

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2018 CA 1228

LYDIA MCCOY

VERSUS

TIGER MANOR

Judgment Rendered: MAY 09 2019

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number C650672

Honorable Todd Hernandez, Presiding

Lydia McCoy
Baton Rouge, LA

Plaintiff/Appellant
In Proper Person

Jennifer E. Michel
Jaime F. Landry
Lafayette, LA

Counsel for Defendant/Appellee
SC Tiger Manor, LLC

BEFORE: GUIDRY, THERIOT, PENZATO, JJ.

GUIDRY, J.

Lydia McCoy appeals from a trial court judgment granting summary judgment in favor of defendant, Tiger Manor¹, and dismissing her claims against Tiger Manor with prejudice. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

McCoy was a resident of an apartment complex owned and operated by Tiger Manor. On August 11, 2016, McCoy filed the instant action, in proper person, against Tiger Manor, asserting that her vehicle was destroyed by water on October 26, 2015, while parked in a lot on Tiger Manor's property, and that the damage to her vehicle was the result of serious flaws in the design, construction, and maintenance of the parking lot. McCoy alleged that as a result of Tiger Manor's negligence, she suffered damages, including loss of her new, custom ordered vehicle, loss of earnings, and mental anguish.

Thereafter, McCoy amended her petition to more specifically allege that the parking lot where her car was parked was designed and built improperly and with serious defects, and that the drainage system in that portion of the parking lot is dysfunctional because rain water gathers in that spot while other sections of the parking lot on the property remain safe and suitable for parking. McCoy also asserted claims for false advertising and breach of contract related to other issues with the apartment complex, including management, maintenance, and transportation. McCoy attached several photographs and maintenance lists to her amended petitions.

Tiger Manor filed an answer to McCoy's claims, asserting that McCoy's damages as related to her vehicle, if any, were caused by an Act of God, particularly a named hurricane and/or other fortuitous event beyond the control of

¹ Tiger Manor was improperly named as a defendant in this matter. The defendant answered the suit in its proper name, SC Tiger Manor, LLC.

Tiger Manor. Tiger Manor also filed a motion for summary judgment on February 1, 2018, asserting that McCoy is unable to produce any evidence that the parking lot contained a defect and further, is unable to establish that any alleged defect caused the flooding and resulting damage. Rather, Tiger Manor asserted that any flooding was the result of Hurricane Patricia, an Act of God. Tiger Manor also sought summary judgment as to McCoy's remaining claims, asserting that McCoy is unable to meet her burden of proof as to any element of those claims.

Thereafter, on March 29, 2018, McCoy filed a motion for continuance, asserting that she is self-represented and needs additional time to retain legal counsel to represent her in this matter.

The trial court conducted a hearing on McCoy's motion to continue and Tiger Manor's motion for summary judgment on April 2, 2018. Following the presentation of argument by the parties, the trial court denied McCoy's motion to continue and took Tiger Manor's motion for summary judgment under advisement.

Thereafter, the trial court issued a written ruling, finding:

[t]he plaintiff has failed to submit the slightest of evidence that may even suggest that the defendant may reasonably be at fault for the damages she alleges she has suffered and no evidence has been submitted to remotely suggest, much less prove by a preponderance of the evidence, that the defendant's conduct in some way caused or contributed to the cause of the flooding in the defendant's parking lot.

Furthermore, the trial court found that plaintiff had more than sufficient time to retain legal counsel and to produce evidence in support of her claims.

The trial court subsequently signed a judgment granting Tiger Manor's motion for summary judgment and dismissing McCoy's claims with prejudice.

McCoy now appeals from the trial court's judgment.²

² We note that the scope of McCoy's appeal is limited to her claims against Tiger Manor for its negligence in the design, construction, and maintenance of its parking lot. As such, we do not address the propriety of the trial court's judgment in granting summary judgment as to her remaining claims.

DISCUSSION

Motion for Continuance

Louisiana Code of Civil Procedure article 1601 provides for discretionary grounds for granting a continuance “if there is good ground therefor.” The trial court must consider the particular facts of a case when deciding whether to grant or deny a continuance, including the diligence and good faith of the party seeking the continuance and other reasonable grounds. St. Tammany Parish Hospital v. Burris, 00-2639, p. 4 (La. App. 1st Cir. 12/28/01), 804 So. 2d 960, 963. The trial court has great discretion in granting or denying a continuance under La. C.C.P. art. 1601, and its ruling should not be disturbed on appeal in the absence of a clear abuse of that discretion. St. Tammany Parish Hospital, 00-2639 at p. 4, 804 So. 2d at 963.

In the instant case, McCoy filed a motion for continuance on March 29, 2018, asserting as her reason for seeking a continuance that she is self-represented and needs additional time to retain legal counsel to represent her in this matter. At the hearing on McCoy’s motion for continuance, McCoy stated that she was working on securing more scientific evidence, but that she cannot do it without legal counsel. Accordingly, she asked the court for additional time to retain legal counsel to represent her in this matter. The trial court, however, in denying McCoy’s motion, noted that she had filed the instant action on August 11, 2016. Tiger Manor did not file its motion for summary judgment until February 1, 2018, and the hearing was set for April 2, 2018. It was not until a few days prior to the scheduled hearing that McCoy, who had filed the instant action *pro se*, filed a motion for continuance in order to obtain legal counsel. The trial court determined that McCoy had “more than sufficient time” to retain legal counsel and to produce evidence in support of her claims.

From our review of the record, we do not find that the trial court abused its discretion in denying McCoy's motion for continuance.

Summary Judgment

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. M/V Resources LLC v. Louisiana Hardwood Products LLC, 16-0758, p. 8 (La. App. 1st Cir. 7/26/17), 225 So. 3d 1104, 1109, writ denied, 17-1748 (La. 12/5/17), 231 So. 3d 624. A motion for summary judgment is properly granted if, after an opportunity for adequate discovery, the motion, memorandum, and supporting documents 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(A)(3). 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. M/V Resources LLC, 16-0758 at p. 9, 225 So. 3d at 1109.

On a motion for summary judgment, the burden of proof is on the mover. Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is then on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. La. C.C.P. art. 966(D)(1). If the adverse party fails to do so, there is no genuine issue of material fact and summary judgment will be granted. Neighbors Federal Credit Union v. Anderson, 15-1020, p. 10 (La. App. 1st Cir. 6/3/16), 196 So. 3d 727, 734. Moreover, as noted in La. C.C.P. art. 967(B), the opposing party cannot rest on the

mere allegations in his pleadings, but his response, by affidavits, depositions, or answers to interrogatories, must set forth specific facts showing there is a genuine issue for trial.

McCoy's claim against Tiger Manor was for its negligence in the design, construction, and maintenance of the parking lot. Louisiana Civil Code article 2317.1 provides, in pertinent part:

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.

For liability to attach under La. C.C. art. 2317.1, the plaintiff has the burden of proving that: (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; (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. Tomaso v. Home Depot, U.S.A., Inc., 14-1467, p. 5 (La. App. 1st Cir. 6/5/15), 174 So. 3d 679, 682. The existence of a defect may not be inferred solely from the fact that an accident occurred, but the plaintiff must prove that a defect existed and that the defect caused the plaintiff's damages. King v. Allen Court Apartments II, 15-0858, p. 7 (La. App. 1st Cir. 12/23/15), 185 So. 3d 835, 840, writ denied, 16-0148 (La. 3/14/16), 189 So. 3d 1069.

In the instant case, Tiger Manor pointed out that McCoy is unable to establish that the parking lot contained a defect and further, that any alleged defect caused the flooding and resulting damage. In opposing Tiger Manor's summary judgment, McCoy merely disputed Tiger Manor's assertion that the flooding of the parking lot was caused by an Act of God, excessive rain resulting from a hurricane, and asserted that it was "logically impossible" that the entire parking lot was

completely free of water intrusion except for the small area where her vehicle was parked.³ However, other than McCoy's conclusory allegations, she failed to present any evidence demonstrating that the parking lot contained a defect, or that any defect was the cause of her damages.⁴

Accordingly, because the existence of a defect may not be inferred solely from the fact that an accident occurred, and because McCoy failed to present any evidence that she will be able to meet her burden of proof at trial, we find no error in the trial court's judgment granting summary judgment in favor of Tiger Manor.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court. All costs of this appeal are assessed to Lydia McCoy.

AFFIRMED.

³ We note that the record does not contain a written opposition to Tiger Manor's motion for summary judgment, nor was any evidence submitted at the hearing.

⁴ McCoy references photographs of the parking lot in question in her appellate brief as supporting her assertions. However, we note that these photographs, while attached to her petition for damages, were not filed into evidence or otherwise referenced at the hearing on the motion for summary judgment. Furthermore, these photographs merely depict the flooding of the parking lot, and lack of flooding in other areas, and do not establish any defect.