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VERMONT SUPERIOR COURT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 315-6-11 Wrcv

Daniel Dockum
Plaintiff

v.

D'Ottavio Construction, Inc., et al.
Defendant

DECISION ON MOTION FOR SUMMARY JUDGMENT

Defendant, D'Ottavio Construction, Inc. (DCI) has moved for summary judgment concerning a claim for injuries made against it, and others, by Daniel Dockum. Mr. Dockum opposes the motion, claiming that the existence of disputed facts make summary judgment inappropriate.

Undisputed Facts

For purposes of this motion, the following facts are undisputed:

DCI is a construction company owned by members of the D'Ottavio family. Plaintiff and Vincent D'Ottavio are social friends.

The Edmund and Debra D'Ottavio own a building at 110 Main St. in Ludlow, Vt. The bottom floor of the building houses the DCI offices. Upstairs in the building is an apartment, which, at the time of the incident in question, was being renovated by their son, Vincent D'Ottavio, for his own use. The apartment was separated from the downstairs by a door at the top of the stairs. Edmund D'Ottavio was in charge of the renovation and was telling Vincent what to do. There is no evidence that the apartment renovation was a project of DCI.

In order to get to the upstairs apartment, it was necessary to go into the DCI offices to a stairway. The door to the DCI offices had a lock on it, so the only way one could access the apartment was if they had a key to the DCI offices if that door was locked. Part of the renovation was to include separating the stairs to the apartment from the interior of the DCI offices, but that work had not been undertaken as of December 14, 2009.

Plaintiff had been an employee of DCI for a few weeks in the fall of 2009 and on December 14, 2009 was invited to attend a celebratory luncheon at a location where Plaintiff had worked. He was no longer employed by DCI at that time. Plaintiff rode in a van with Edmund

D'Ottavio and Vincent to the luncheon from 110 Main St. Following the luncheon, Edmund D'Ottavio drove to a construction supplier where he purchased sheetrock which he and Vincent loaded into the van. When they got back to 110 Main St., Vincent and Plaintiff carried the sheetrock from the van to the upstairs apartment, stacking it against a wall. The unloading took place in mid-afternoon.

The parties disagree about whether the sheetrock was moved from the time it was brought into the apartment until Plaintiff was injured. Plaintiff says that it was, DCI says it is not sure. For purposes of this motion, this disputed fact is not material.

After stacking the sheetrock, Plaintiff went home and then to a class he was taking. At about 9:00 p.m., while he was driving home from his class, Plaintiff received a call from Vincent asking him to come back to the apartment at 110 Main St. to hold the sheetrock for Vincent while he screwed it into place. As a favor to Vincent, Plaintiff agreed to do so, arriving at between 9:30 and 10 p.m.

While holding sheetrock for Vincent, Plaintiff bumped into a stepladder and the stack of sheetrock fell, landing on Plaintiff's right leg, causing injuries. Plaintiff claims DCI is responsible for the injuries he received.

Discussion

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, referred to in the statements required by Rule 56(c)(2), show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law." V.R.C.P. 56(c)(3). The party moving for summary judgment has the burden of proof, and the opposing party must be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue of material fact exists. *Price v. Leland*, 149 Vt. 518, 521 (1988). However, summary judgment is mandated where, after an adequate time for discovery, a party fails to make a showing sufficient to establish the existence of an element essential to his or her case, and on which she has the burden of proof at trial. *Poplaski v. Lamphere*, 152 Vt. 251, 254–55 (1989) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

This claim arises from an alleged defective condition of the premises where the accident took place, i.e. sheetrock negligently stacked against a wall. Vermont law is clear that a party claiming injuries as a result of a defective condition of premises must seek redress against the party who invited him to the premises. As was stated in *Beaulac v. Robie*, 92 Vt. 27, 32 (1917):

> Negligence can only spring from unperformed duty; so in actions therefor, it is of primary importance to inquire whether the alleged duty is owed by the defendant to the plaintiff. Liability for an injury due to defective premises ordinarily depends upon power to prevent the injury by making repairs, and therefore rests primarily upon him who has control and possession of the premises. In the absence of agreement the landlord is not bound to make repairs. See *Brown v. Burrington*, 36 Vt. 40.

> It is a well-settled general rule that persons who claim damages on the ground that they are invited into a dangerous place in which they receive injuries must seek their remedy against the person who invited them, and there is nothing in the relation of the landlord and tenant which changes this rule. Thus, as between landlord and tenant, it is the duty of the latter, in the first instance, to see that the premises occupied by him are safe for those coming there by his invitation, express or implied; and persons injured must seek redress from the tenant and not from the landlord. A tenant having entire control of the premises is, so far as third persons are concerned, deemed the owner. He is prima facie liable for injuries to others occasioned by neglect to keep the premises in repair.

In this case, there may be a factual issue concerning the retention of control by Edmund (and Debra) D'Ottavio, the property owner, or whether that control had been relinquished by him/them to Vincent D'Ottavio. Further, the evidence suggests that Vincent D'Ottavio was the person who invited Plaintiff onto the premises at the time he was injured. However, it is not necessary to resolve that issue in order to determine the instant motion. There is no evidence of control of the subject premises by DCI. That the apartment was accessed only through the DCI offices at the time of the incident does not mean they had control over the area in question, which was an apartment being renovated by Vincent D'Ottavio for his own purposes at the time the injury occurred. The operative question is control of the subject area, not means of access. See, e.g., *Cameron v. Abatiell*, 127 Vt. 111 (1968); *Winter v. Unaitas*, 124 Vt. 249 (1964)(Barney, concurring).

The apartment building was owned by Edmund and Debra D'Ottavio. The injury took place in an area that was being renovated by Vincent D'Ottavio for his own use. A corporation is a legal entity which is separate and distinct from its shareholders. *Bovee v. Gravel*, 174 Vt. 286 (2002). The ownership or control of DCI by members of the D'Ottavio family, if such be the case, does not impose liability on DCI. There are no facts before the court that DCI assumed control over the subject area from the landlord or that it was the tenant of the apartment and invited Plaintiff into the area. In the absence of the such evidence, DCI is entitled to judgment in its favor. *O'Brien v. Island Corp.*, 157 Vt. 135 (1991).

ORDER

DCI's Motion for Summary Judgment is **GRANTED**.

Dated at Woodstock this 10th day of September, 2012.

Harold E. Eaton, Jr.
Civil Division Judge