

**KRISTY KIRKLAND AND
LESIA KIRKLAND AS THE
NATURAL TUTRIX OF HER
MINOR CHILDREN,
FREDRICKA KIRKLAND AND
TASHI KIRKLAND**

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NO. 2000-CA-2114

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COURT OF APPEAL

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FOURTH CIRCUIT

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STATE OF LOUISIANA

VERSUS

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**ENTERGY CORPORATION
AND HAMP'S
CONSTRUCTION, L.L.C.**

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**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 98-19994, DIVISION "F-10"
Honorable Yada Magee, Judge**

**Charles R. Jones
Judge**

(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones,
and Judge Dennis R. Bagneris, Sr.)

ARMSTRONG, J., CONCURS

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AFFIRMED

We review on appeal the district court's granting of a summary judgment in a wrongful death and survival action. Plaintiffs/Appellants, Kristy Kirkland and Leisa Kirkland as the natural tutrix of her minor children Fredrika Kirkland and Tasha Kirkland, appeal the district court's judgment granting Defendant/Appellee, Hamp's Construction L.L.C.'s, Motion for Summary Judgment, thus dismissing Hamp's Construction L.L.C. We affirm.

Facts

On October 13, 1998, Mr. Seinfried Davis was electrocuted and subsequently died after he entered an electrical transformer vault on property owned by Oakbrook apartments.

On June 16, 1998, Hamp's Construction L.L.C. (hereinafter "Hamp's") entered into eleven (11) separate contracts with the City of New Orleans to demolish eleven (11) different residential buildings comprising Oakbrook apartments. Prior to the demolition of the buildings, Hamp's

owner, Charlie Hampton, maintains that he met with a representative from Entergy of New Orleans (Hereinafter “Entergy”) to discuss turning off of the electricity in the Oakbrook buildings. The Entergy representative opened the electrical transformer vault, radioed a third party and arranged a scheduled time for the electricity to be turned off. Shortly thereafter, Hamp’s begin demolition of the buildings. Hamp’s claims that the demolition work was completed on or about September 27, 1998 although large equipment belonging to the company remained on the premises.

Mr. Davis’ reasons for entering the electrical transformer vault are unknown and there is a dispute as to whether Mr. Davis forced open the vault doors or whether Hurricane Georges forced the doors open. The vault was large enough for Mr. Davis to enter through a doorway and walk around once inside. From there, the parties can only allege what Mr. Davis was doing inside. An eyewitness, Mr. James Johnson, testified that he saw Mr. Davis enter the electrical vault when minutes later he heard an explosion. According to Mr. Johnson, Mr. Davis came stumbling out of the vault severely burned and singed. Mr. Davis subsequently died as a result of the electrocution.

Procedural History

The original petition was filed in the Civil District Court for the Parish of Orleans as a wrongful death and survival action instituted by, and on behalf of the minor children of Mr. Davis (hereinafter “the Kirklands”) against Entergy Corporation and Hamp’s Construction Company. Both Entergy and Hamp’s filed Motions for Summary Judgments. The district court denied the motion as to Entergy and granted the Summary judgment as to Hamp’s thus dismissing the Kirkland’s claim against Hamp’s.

Argument

The Kirkland’s sole assignment of error is that the district court erred in granting Hamp’s Motion for Summary Judgment finding that there were no genuine issues of material fact with regard to Hamp’s negligence and custody and control over the demolition site including the electrical transformer vault at issue.

Standard of Review

The standard used to determine whether to grant a Motion for Summary is set forth in La. C.Civ. Pro. Art 966 (C) (1) and (2) which provides:

(C) (1) After adequate discovery or after a case is set for trial, a motion which shows that there is *no genuine issue of material fact* and that

the mover is entitled to judgment as a matter of law shall be granted.

(2) The burden of proof remains with the movant. However if the movant will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the movant'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 that there is an absence of factual support for one or more elements essential to the adverse party's claim, action or defense.*

Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact (*emphasis added*).

In support of its Motion for Summary Judgment, Hamp's provided the district court with the demolition contracts between itself and the City of New Orleans. The contracts evidence that Hamp's did not have guard or control over the premises and that it owed no duty to Mr. Davis who, may have entered the electrical transformer at his own risk. As the movant, the burden was on Hamp's to prove that there was an absence of factual support essential to the Kirkland's claim. On appeal the Kirklands argue that the district court erred in finding that the evidence supported Hamp's Motion.

Contractual Relationship

The Kirklands contend that the contracts between Hamp's and the City of New Orleans speak for themselves in that Hamp's was obligated by

the contracts to remove the electrical transformer vault as well as the residential buildings. Hamp's argues that *eleven (11) separate contracts* existed and that each contract provided a *specific municipal address* and instructed that they would demolish a "building" not "buildings". The contracts read in pertinent part as follows:

- The contractor agrees to:
2. Perform or cause to be performed, on the said property to remove existing building, structure, trash and grade lot...
 - b. Perform no work without having utilities removed; gas, water and electricity.

The Kirklands argue that the electrical transformer vault was an existing building or structure per the contract and that it was situated on the property to be demolished.

Each provision in a contract must be interpreted in light of other provisions so that each is given meaning suggested by the contract as whole. *First National Bank of Commerce v. City of New Orleans, et al*, 555 So.2d 1345 (La. 1990). Hamp's entered into eleven (11) separate contracts with the City of New Orleans. Looking at each contract as a whole in light of *First National Bank of Commerce*, each contract contains a municipal address; each contract uses the wording "building" and "structure" thus relating back to the municipal address. In oral argument Hamp's maintained that each

separate contract was to demolish only the building specified by the stated municipal address. The Kirklands were unable to negate Hamp's argument with proof that the electrical transformer vault actually was located on the lot bearing the municipal address stated in any of the contracts and review of the record before us demonstrates no difference. Failure to make such a connection between the City of New Orleans' records in the conveyance office and the actual location of the vault weakens the Kirkland's argument.

The Kirklands also contend that since the contracts read that no work could be done by Hamp's until the utilities were "removed", Hamp's had a responsibility to "remove" the utilities. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. LA. C.C. Art 2046. Had Hamp's attempted to "remove" the electrical transformer vault via demolition or other means as suggested by the Kirklands, Hamp's would have placed its employees at risk. More importantly, the electrical transformer vault provided electricity to several customers in the surrounding area who would have been left powerless. The absurd consequences resulting from the Kirkland's interpretation of the contracts would have required Hamp's to demolish a live electrical transformer vault which may have lead to injury or perhaps death of Hamp's employees and

left a broad populated area without electricity.

Hamp's argument is supported by the fact that the company did meet with Entergy to have the power removed. Hamp's further argues that the contracts in which the Kirklands rely on are between Hamp's and the City; that the City was not the owner of the vault, Entergy was, and that Hamp's did not contract with Entergy.

We find that the contracts called for the demolition of a building or a structure located on the stated municipal address. We further find that Hamp's responsibility to "remove" the electricity translates into requiring Hamp's to arrange to turn off the power serving the building to be demolished. If a word is susceptible to different meanings, it must be interpreted as having the meaning that best conforms to the object of the contract. La. C.C. art. 2048. Hamp's properly "removed" the electricity by arranging with an Entergy representative to have the power turned off so that Hamp's could proceed with demolition.

We conclude that the provisions in the contracts were interpreted correctly by the district court in determining that Hamp's did not have a responsibility to remove the electrical transformer vault as a result of the eleven (11) contracts to demolish Oakbrook apartments.

Custody/Control/Garde

Hamp's Motion for Summary Judgment was also based on the argument that it did not have custody or control over the vault and could not be held liable under La.Civ. Code art. 2317, *Acts of others and of things in custody*, which provides that:

We are responsible, not only for the damage occasioned by our own act, but also for that which is caused by the act of persons for whom we are answerable, or of the things which we have in our custody...

The Kirklands contend that the mere fact that Hamp's had the power to destroy buildings and structures evidenced custody and control. They also contend that because Hamp's equipment remained on the property Hamp's had not completely relinquished control.

Hamp's relies on the Supreme Court opinion in *Sisler v. Liberty Mutual Insurance Co.*, 558 So.2d 1106, 1112 (La. 1990), wherein the Court observed that "In an action asserting strict liability as grounds for recovery, the plaintiff bears the burden of proving 1) the thing which caused damages was in the care, custody and control of the defendant; 2) the thing had a vice or defect which created an unreasonable risk of harm; and 3) the injuries were caused by a defect." Thus, the Kirklands must satisfy all three elements in accordance with *Sisley* to support their argument that Hamp's had control over the electrical transformer vault hence owing Mr. Davis a duty under La.

Civ. Code art 2317. They have failed to do so.

In *Daughty v. Insured's Lloyds Insurance Companies*, 576 So 2d. 461 (La. 1991), the court found that under most circumstances ownership alone establishes requisite benefit, control and authority to find garde for purposes of statute [sic] making one responsible, not only for damage occasioned by his own act, but for that which is caused by act of persons for whom that person is answerable or of things which that person has in his custody. Because Hamp's contracted with the City of New Orleans to demolish the Oakbrook apartments, we conclude that the City obtained control of Oakbrook and the vault via police power to destroy dilapidated property. However, we also conclude that Entergy owned and thus had control over the equipment inside.

The Kirklands also rely on the fact that Hamp's left large expensive equipment on the property implying that Hamp's still had garde over the property. Hamp's on the other hand, maintains that it was finished with the demolition project two weeks prior to Mr. Davis' electrocution and that they were unaware of the accident until Hamps' employees returned to the property to retrieve their equipment.

Hamp's argues that the vault remained "live" because it was providing electricity to others outside of the recently destroyed building. The Kirklands

offer no evidence to support their contention that the vault itself or the electrical equipment within the vault was defective. While it is not contested that Mr. Davis' death was indeed caused by him being electrocution, the district court determined that there was no question of material fact that Hamp's actions was the cause of his death.

Considering the three necessary components set out in *Sisler* the district court did not err in determining that Hamp's had no responsibility to Mr. Davis under La. Civ. Code art. 2317 and that summary judgment was appropriate.

Decree

For the reasons established herein and after review of the record before us, we find that there are no genuine issues of material fact in relation to Hamp's and the death of Mr. Davis and that there was no error by the district court in granting Hamp's Motion for Summary Judgment.

AFFIRMED