

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2394-21

FRITZY RIVERA,

Plaintiff-Respondent,

v.

CHERRY HILL TOWERS, LLC,
AP MA I CHT OWNER, LLC,
VIKCO, INC. t/a VIKING
ASSOCIATES and/or VIKING
RESIDENTIAL¹, AION
MANAGEMENTS, LLC,

Defendants-Respondents,

and

VIKCO, INC. t/a VIKING
ASSOCIATES and/or VIKING
RESIDENTIAL,

Defendant/Third-Party
Plaintiff-Appellant,

v.

BRIAN WALKER,

Third-Party Defendant-Respondent.

APPROVED FOR PUBLICATION

December 12, 2022

APPELLATE DIVISION

¹ Improperly plead as Viking Property Management LLC and Viking Associates Inc.

Argued October 18, 2022 – Decided December 12, 2022

Before Judges Sumners, Susswein and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-2216-20.

Walter F. Kawalec, III argued the cause for appellant (Marshall, Dennehey, Warner, Coleman & Goggin, attorneys; Carolyn K. Bogart, of counsel and on the briefs; Walter F. Kawalec, III, on the briefs).

Jordan L. Howell argued the cause for respondent (Saltz Mongeluzzi & Bendesky, PC, attorneys; Larry Bendesky, Robert W. Zimmerman, and Jordan L. Howell, on the brief).

The opinion of the court was delivered by

SUMNERS, JR., P.J.A.D

Plaintiff Fritzy Rivera alleges defendant Vikco, Inc.'s negligence in failing to provide a safe environment as property manager of the Cherry Hill Towers apartment complex was the proximate cause of her being shot by her estranged husband, Brian Walker, as she left her friend's apartment. Vikco was not the property manager when Walker accessed Cherry Hill Towers through an open security gate. Rivera contends the opened security gate was a practice established by Vikco and continued by the new property management company.

The motion court denied Vikco's summary judgment motion to dismiss Rivera's complaint. The court reasoned there was a genuine issue of material

fact to be determined by the jury as to whether Vikco owed Rivera a duty to provide a safe environment at Cherry Hill Towers when Vikco was not the property manager at the time of the shooting. We granted Vikco leave to appeal the motion court's order.

We conclude whether Vikco owed Rivera a duty is a question of law that should have been determined by the motion court, not by a jury at trial. We further conclude that under the circumstances of this case, our common law does not support plaintiff's theory that Vikco's duty to provide security at Cherry Hill Towers continued after its management services were discontinued. Accordingly, the motion court's order is reversed, and summary judgment is granted to Vikco.

Like the motion court, we view the evidence in Vikco's summary judgment motion in the light most favorable to Rivera, the non-moving party. Harz v. Borough of Spring Lake, 234 N.J. 317, 329 (2018). We thus give her "the benefit of the most favorable evidence and most favorable inferences drawn from that evidence." Gormley v. Wood-El, 218 N.J. 72, 86 (2014); see also R. 4:46-2(c).

Cherry Hill Towers, comprised of 434 residential apartment units in two separate buildings, was sold in October 2018. The complex was fully enclosed

by a security gate with one central entrance point and three exits. For approximately eighteen years prior to the sale, Vikco served as Cherry Hill Towers' property manager, where one of its duties was to ensure the safety of its residents and their guests. When new ownership took over, AION Management, LLC assumed all Vikco's property manager duties.

Seventeen days after AION took over from Vikco, Walker drove his car through the open security gate of Cherry Hill Towers' front entrance at about 11:30 p.m. to lay in wait for Rivera to leave the complex after she visited a resident. Upon confronting Rivera in the parking lot, Walker shot her in the head, chest, and arm. During Vikco's tenure as property manager, the front gate was unmanned and generally left open during leasing office hours, specifically 9:00 a.m. to 6:00 p.m. or 7:00 p.m. on weekdays and 10:00 a.m. to 5:00 p.m. on Saturdays. After those hours, the gate was supposed to be closed with access restricted to residents. Apparently, AION continued Vikco's practice of leaving the gate unsecured. After AION took over, no Vikco employees worked or consulted with AION with respect to security protocols at Cherry Hill Towers.

Rivera filed suit against Vikco—as well other defendants—alleging its negligence in providing security at Cherry Hill Towers, a high crime area, was

the proximate cause of her assault. She sought compensatory and punitive damages.

Following discovery, Vikco moved for summary judgment, arguing it could not be held liable for Rivera's assault given it had no control over security at Cherry Hill Towers when Rivera was assaulted because its property management contract had ended. Vikco further asserted Rivera's assault was so particularized to her it was not foreseeable. Rivera opposed, contending Vikco owed a duty to her based on the four-factor analysis in Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 439 (1993). She also argued her assault was foreseeable based upon Clohesy v. Food Circus Supermarkets, Inc., 149 N.J. 496, 504 (1997) ("[B]usiness owners and landlords have a duty to protect patrons and tenants from foreseeable criminal acts of third parties occurring on their premises.") and Estate of Campagna v. Pleasant Point Properties, LLC, 464 N.J. Super. 153, 178-79 (App. Div. 2020) (ruling a risk of harm is determined from whether experience indicates a third party will endanger someone else), because Vikco had actual notice that Cherry Hill Towers was unsafe based on tenants' complaints and hundreds of 9-1-1 calls.

The motion court denied summary judgment. In its oral decision, the court explained that even though Vikco was not managing Cherry Hill Towers when

Rivera was assaulted, a jury could find that, during its time as property manager, Vikco knew about significant criminal activity occurring at Cherry Hill Towers but did not prevent it. The court found Clohesy and Campagna both demonstrate that significant criminal conduct, even if it is dissimilar to the subject crime, is sufficient to place a party on notice to exercise a duty of care. Therefore, a jury could find Vikco had the opportunity and ability to exercise reasonable care regarding the criminal activity occurring at Cherry Hill Towers but failed to do so. The court reasoned "it's not to say that [Vikco is] responsible, but . . . it's a jury issue as to whether or not the duty exists."

Before us, Vikco argues the motion court erred by ruling the question of whether it owed a duty to Rivera was for the jury to determine. It further maintains it owed no duty to Rivera when she was assaulted because it was no longer property manager at the time. Rivera contends the court's decision, when read in its entirety, found Vikco owed her a duty, and the jury would determine whether it breached that duty.

Rivera is incorrect in asserting the motion court determined Vikco owed her a duty but left it to the jury to determine if there was a breach of that duty. Throughout its analysis, the court weighed each Hopkins factor under a standard of whether "a jury could make a finding" was satisfied by Rivera's proofs. This

was a mistake. It is well settled that whether a party owes a duty to another party is a question of law for the court to decide, not the fact finder. See Robinson v. Vivirito, 217 N.J. 199, 208 (2014). Therefore, we answer this question, which the motion court did not when it denied summary judgment to Vikco.

There is no dispute Vikco had a duty to provide a safe premises by "tak[ing] reasonable security precautions to protect [Cherry Hill Towers] tenants and their guests from foreseeable criminal acts" during the time it served as property manager. Gonzalez v. Safe & Sound Sec. Corp., 185 N.J. 100, 121 (2005). The issue is whether Vikco owed a duty to Rivera given it was not the property manager when she was assaulted. As our Supreme Court recently recognized, "the assessment of whether a [defendant] has a duty to refrain from conduct that poses an unreasonable risk of foreseeable harm to others is a 'value judgment' based on public policy and notions of basic fairness — did the person owe the injured party a duty of reasonable care?" Estate of Narleski v. Gomes, 244 N.J. 199, 223 (2020).

Hopkins requires us to examine "the relationship of the parties, the nature of the attendant risk, the opportunity and ability to exercise care, and the public interest in the proposed solution." 132 N.J. at 439. Under the first factor,

foreseeability examines whether the defendant had actual or constructive knowledge of the risk of injury and "is susceptible to objective analysis." J.S. v. R.T.H., 155 N.J. 330, 338 (1998) (citation omitted). The second factor analyzes "defendant's 'responsibility for conditions creating the risk of harm' and an analysis of whether the defendant had sufficient control, opportunity, and ability to have avoided the risk of harm." Id. at 339 (quoting Kuzmicz v. Ivy Hill Apts., Inc., 147 N.J. 510, 515 (1997)). The third factor examines "whether in light of the actual relationship between the parties under all of the surrounding circumstances the imposition . . . of a general duty to exercise reasonable care in preventing foreseeable harm . . . is fair and just." Hopkins, 132 N.J. at 438. The fourth factor considers "notions of fairness, common sense, and morality," id. at 443, while looking at public policy "in the context of contemporary circumstances and considerations," J.S., 155 N.J. at 339.

In weighing the Hopkins factors, we conclude Vikco did not owe a duty to Rivera when Walker drove through an open security gate to commit his horrific act. It is foreseeable that failing to secure the premises would allow Walker or others with criminal intentions to enter the apartment complex unabated, creating a risk to tenants and their guests. However, because Vikco's services as property manager had been discontinued at the time of the shooting,

it did not have a relationship with Rivera and had no ability to exercise control over the complex. There is no public interest in imposing security responsibility upon Vikco for conduct that was under the full control of AION without input from Vikco.

We reject Rivera's contention that Vikco is liable for her assault because its practice of providing an unsafe environment at Cherry Hill Towers continued under the new property manager. Rivera argued Vikco breached its duty to provide safe premises during its tenure as property manager by implementing inadequate security measures. Since Vikco's security policies stayed in place under AION, Rivera argued Vikco's negligence caused her injury. At oral argument, Rivera analogized Vikco's negligence to a builder who used defective wood to build a house. Although another contractor may work on the house later and ignore the defective wood, the original builder will still be held negligent if the house eventually collapses due to the defective wood. We are unpersuaded.

Our case law has not addressed whether an apartment complex's property manager has a common law duty to residents and their guests to provide a safe environment after the property manager's services are discontinued. Under the circumstances presented, we see no reason to do so now.

We are unpersuaded by Rivera's analogy to a builder who uses defective wood that eventually causes a house to collapse. The security system and protocols instituted by Vikco to limit public access to Cherry Hill Towers are not comparable to the wood framing hidden behind the walls of a house. Here, there are no allegations that any deficiencies in the security system could not have been remedied by AION during its brief tenure as property manager. Vikco had no contractual obligation regarding the management of Cherry Hill Towers after AION assumed property management responsibilities. A "principal purpose[] of tort law is deterrence." Narleski, 244 N.J. at 227. Vikco was not able to deter the assault against Rivera because it was no longer responsible for ensuring the safety of Cherry Hill Towers' residents and their guests. Because Vikco owed no duty to Rivera when she was assaulted, it is therefore entitled to summary judgment.

Reversed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



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