

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

JENNIFER ELIZABETH LEE, WIFE
OF AND CRAIG ALLEN LEE

NO. 2017 CW 0266

VERSUS

PEARL RIVER BASIN LAND AND
DEVELOPMENT COMPANY, LLC,
THE STATE OF LOUISIANA, THE
TOWN OF PEARL RIVER, ABC
INSURANCE COMPANY, DEF
INSURANCE COMPANY AND XYZ
INSURANCE COMPANY

DEC 13 2017

In Re: State of Louisiana, applying for supervisory writs,
19th Judicial District Court, Parish of East Baton
Rouge, No. 620,406.

BEFORE: McDONALD, McCLENDON, AND WELCH, JJ.

WRIT GRANTED. At issue before this court is whether the trial court properly denied the State of Louisiana's ("the State's") motion for summary judgment on liability. In this matter, plaintiff Craig Allen Lee, was operating his vessel at approximately 2:30 a.m. on a waterway in St. Tammany Parish known as the "pump slough" when he struck his head on an unlit bridge. Plaintiff and his wife Jennifer filed suit for damages against the developer of the bridge, Pearl River Basin Land & Development Company, L.L.C., the Town of Pearl River, the alleged owner of the property on which the bridge is situated, and the State of Louisiana. Plaintiffs sued the State asserting that it is strictly liable as the owner of the water bottom of the pump slough and for negligence based on its alleged custody or garde of the waterway through supervision, direction, or control through the Louisiana Department of Wildlife and Fisheries ("LDWF").

Because the State will not bear the burden of proof at trial on the issue before the court on summary judgment, *i.e.* liability, it was required only to point out the absence of factual support for one or more elements essential to plaintiffs' claim or action. La. Code Civ. P. art. 966D(1). We believe that the State has pointed out the absence of factual support for plaintiffs' claim that the State owned the water bottom of the pump slough on which the bridge is situated. See Affidavit of Spencer Robinson, Administrator of State Lands, Louisiana State Lands Division. Plaintiffs did not then come forward with factual support to establish a genuine issue of material fact on the issue of ownership. Nevertheless, even if we were to find the State owned the water bottom, this does not translate to ownership of the bridge that might impose a duty on the State to light the structure. Moreover, plaintiffs cannot demonstrate that the water bottom of the pump slough or the waterway itself is defective.

Additionally, we do not find that plaintiffs have a claim in negligence against the State. Because the State does not own the bridge, the plaintiffs have the burden of proving that the

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

2017CW0266

Page 2


property which caused the damage was in the State's care, custody, or garde through the exercise of supervision, direction, or control. Plaintiffs largely rely on the testimony of three LDWF agents to establish that they were familiar with the bridge and aware of the fact that it was unlit, thus posing a danger to the boating public. Our review of their testimony reveals that these agents, in fact, had very little familiarity with the bridge, much less actual or constructive notice of the purported lighting defect, particularly since none of these agents had been to the pump slough by vessel at night prior to the accident in question. Although we are aware that custody or garde of a thing can form the basis for fault in negligence under a duty-risk analysis, we find that plaintiffs did not come forward with factual support to establish a genuine issue of material fact as to the State's custody or garde of the bridge. Neither did plaintiffs establish a genuine issue of material fact as to whether the State benefitted from the bridge. Further, there is simply no evidence that State employees used the bridge. Accordingly, we conclude the State owed no duty to the plaintiffs, by way of inter-agency reporting or otherwise, to protect against the harm they suffered. Therefore, after de novo review, the ruling of the trial court denying the State of Louisiana's motion for summary judgment on liability is reversed, and the motion is granted dismissing the claims of plaintiffs against the State of Louisiana with prejudice.

JMM

JEW

McClendon, J., concurs. After de novo review, I conclude that defendant, the State of Louisiana, pointed out the absence of factual support for one or more elements essential to plaintiffs' claims, and plaintiffs did not come forward with factual support to prove that the State either owned or had custody, control or garde of the unlit bridge. Accordingly, the State has no liability in this matter.

COURT OF APPEAL, FIRST CIRCUIT


DEPUTY CLERK OF COURT
FOR THE COURT