STATE OF VERMONT
RUTLAND COUNTY

JOSEPH RAGOSTA, and	)	**Rutland Superior Court**
DIANE RAGOSTA	)	**Docket No. 265-3-07 Rdcv**
	)	
Plaintiffs,	)	
	)	
	)	
	)	
PINS FABRICATING, INC.,	)	
BRADLEY J. TURNBULL, and	)	
MILTON KELLY,	)	
	)	
Defendants	)	

DECISION ON DEFENDANTS' MOTION FOR JUDGMENT AS A MATTER OF LAW OR IN THE ALTERNATIVE FOR A NEW TRIAL, FILED MAY 18, 2009

This matter came on before the Court on defendants' Motion for Judgment as a Matter of Law pursuant to V.R.C.P. 50, or in the alternative for a New Trial pursuant to V.R.C.P. 59, filed May 18, 2009. Plaintiffs filed an Opposition on May 20, 2009.

Plaintiffs Joseph and Diane Ragosta are represented by Aaron Eaton, Esq. Defendants Pins Fabricating, Inc., Bradley J. Turnbull, and Milton Kelly are represented by Susan J. Flynn, Esq.

Background

A three day jury trial was held in the above matter between April 27, 2009 and April 29, 2009, regarding plaintiffs' claim for negligence arising out of the fall a large press brake onto plaintiff Joseph Ragosta on defendant Pins Fabricating's premises. On April 29, 2009, the jury returned a verdict in favor of the plaintiffs, finding that the defendants Bradley Turnbull and Milton Kelly were liable for negligence. The jury found that there was comparative negligence on the part of plaintiff Joseph Ragosta. The

jury attributed 40% of the total negligence to plaintiff Joseph Ragosta, 40% to defendant Bradley Turnbull, and 20% to defendant Milton Kelly. The jury found that plaintiff Joseph Ragosta was entitled to $143,000 in past medical expenses, $250,000 in past personal injury damages, and $300,000 in future personal injury damages, for a total of $693,000 in compensatory damages. Finally, the jury found that plaintiff Diane Ragosta had not proven that she was entitled to damages for loss of consortium.

Discussion

Defendants make two arguments. First, they argue that any conclusion by the jury that the plaintiff Joseph Ragosta was invited onto the premises of Pins Fabricating, Inc. ("Pins Fabricating") is not supported by reasonable and substantial evidence. Second, defendants argue that there was no evidence presented at trial that the defendants had sufficient time to do anything other than warn plaintiff Ragosta about the falling press brake.

A motion for judgment as a matter of law pursuant to V.R.C.P. 50 is granted only where there is no legally sufficient basis for a reasonable jury to find for the nonmoving party. *Perry v. Green Mountain Mall*, 2004 VT 69, ¶ 7, 177 Vt. 109.

Motions for a new trial pursuant to V.R.C.P. 59 are within the sound discretion of the trial court. *Cooper v. Myer*, 2007 VT 131, ¶ 12, 183 Vt. 561 (mem.). The trial court reviews all of the evidence in the light most favorable to the jury verdict, because "it is the protected duty of the jury to render a verdict, and a judge may not disturb that verdict unless it is clearly wrong." *Hardy v. Berisha*, 144 Vt. 130, 133–34 (1984) (citations omitted). "Only after the evidence is so viewed, and the verdict is shown to be clearly wrong and unjust because the jury disregarded the reasonable and substantial evidence, or

found against it, because of passion, prejudice, or some misconception of the matter, can the court exercise its discretion to set aside the verdict." *Pirdair v. Medical Ctr. Hosp.*, 173 Vt. 411, 416 (2002) (quoting *Gregory v. Vt. Traveler, Inc.*, 140 Vt. 119, 121 (1981)).

The jury found that the plaintiff proved by a preponderance of the evidence each element of his claim for negligence against both defendant Bradley Turnbull and defendant Milton Kelly.

Plaintiff first argues that any conclusion by the jury that plaintiff Ragosta was invited onto the premises of Pins Fabricating cannot be supported by the reasonable and substantial evidence presented at trial. This argument fails because the jury was not required to find that plaintiff Ragosta was a business invitee in order to find in his favor. A trespasser is also owed a duty of care from which negligence may arise.

A trespasser is a person who enters or remains upon land in the possession of another without a privilege to so do created by the possessor's consent or otherwise. *Farnham v. Inland Seas Resort Properties, Inc.*, 2003 VT 23, ¶ 9, 175 Vt. 500. A landowner generally owes no duty of care to a trespasser, except to avoid willful or wanton misconduct. *Keegan v. Lemieux Sec. Services, Inc.*, 2004 VT 97, ¶ 8, 177 Vt. 575. However, if a landowner knows or has reason to know of a trespasser's presence, he then owes the trespasser a duty to perform his activities on the land with reasonable care for the trespasser's safety. *Lavallee v. Pratt*, 122 Vt. 90, 93 (1960). This duty only arises when the defendants became aware of the plaintiff's presence or should have reasonable anticipated his presence. *Id*. Therefore, the jury was not required to find that plaintiff Ragosta was a business invitee in order to find in his favor.

Defendants' second argument is that there was no evidence presented at trial that the defendants had sufficient time to do anything other than warn plaintiff Ragosta about the falling press break. The Court does not agree. The Courts finds that there was evidence presented at trial, including plaintiff Ragosta's testimony, that the defendants had sufficient time to do more than warn the plaintiff. Therefore, there was legally sufficient evidence to find that the defendants breached their duty to perform their activities on the premises with reasonable care for the plaintiff's safety. See *Lavallee*, 122 Vt. at 93.

Furthermore, the Court notes in regards to both of defendants' arguments that plaintiff Ragosta testified that he was invited onto the premises. Therefore, there was legally sufficient evidence to find that he was a business invitee. See *Farnham*, 2003 VT 23, ¶ 9 (stating that business invitee is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings of the owner). If plaintiff was a business invitee, defendants owed plaintiff a duty of reasonable care to keep the premises in a safe and suitable condition so that the plaintiff would not be unnecessarily or unreasonably exposed to danger. See *Seewaldt v. Mount Snow, Ltd.*, 150 Vt. 238, 241 (setting forth duty of care owed to business invitee). There was legally sufficient evidence presented at trial which would have allowed the jury to find that the business invitee duty was breached even if no evidence was presented that defendants had sufficient time to do anything other than warn plaintiff Ragosta about the falling press.

Defendants' claim for judgment as a matter of law pursuant to V.R.C.P. 50 fails because there was a legally sufficient basis for a reasonable jury to find for plaintiff Ragosta. See *Perry*, 2004 VT 69, ¶ 7.

Likewise, defendants' claim for a new trial pursuant to V.R.C.P 59 fails because defendants have not shown that the verdict was clearly wrong and unjust because the jury disregarded the reasonable and substantial evidence, or found against them, because of passion, prejudice, or some misconception of the matter. See *Pirdair*, 173 Vt. at 416.

ORDER

Defendants' Motion for Judgment as a Matter of Law pursuant to V.R.C.P. 50(b) and Motion for a New Trial pursuant to V.R.C.P. 59(a), filed May 18, 2009, is DENIED.

Dated at Rutland, Vermont this _____ day of _____, 2009.

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Hon. William Cohen
Superior Court Judge