STATE OF MICHIGAN

COURT OF APPEALS

KISHA STEVENS,

Plaintiff-Appellant,

v

RIGGS NATIONAL BANK OF WASHINGTON and MULTI-EMPLOYER PROPERTY TRUST,

Defendants/Third-Party Plaintiffs,

and

TRAMMEL CROW COMPANY,

Defendant-Appellee,

and

VIRGINIA GLASS PRODUCTS and NEW IMAGE BUILDING MAINTENANCE, INC.,

Defendants,

and

BLUE CARE NETWORK OF MICHIGAN,

Third-Party Defendant.

UNPUBLISHED
July 5, 2005

No. 260222
Oakland Circuit Court
LC No. 03-051653-NO

Before: Cooper, P.J., and Fort Hood and R. S. Gribbs*, JJ.

PER CURIAM.

Plaintiff Kisha Stevens appeals as of right the trial court's order granting defendant Trammel Crow Company's ("Trammel") motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff worked for Blue Care Network of Michigan ("BCN"). BCN leased office space in a building owned by Riggs National Bank ("Riggs"). Pursuant to the lease, BCN was

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

responsible for maintaining various portions of the premises, including doors in its space. A set of double glass doors constituted the entrance to BCN's office, and BCN's employees used the doors throughout the day. Trammel contracted with Riggs to perform certain management services in the building.

Plaintiff sustained injuries when the handle of one of the glass doors broke and the door shattered. She filed suit alleging negligence, premises liability, and breach of contract. Trammel moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that plaintiff failed to establish that she was a third-party beneficiary of the maintenance contract between Trammel and Riggs, that it could not be held liable to plaintiff because it did not owe her a duty separate and distinct from a contractual duty, and that in any event, it had no notice that the door was defective. The trial court granted the motion, finding that no contractual relationship existed between plaintiff and Trammel, that the lease between BCN and Riggs specified that BCN was responsible for maintaining the doors of its suite, and that no evidence showed that Trammel had notice that the door was defective.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Plaintiff argues that the trial court erred by granting Trammel's motion for summary disposition because a question of fact existed as to whether she was a third-party beneficiary of the management contract between Trammel and Riggs. We disagree. A person for whose benefit a promise is made via a contract has the right to enforce the promise. A person is a third-party beneficiary of a contract when the contract establishes that the promisor has undertaken a promise directly to or for that person. Only intended, rather than incidental, third-party beneficiaries may sue for breach of a contractual promise made in their favor. MCL 600.1405; *Schmalfeldt v North Pointe Ins Co*, 469 Mich 422, 428; 670 NW2d 651 (2003).

However, plaintiff has cited no portion of the management contract to support her assertion that she was an intended beneficiary of the contract. A party cannot simply assert a position and then leave it to this Court to search for authority to sustain or reject that position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Furthermore, no evidence established that Trammel undertook a promise directly to or for plaintiff. *Schmalfeldt*, *supra*. Accordingly, the trial court correctly dismissed plaintiff's claim for breach of contract.

Plaintiff further contends that Trammel negligently failed to perform its contractual duty to maintain the glass doors in a reasonably safe condition. We disagree. To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

A tort action resulting from misfeasance of a contractual obligation must be based on the existence of a duty separate and distinct from the contractual obligation itself. *Fultz v Union-Commerce Associates*, 470 Mich 460, 467; 683 NW2d 587 (2004). The lease between BCN and Riggs established that BCN was responsible for maintaining the doors. No evidence showed that Trammel owed plaintiff a duty separate and distinct from its contractual obligation to BCN. The trial court, therefore, properly dismissed plaintiff's breach of contract claim.

Plaintiff also argues that the trial court erred by granting Trammel's motion for summary disposition because Trammel failed to maintain the glass doors in reasonably safe condition. We disagree. A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. The duty encompasses the obligation to use reasonable care to protect invitees from risks that the possessor of land knows or should know will not be discovered by those invitees. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).

However, premises liability is conditioned upon the presence of both possession of and control over the premises. For purposes of premises liability, possession depends on the actual exercise of dominion and control over the property. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 660-662; 575 NW2d 745 (1998). No evidence established that Trammel had actual possession of and control over the premises. The lease between BCN and Riggs gave BCN the responsibility of maintaining the glass doors. BCN, and not Trammel, had possession of and control over the glass doors. Therefore, the trial court properly dismissed plaintiff's premises liability claim against Trammel.

Even assuming arguendo that the doctrine of premises liability could serve as a basis for a claim against Trammel, such a claim would fail as there was no evidence that Trammel caused the dangerous condition or had notice of it. *Derbabian v S & C Snowplowing, Inc*, 249 Mich App 695, 706; 644 NW2d 779 (2002).

Affirmed.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Roman S. Gribbs