, Louisiana. Ms. Rodrigue and other members of her party exited the parking garage and walked on an exterior ramp toward the upper level of the Centroplex. While waiting in line to enter the building, an SMG employee working at the Centroplex directed Ms. Rodrigue and her party around the side of the building to a set of stairs so that they could access their floor level seats. However, while attempting to descend the stairs, Ms. Rodrigue missed a step and fell down the stairs.

Thereafter, Ms. Rodrigue filed a petition for damages, naming the Centroplex; its insurer, DEF Insurance Company; the City of Baton Rouge-Parish of East Baton Rouge (City-Parish);[1] SMG; and Federal as defendants. Ms. Rodrigue asserted that while walking on the ramp at the Centroplex, she was directed around the side of the building and down a flight of stairs by an SMG employee. Ms. Rodrigue asserted that as a result of inadequate lighting in the stairwell, she missed a step and fell down the stairs, resulting in injuries to her head, back, neck, knees, wrists, and buttocks. Ms. Rodrigue asserted that the parties were liable in negligence for: maintaining a defective condition (the inadequately lit stairwell and pathway where people traverse) on their premises;

[1] Ms. Rodrigue named the "City of Baton Rouge" as a defendant in this matter. However, we note that the proper party defendant is the City of Baton Rouge-Parish of East Baton Rouge.

failing to have proper and safe maintenance procedures of Centroplex stairways despite direct and/or constructive knowledge that the stairway was inadequately lit; failing to correct and/or repair the condition despite having direct knowledge that the stairway was inadequately lit; respondeat superior; failing to provide safe passageway; failing to properly maintain stairways in a safe condition; failing to repair lighting problems; failing to inspect stairways for adequate lighting after direct and/or constructive notice; failing to properly design their stairways and pathways; failing to have proper inspection procedures to detect such hazardous conditions by knowingly directing persons to traverse said area where they knew such area had inadequate lighting; and for any acts of negligence which will be proved at trial of this matter.

Thereafter, SMG and Federal filed a motion for summary judgment, asserting that Ms. Rodrigue cannot establish: (1) that SMG owned or was the custodian of the area where the alleged fall occurred because that area was not within the premises leased, managed, or controlled by SMG; and (2) even if an employee of SMG directed Ms. Rodrigue to the area of the alleged fall, SMG had no prior notice of any problems in the area. Ms. Rodrigue opposed the motion, asserting that SMG had the care, custody, and control of the premises and the stairwell in accordance with La. C.C. arts. 2317 and 2317.1. Additionally, Ms. Rodrigue asserted that notice was immaterial because as the custodian of the stairwell, SMG had a duty to keep such property in a reasonably safe condition or, alternatively, that SMG had constructive notice of the stairwell's unreasonably dangerous condition.

Following a hearing on the motion, the trial court rendered judgment, granting summary judgment in favor of SMG and Federal and dismissing all of Ms. Rodrigue's claims against them with prejudice. Specifically, the trial court found that SMG did not own, lease, or manage the area where the fall occurred,

because the facility that SMG contracted with the City-Parish to manage is limited to the seating area, exhibition hall, and performing arts theater as stated in the management agreement, and the area outside the listed areas, including where Ms. Rodrigue fell, was managed by the City-Parish. The trial court further found that the management agreement was clear and unambiguous regarding this issue. Thereafter, the trial court signed a judgment on July 22, 2014, in conformity with its ruling.[2]

Ms. Rodrigue now appeals from the trial court's judgment.

STANDARD OF REVIEW

A motion for summary judgment is a procedural device used to avoid a full scale trial when there is no genuine issue of material fact. Johnson v. Evan Hall Sugar Cooperative, Inc., 01-2956, p. 3 (La. App. 1st Cir. 12/30/02), 836 So. 2d 484, 486. A motion for summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, if any, admitted for purposes of the motion for summary judgment, show that there is no genuine issue of material fact, and that mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B)(2). Only evidence admitted for purposes of the motion for summary judgment shall be considered by the court in its ruling on the motion. La. C.C.P. art. 966(F)(2).

On a motion for summary judgment, the burden of proof is on the mover. If, however, the mover will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the mover's burden on the

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[2] Following the trial court's ruling and circulation of judgment, Ms. Rodrigue filed a motion to clarify judgment. Ms. Rodrigue asserted that she disagreed with SMG and Federal's draft judgment, which contained language dismissing all of her claims against them with prejudice, because it was her understanding that the trial court's ruling granted summary judgment in favor of SMG and Federal only in part and, therefore, does not dismiss all of her claims. The hearing on this motion was not held, however, until February 12, 2015, after the signing of the July 22, 2014 judgment and following Ms. Rodrigue's motion for suspensive appeal. At the February 12, 2015 hearing before the successor judge, the trial court: denied the motion to clarify judgment; affirmed the July 22, 2014 judgment dismissing all claims against SMG and Federal; and granted Ms. Rodrigue's motion for suspensive appeal.

motion does not require that all essential elements of the adverse party's claim, action, or defense be negated. Instead, the mover must point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the adverse party must produce factual evidence sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. If the adverse party fails to meet this burden, there is no genuine issue of material fact, and the mover is entitled to summary judgment. La. C.C.P. art. 966(C)(2).

In determining whether summary judgment is appropriate, appellate courts review evidence de novo under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. Lieux v. Mitchell, 06-0382, p. 9 (La. App. 1st Cir. 12/28/06), 951 So. 2d 307, 314, writ denied, 07-0905 (La. 6/15/07), 958 So. 2d 1199.

DISCUSSION

Under Louisiana law, a party is responsible not only for damage resulting from one's own act but also for damage caused by things within one's custody. La. C. C. art. 2317. Where damages are claimed as a result of vices or defects in the thing within one's custody, La. C.C. art. 2317.1 provides:

> The owner or custodian of a thing is answerable for damage occasioned by its ruin, vice, or defect, only upon a showing that he knew or, in the exercise of reasonable care, should have known of the ruin, vice, or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care. Nothing in this Article shall preclude the court from the application of the doctrine of res ipsa loquitur in an appropriate case.

The general rule applicable to an owner or person having custody of immovable property is that he has a duty to keep such property in a reasonably safe condition. He must discover any unreasonably dangerous condition on his premises and either correct the condition or warn potential victims of its existence.

See Graupmann v. Nunamaker Family Limited Partnership, 13-0580, p. 6 (La. App. 1st Cir. 12/16/13), 136 So. 3d 863, 867. This duty is the same under theories of negligence under La. C.C. art. 2315 or strict liability under La. C.C. art. 2317. Graupmann, 13-0580 at p. 6, 136 So. 3d at 867. Under either theory, the plaintiff has the burden of proving: (1) the property which 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. Graupmann, 13-0580 at p. 6, 136 So. 3d at 867.

In determining whether a thing is in one's custody or garde, courts should consider: (1) whether the person bears such a relationship as to have the right of direction and control over the thing; and (2) what, if any, kind of benefit the person derives from the thing. Davis v. Riverside Court Condominium Association Phase II, Inc., 14-0023, p. 6 (La. App. 4th Cir. 11/12/14), 154 So. 3d 643, 648; see also Zeno v. Grady Crawford Construction Company, Inc., 94-0858, p. 3 (La. App. 1st Cir. 3/3/95), 652 So. 2d 590, 592, writ denied, 95-0857 (La. 1995), 652 So. 2d 590. Although there is a presumption that an owner has custody or garde of his property, this presumption is rebuttable. Doughty v. Insured Lloyds Insurance Company, 576 So. 2d 461, 464 (La. 1991). One way to rebut the presumption is by establishing a contractual undertaking by another to maintain and control the property. Davis, 14-0023 at p. 7, 154 So. 3d at 648.

In the instant case, the City-Parish entered into a management agreement with SMG. Specifically, the agreement provides:

> The City-Parish is the owner and current operator and manager of the Riverside Centroplex, a three-venue complex consisting of a 12,000 seat arena, 30,000 square foot exhibition hall and a 2,200 seat performing arts theater (collectively, "the Facility") located in the City of Baton Rouge, Louisiana at 275 South River Road.

* * *

> The City-Parish desires to engage SMG, and SMG desires to accept such engagement, to provide management services for the Facility on the terms and conditions set forth herein.

Furthermore, the management agreement provides:

> During the Management Term and the Renewal Term, if any, the City-Parish shall continue to provide the Fiscal Management Services on the same basis as such services were provided for the Facility prior to the commencement of the Management Term.

"Fiscal Management Services" are defined in the management agreement as "the services provided prior to the date [of the agreement] by the City-Parish relating to the maintenance and administration of the Facility which are described on Exhibit 'C' attached hereto." The Fiscal Management Services listed on Exhibit C to the management agreement include "maint[enance of] the grounds of the Facility compound" as well as "[b]uilding improvement/renovation design; providing labor to seal/patch/repair any exterior driveway/pavement or concrete ramps and steps."

In the instant case, it is undisputed that Ms. Rodrigue fell on an exterior stairwell adjacent to the Centroplex arena. According to the management agreement, the City-Parish, as owner, contracted with SMG to specifically manage the arena, exhibition hall, and performing arts theater. The City-Parish, however, retained responsibility for the maintenance of the exterior areas, including the grounds, driveways, pavement, ramps, and steps. As such, from a plain reading of the management agreement, it unambiguously establishes that the City-Parish did not transfer management of the exterior stairwell at issue to SMG as part of the agreement but rather, specifically retained responsibility for maintenance of the stairwell. Therefore, because SMG did not own, lease, manage, or have direction or control over the stairwell at issue, Ms. Rodrigue is not able to establish that SMG had custody of the stairwell, and SMG is entitled to summary judgment as a matter of law on Ms. Rodrigue's claims for custodial liability under La. C.C. arts.

2315 and 2317. See Davis, 14-0023 at p. 13, 154 So. 3d at 651 and Mix v. Krewe of Petronius, 95-1793, pp. 8-9 (La. App. 4th Cir. 5/22/96), 675 So. 2d 792, 797; see also Graupmann, 13-0580 at p. 6, 136 So. 3d at 867.

However, we note that the judgment in the instant case dismisses the entirety of Ms. Rodrigue's claims against SMG and Federal with prejudice. In her petition, Ms. Rodrigue also asserted claims generally in negligence and respondeat superior, which were not addressed in the motion for summary judgment or by the trial court in its ruling.[3] Accordingly, the trial court erred in dismissing the entirety of Ms. Rodrigue's claims with prejudice.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court to the extent that it granted summary judgment in favor of SMG and Federal, dismissing Ms. Rodrigue's claims for custodial liability under La. C.C. arts. 2315 and 2317. However, we reverse the trial court's dismissal of the remainder of Ms. Rodrigue's

[3] SMG and Federal assert on appeal that they sought summary judgment as to all of Ms. Rodrigue's claims, because not only did they allege that Ms. Rodrigue could not prove SMG owned or was the custodian of the area where she fell but also that even if an employee of SMG directed Ms. Rodrigue to the area of the alleged fall, Ms. Rodrigue could not prove that SMG had prior notice of any problems in the area. However, in discussing knowledge and/or notice in their brief in support of their motion for summary judgment, SMG and Federal specifically stated that "plaintiff cannot prove another requisite element of her claim: that SMG knew or should have known that the area was problematic." The only claim mentioned in SMG and Federal's brief was a claim for custodial liability under La. C.C. art. 2317, and actual or constructive knowledge of the risk is an element in establishing such a claim. See Graupmann, 13-0580 at p. 6, 136 So. 3d at 867. There is no indication that SMG and Federal sought summary judgment based upon the fact that Ms. Rodrigue could not prove that SMG had notice of the alleged dangerous condition of the stairwell or that she could not otherwise meet her burden of proof in establishing a claim against SMG and Federal for ordinary negligence under La. C.C. art. 2315 or respondeat superior. See Seago v. Benedict's of Mandeville, Inc., 11-1881 (La. App. 1st Cir. 5/2/12) (unpublished opinion), writ denied, 12-1215 (La. 9/21/12), 98 So. 3d 341 (court examined plaintiff's claims for custodial liability under La. C.C. art. 2317.1 and for ordinary negligence under La. C.C. art. 2315 against host of event where alleged slip and fall occurred); Todd v. Angel, 47,911 (La. App. 2nd Cir. 4/24/13), 114 So. 3d 512 (court examined plaintiff's claim for negligence under La. C.C. art. 2315 against sponsor of event where alleged slip and fall occurred). Furthermore, the trial court did not address any claim for ordinary negligence under La. C.C. art. 2315 or respondeat superior in its ruling, wherein it solely addressed the issue of custody, presumably because it also thought that the issue of knowledge was raised by SMG and Federal as an additional element of Ms. Rodrigue's claim under La. C.C. art. 2317. Accordingly, we find SMG and Federal's argument that these other claims were properly before the trial court on the motion for summary judgment to be without merit. See La. C.C.P. art. 966(F)(1).

claims and remand this matter to the trial court for further proceedings consistent with this opinion. All costs of this appeal are assessed equally to Spectator Management Group and Federal Insurance Company.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.