

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA BILLIAU and GARY BILLIAU,

Plaintiffs-Appellants,

V

SUBURBAN CONTRACTOR CLEANING, INC.
and GRAND RAPIDS BUILDING SERVICES,
INC.,

Defendants-Appellees.

UNPUBLISHED
July 19, 2011

No. 298574
Macomb Circuit Court
LC No. 2009-000784-NO

Before: BORRELLO, P.J., and METER and SHAPIRO, JJ.

PER CURIAM.

Plaintiff,¹ a teller manager for Charter One Bank, was injured at work when she slipped and fell on the restroom floor while performing opening security procedures. Charter One had contracted with defendant Suburban Contractor Cleaning, Inc. to provide cleaning services, who had subcontracted with defendant Grand Rapids Building Services, Inc. to do the actual cleaning. According to plaintiff, the night before her fall, GRBS had waxed the restroom floor and cleaned the carpets by extraction, but failed to provide notice of the cleaning to the bank employees. Plaintiff sued GRBS for negligence,² alleging that it was negligent in its performance of the cleaning because the carpets were still wet roughly nine hours after they were cleaned, but would have been dry two to three hours after cleaning when the process is done properly. Plaintiff further alleged that GRBS failed to provide any notice that the cleaning had occurred and that the wet carpet was undetectable. Thus, when plaintiff crossed the highly-waxed bathroom floor with shoes wet from the carpet, she slipped and fell. Plaintiff alleged that GRBS violated its duty to use ordinary care in the performance of their duties under the contract. GRBS moved for summary disposition, asserting that, under *Fultz v Union-Commerce Assoc* 470 Mich 460; 683 NW2d 587 (2004), and its progeny, it owed no duty to plaintiff that was “separate and distinct”

¹ Because plaintiff Gary Billiau’s claims are all derivative of the injuries suffered by his wife, Patricia, we refer to Patricia Billiau as the singular “plaintiff.”

² The trial court granted Suburban’s motion for summary disposition, which is not before us. Accordingly, we have focused solely on plaintiff’s allegations against GRBS.

from its contractual duties. The trial court granted GRBS's motion. Plaintiff appeals as of right. We reverse and remand for additional proceedings.

On appeal, plaintiff alleges that GRBS owed her a duty separate and distinct from its contract duties—the duty to perform its contractual duties with ordinary care, or exercise reasonable care in their execution. Plaintiff argued that by negligently cleaning the carpets, so as to leave them wet some nine hours after cleaning, in conjunction with waxing the bathroom floors the same night, GRBS created a new hazard that did not previously exist. GRBS argues that because plaintiff's injuries arise from the action of cleaning the floors, which is the subject of its contract with Suburban, it has no duty to plaintiff “separate and distinct” from the contract.

In *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, ___ Mich ___; ___ NW2d ___ (Docket No. 141168, June 6, 2011), our Supreme Court held “that a contracting party's assumption of contractual obligations does not extinguish or limit separately existing common-law or statutory tort duties owed to noncontracting third parties in the performance of the contract.” *Id.*, slip op at 2. Furthermore, “[e]ntering into a contract with another pursuant to which one party promises to do something does not alter the fact that there [exists] a preexisting obligation or duty to avoid harm when one acts.” *Id.*, slip op at 12-13 (Quotations and citations omitted). Although the existence of a contract does not generally *create* a duty of care to a noncontracting third-party, its existence does not *extinguish* any duty of care that already exists to such persons. *Id.*, slip op at 13. Therefore, the determination of whether GRBS owed a duty to plaintiff must be determined “without regard to the obligations contained within the contract.” *Id.*

The record indicates that GRBS performed the carpet extraction and floor waxing at Charter One Bank that plaintiff alleges was negligently performed, thereby resulting in plaintiff's injuries. GRBS, having elected to act, was “under the general duty to so act . . . as to not injure another.” *Clark v Dalman*, 379 Mich 251, 261; 150 NW2d 755 (1965). This ““basic rule of common law, which imposes on every person engaged in the prosecution of any undertaking an obligation to use due care, or to so govern his actions as not to unreasonably endanger the person or property of others”” is a separate and distinct duty imposed by law. *Loweke*, ___ Mich at ___, slip op at 7, quoting *Clark*, 379 Mich at 261. Therefore, GRBS owed plaintiff a duty to clean the carpets and wax the bathroom floor using due care to avoid unreasonably endangering plaintiff's person.

Because GRBS owed plaintiff a duty under common law that was separate and distinct from any contractual obligations found in the contract between GRBS and Suburban, the trial court erred in granting summary disposition to GRBS on the basis of its conclusion that GRBS owed plaintiff no duty. Accordingly, we reverse the trial court's grant of summary disposition to GRBS and remand for additional proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Patrick M. Meter
/s/ Douglas B. Shapiro