

**NOT DESIGNATED FOR PUBLICATION**

**DORIS L. THOMAS** \* **NO. 2006-CA-0879**  
**VERSUS** \* **COURT OF APPEAL**  
**DDRA CAPITAL, INC. A.K.A.** \* **FOURTH CIRCUIT**  
**DELTA DOWNS**  
**ENTERPRISES, L.L.C. A.K.A.** \* **STATE OF LOUISIANA**  
**DELTA DOWNS RACE**  
**TRACK AND CASINO AND** \* \* \* \* \*  
**LOUISIANA STATE RACING**  
**COMMISSION**

APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2003-2575, DIVISION "A-5"  
HONORABLE LLOYD J. MEDLEY, JUDGE  
\* \* \* \* \*  
**JAMES F. MCKAY III**  
**JUDGE**  
\* \* \* \* \*

(Court composed of Judge Patricia Rivet Murray, Judge James F. McKay III,  
Judge David S. Gorbaty)

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Race Track and Casino

**REVERSED AND REMANDED**

The appellant, Doris L. Thomas, appeals the judgment of the trial court granting summary judgment in favor of the appellee DDRA Captial, Inc., a.k.a. Delta Downs Enterprises, L.L.C., a.k.a. Delta Downs Race Track and Casino (“Delta Downs”). We agree and reverse the trial court.

#### **FACTS AND PROCEDURAL HISTORY**

The pertinent facts are that on or about the night of April 7, 2002, the two-year old filly named “Amazing Glace” which was owned by Doris L. Thomas and trained by her husband Travis Thomas, was injured while running loose on the back side of the barn area at Delta Downs. Following the conclusion of the sixth race at Delta Downs, Amazing Glace, as required by Louisiana State Racing Commission Rules, was taken to the detention barn and put into a stall, for the purpose of securing a post race specimen. It is uncontested that the detention barn was under the control of the Louisiana State Racing Commission (“LSRC”) during the testing procedures. The LSRC rules, which are to be affixed to the building, require that representatives of the LSRC, owner, trainer, hot walker,

groom, or an authorized agent of the owner or trainer be present at all times during the procedure<sup>1</sup>. Neither a member nor representative of Delta Downs is authorized or permitted to be present in the detention barn during this procedure. In this particular instance the LSRC had assigned an employee, Alfred Chavis (also known as the “Catcher”), to collect the urine from Amazing Glace. During the procedure, Amazing Glace allegedly pushed the lower stall door open and broke loose into the common area of the test barn. Amazing Glace broke through a rope that was strung across the back barn doors and was eventually caught near another barn on the property. Amazing Glace, after being contained, was returned to the detention barn.

It is alleged that Amazing Glace sustained injuries to its upper right front legs and knees as a result of escaping from the detention barn.

On August 18, 2005, Delta Downs filed a motion for summary judgment, which was heard on March 9, 2006. On March 17, 2006, the trial court signed the judgment granting the motion in favor of the defendants Boyd Tracing, LLC d/b/a Delta Downs Race Track and Casino and dismissing them from the lawsuit.

## **STANDARD OF REVIEW**

Appellate courts review summary judgments de novo under the same criteria that govern the district court's consideration of whether summary judgment is appropriate. Reynolds v. Select Properties, Ltd., 93-1480 (La.4/11/94), 634 So.2d 1180, 1183. "Favored in Louisiana, the summary judgment procedure 'is designed to secure the just, speedy, and inexpensive determination of every action' and shall

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<sup>1</sup> See. Louisiana Racing Commission 's Rules of Racing § 1747 & § 1753

be construed to accomplish these ends." King v. Parish National Bank, 2004-0337 (La.10/19/04), 885 So.2d 540, 545, (*quoting* La. C.C.P. art. 966(A)(2)).

A summary judgment shall be rendered forthwith 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 a material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966. If the court finds that a genuine issue of material fact exists, summary judgment must be rejected. Alexis v. Southwood Ltd. Partnership, 2000-1124 (La.App. 4 Cir. 7/18/01), 792 So.2d 100, 102. The burden does not shift to the party opposing the summary judgment until the moving party first presents a *prima facie* case that no genuine issues of material fact exist. Id. At that point, the party opposing the motion must "make a showing sufficient to establish existence of proof of an element essential to his claim, action, or defense and on which he will bear the burden of proof at trial." La. C.C.P. art. 966(C).

## **DISCUSSION**

On appeal, Doris L Thomas argues that the trial court erred in granting this motion for summary judgment based on the existence of genuine issues of material fact germane to various issues concerning the maintenance of the detention barn, in particular the latch and rope system. The appellant claims that there was a construction and design defect in this system (a thin rope and a rusty latch), particularly for restraining thoroughbred racehorses.

Debatably, this system could have been inadequate potentially causing liability to fall upon Delta Downs for failure of design, installation, upkeep and/or maintenance of this latch system that ultimately created an unreasonably dangerous condition resulting in the injuries to this horse. Potentially, there may be some

liability on the LSRC as well; by its own rules it had the care and control of the horse during the procedure. Appellant argues that the questions pertinent to who may have controlled the construction of the barn itself and the security devices are key questions of fact more appropriate for a jury to determine.

Conversely, the appellee, Delta Downs, asserts that the detention barn was strictly under the control of the LSRC at the time of the alleged accident and denies any culpability or liability for the injuries that Amazing Glace sustained. We do not find that Delta Downs has sufficiently met its burden of proof as required by La. C.Civ. Pro. art 966 which on its own precludes summary judgment in its favor.

## **CONCLUSION**

After reviewing the record *de novo* in a light more favorable to Doris L. Thomas, the party opposing the motion for summary judgment, we find that she has successfully raised a material issue of fact as to who had actual custody care and control of the detention barn. Although, by LSRC rules it clearly had care custody and control of the procedure, it is unclear who had the care, custody and control of the actual barn. It is further unclear whose responsibility it was to properly maintain the gates and locks on the detention barn. It stands to reason that by law Delta Downs must provide a facility for the mandatory post race urine testing to the LSRC. It follows that this facility is owned by Delta Downs and that it should be maintained in suitable condition for the urine test.

This Court is unable to determine from the record before us who had a duty to protect Amazing Glace from escaping the detention barn thereby incurring substantial injuries or if there was some comparative negligence. Did Amazing Glace escape because of a faulty lock and flimsy rope or because of a negligence of a LSRC employee, the “Catcher”? These issues are clearly material and

germane to the case at bar. Because of the inferences that can be reasonably drawn from the evidence in the record before this Court, and construed in Doris L. Thomas' favor, at this juncture in the litigation summary judgment is not warranted.

Accordingly, we find that the trial court erred in granting summary judgment in favor of Delta Downs. Therefore, we reverse the trial court's judgment and remand the matter for further proceedings.

**REVERSED AND REMANDED**