

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: May 18, 2016)

KATHLEEN I. MAIN, Individually, as :
legal beneficiary and on behalf of all :
legal beneficiaries of DAVID D. MAIN, :
MICHAEL D. MAIN, BONITA I. MAIN; :
and DAVID M. MAIN :

V. :
: :
: :
CITIZENS FINANCIAL GROUP, INC. :

C.A. No. PC 11-6234

DECISION

PROCACCINI, J. This matter came to be heard on May 9, 2016 before the Superior Court, Procaccini, J., on Defendant Citizens Financial Group, Inc.’s (Citizens or Defendant) Motion for Summary Judgment. Defendant seeks summary judgment on the basis that it did not owe a duty of care to provide additional security at its Walnut Hill Branch in Woonsocket, Rhode Island. Defendant also seeks summary judgment on the basis that Defendant was not the cause of David D. Main’s (Mr. Main) fatal injuries. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

On September 20, 2010, Mr. Main, the manager of a local Shell Station (Shell Station), was shot and killed while attempting to make a deposit for his employer at a Citizens Bank branch in Woonsocket, Rhode Island (Walnut Hill Branch). Mr. Main was the victim of a targeted and planned attack by co-conspirators, Jason Pleau (Mr. Pleau), Jose Santiago (Mr. Santiago), and Kelley Lajoie (Ms. Lajoie) (collectively, Co-Conspirators). The Co-Conspirators received inside information regarding the Shell Station’s bank deposit practices. On the date of

the attack, Mr. Pleau hid on property adjacent to the Walnut Hill Branch owned by the City of Woonsocket. Ms. Lajoie stood watch at the Shell Station and alerted Mr. Pleau when Mr. Main left for the Walnut Hill Branch with the weekend deposit in tow. Mr. Santiago was waiting nearby with a getaway vehicle.

Mr. Pleau confronted Mr. Main in the parking lot of the Walnut Hill Branch pointing a loaded gun and demanding that Mr. Main give him the “dough.” Mr. Main did not comply with the demand and ran towards the entrance of the Walnut Hill Branch. Mr. Pleau fired several shots, one of those shots fatally wounding Mr. Main. Mr. Pleau took the bank bag and ran toward the back of the bank, hopped a fence, and fled to where Mr. Santiago was waiting. The Co-Conspirators were later apprehended. All three Co-Conspirators pled guilty to their respective charges.

In 2011, Kathleen I. Main, Mr. Main’s wife, filed a single-count Complaint against Citizens on behalf of all the legal beneficiaries of Mr. Main (collectively, Plaintiffs), alleging that Citizens failed to maintain adequate security at its Walnut Hill Branch. Defendant now moves for summary judgment on the basis that it satisfied its duty to provide security under the Bank Protection Act and industry standards. Defendant continues that it does not owe a duty to provide additional security measures. Specifically, Defendant argues that the prior robberies at the Walnut Hill Branch did not trigger an additional duty to provide heightened security, as it was not foreseeable that an armed robbery turned murder would occur at the Walnut Hill Branch. Defendant also posits that it did not cause Mr. Main’s fatal injuries because both Mr. Pleau and Mr. Main’s actions broke the causal chain. In response, Plaintiffs contend that the issues in this case are purely one of fact—that being, whether Defendant met its duty to provide adequate security. Additionally, Plaintiffs maintain that the Rhode Island Supreme Court has already held

that prior acts of violence need not be in the exact manner of the injury causing act to make it foreseeable that the injury causing act will occur. Finally, Plaintiffs contend that whether Mr. Main's flight from Mr. Pleau was so unreasonable that it broke the causal chain is a question of fact for the jury to resolve.

II

Standard of Review

Before granting a motion for summary judgment, the trial court is required to review the pleadings, as well as affidavits, admissions, answers to interrogatories, and other appropriate evidence from a perspective most favorable to the nonmoving party. Steinberg v. State, 427 A.2d 338, 340 (R.I. 1981). The question before the Court is whether there is a genuine issue as to any material fact which must be resolved. See R.I. Hosp. Trust Nat'l Bank v. Boiteau, 119 R.I. 64, 66, 376 A.2d 323, 324 (1977). If an examination of the evidence, viewed in the light most favorable to the opposing party, reveals no such issue, then the petition is ripe for summary judgment. See id. When the moving party sustains its burden, the opposing party must then prove "by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions." Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1225 (R.I. 1996). The trial justice must keep in mind that summary judgment "is a drastic remedy and should be cautiously applied." Steinberg, 427 A.2d at 339–40 (quoting Ardente v. Horan, 117 R.I. 254, 256-57, 366 A.2d 162, 164 (1976)) (internal quotation marks omitted). The purpose of summary judgment "is not to cull out the weak cases from the herd of lawsuits waiting to be tried . . . only if the case is legally dead on arrival should the court take the drastic step of . . . granting summary judgment." Mitchell v. Mitchell, 756 A.2d 179, 185 (R.I. 2000).

III

Analysis

“Whether a duty of care is owed is a question of law for the court and not the jury.” Bucki v. Hawkins, 914 A.2d 491, 495 (R.I. 2007). Under Rhode Island law, having abolished the common law categories of premise liability, “courts must determine whether landowners have satisfied their affirmative duty to exercise reasonable care for the safety of all people reasonably expected to be upon the premises.” Id. Whether a duty exists depends on the particular facts and circumstances of each case. See Berardis v. Louangxay, 969 A.2d 1288, 1291 (R.I. 2009). Courts are directed to consider:

“(1) the foreseeability of harm to the plaintiff, (2) the degree of certainty that the plaintiff suffered an injury, (3) the closeness of connection between the defendant’s conduct and the injury suffered, (4) the policy of preventing future harm, and (5) the extent of the burden to the defendant and the consequences to the community for imposing a duty to exercise care with resulting liability for breach.” Banks v. Bowen’s Landing Corp., 522 A.2d 1222, 1225 (R.I. 1987).

Defendant does not contest whether it owed a general duty to provide security to protect its customers. See Def.’s Mem. at 21; Def.’s Reply Mem. at 5. And rightly so. Many other jurisdictions have found that a commercial property owner has a duty to protect an invitee from criminal acts of third parties in certain circumstances—namely, when the property owner is put on notice that it is necessary “to keep the premises reasonably safe for the purposes of the invitation.” Konar v. PFL Life Ins. Co., 840 A.2d 1115, 1124 (R.I. 2004) (Flanders, J., dissenting). Rather, Defendant frames the issue as whether “Citizens had an affirmative duty to provide additional security measures beyond what it already had in place at the Walnut Hill Branch.” Def.’s Mem. at 21. Defendant goes on to argue that this additional duty was not triggered because the prior robberies at the Walnut Hill Branch were nonviolent and

distinguishable from Mr. Main's murder. As a result, Defendant maintains, Mr. Pleau's criminal act was unforeseeable.

As Defendant admits, it had a duty to provide security to ensure the safety of its customers. Defendant details various measures it took to meet this duty, including, lighting, security cameras, panic buttons, protocol, employee training, and risk assessments. Rhode Island courts have yet to define the industry standard of care for banks in the ambit of security. While Defendant does cite the Bank Protection Act and cases from other jurisdictions, this Court refrains from summarily deciding whether the security measures in place in September 2010 satisfied Defendant's duty. Both parties have named experts that will allegedly attest to what is, in their opinion, the proper standard of care for bank security. The Court acts as a gatekeeper to expert testimony, ensuring that each witness is qualified by "knowledge, skill, experience, training, or education." R.I. R. Evid. 702. However, "once an expert has shown that the methodology or principle underlying his or her testimony is scientifically valid and that it 'fits' an issue in the case, the expert's testimony should be put to the trier of fact to determine how much weight to accord the evidence." DiPetrillo v. Dow Chem. Co., 729 A.2d 677, 689-90 (R.I. 1999). Plaintiffs have sufficiently persuaded the Court that their experts are adequately qualified to give their professional opinions on the open issues. It is outside the scope of the Court's authority to determine which parties' experts will be more convincing on the applicable standard of care.

Without a more particularized and sound standard, the Court falls back onto the general standard of care for landowners: Landowners have a general duty to exercise reasonable care for all of those reasonably expected to enter their property. See Bucki, 914 A.2d at 495. Once a party overcomes the duty hurdle, he or she is entitled to a factual determination on whether such

duty was actually breached. See Berard v. HCP, Inc., 64 A.3d 1215, 1219 (R.I. 2013). The record is replete with issues of fact that must still be considered by the factfinder. It is not within the Court's authority to decide whether the above-listed security measures satisfied Defendant's duty of care. The Court additionally acknowledges that it especially refrains from doing so considering the novelty and implications of the present issue.

Likewise, the Court declines to accept Defendant's attempt to couch the issue as to whether an additional, second duty exists—one to provide additional security. To hold so would allow litigants to avoid factual inquiries at trial by merely couching such as part of a new duty, capable of being rejected on summary judgment. The issue before the Court is truly one of foreseeability taking into consideration prior crimes, location, nature, and condition of the property.¹ Was it reasonably foreseeable that a crime as heinous as Mr. Pleau's murder of Mr. Main could occur at the Walnut Hill Branch—such that the security measures in place at the Walnut Hill Branch were no longer adequate? Questions of foreseeability generally constitute questions of fact for the jury. See Volpe v. Gallagher, 821 A.2d 699, 717 (R.I. 2003); see also Pantalone v. Advanced Energy Delivery Sys., Inc., 694 A.2d 1213, 1216 (R.I. 1997). Foreseeability in the context of duty has already been accounted for in our general doctrine of premise liability. Now, foreseeability plays into the standard of care and breach analyses. This Court does not agree that Mr. Pleau's crime was unforeseeable as a matter of law to warrant a summary dismissal of the case.

¹ As argued by Defendant during oral argument, the Court acknowledges the difference between imposing a duty and considering whether such was actually breached. The former is in fact a question of law for the Court, which requires consideration into foreseeability. Nevertheless, foreseeability also plays a part in the applicable standard of care and whether it is in fact breached—which is the crux of what the parties are arguing about in this case.

Moreover, while the Court acknowledges that Plaintiffs' reliance on Volpe, 821 A.2d at 716 is misplaced, the Court still finds the policy behind the Supreme Court's pronouncement convincing. In Volpe, the Court stated:

“Possessors of property . . . are not entitled to take a legal mulligan when they are negligent. Thus, they should not obtain the benefit of one free act of negligence merely because the foreseeable consequences of their negligence did not materialize in the precise form and manner of the particular injury in question until the occurrence of the injury-causing incident itself. When negligence occurs, we are simply unwilling to sacrifice the first victims' rights to life and liberty upon the altar of an inflexible prior-similar-incidents rule. Nor are we prepared to slavishly adhere to the notion that at least one prior criminal act of violence must have occurred before a property possessor can be held liable for a licensee's otherwise foreseeable misuse of the possessor's property to harm another.” Id.

The Supreme Court has yet to consider this exact principle in the context of a commercial setting, see id. at 718; see also Konar, 840 A.2d at 1120 n.1; and the Court warned against applying its holding in Volpe to a different set of facts, Volpe, 821 A.2d at 718. Nevertheless, this Court is not relying on Volpe in an attempt to hold a landlord liable for a third-party's actions. Rather, the Court is recognizing the policy behind the limited issue of foreseeability that was considered in Volpe. All parties agree, as does this Court, that Defendant had a duty to provide security at its Walnut Hill Branch. The predominant issue before the Court is not one of duty, as was in Volpe; instead, the issue is whether the security measures provided by Defendant met that duty. It is up to the jury, not the Court, to decide whether Mr. Main's murder was foreseeable, such that the security measures in place in 2010 at the Walnut Hill Branch were inadequate and constituted a breach of Citizens' duty of care to its customers. See Pinsonneault v. Merchants & Farmers Bank & Trust Co., 816 So. 2d 270, 276-79 (La. 2002) (acknowledging that foreseeability defines the duty in a similar case, but finding that the predominant issue was

one of fact—that being whether the bank implemented reasonable security measures to prevent and protect against foreseeable harms; “While there is certainly room for debate in every case as to what security measures are reasonable, the determination is essentially a factual one”). Consequently, this Court finds that Defendant owed a duty of care to Mr. Main. Genuine issues of material fact remain as to the exact confines of this duty and whether it was satisfied on September 20, 2010. Therefore, summary judgment is not appropriate.

Furthermore, summary judgment is not appropriate on the basis that Defendant did not cause Mr. Main’s injuries. “In an action for wrongful death, the plaintiff must, as in any other negligence suit, introduce competent evidence to establish a causal relationship between the defendant’s act or omission and the injuries resulting in decedent’s death.” Boccasile v. Cajun Music Ltd., 694 A.2d 686, 689 (R.I. 1997) (quoting Allen v. State, 420 A.2d 70, 72 (R.I. 1980)) (internal quotation marks omitted). It is true that an unforeseeable criminal act by a third party breaks the causal chain. See Martin v. Marciano, 871 A.2d 911, 915, 918 (R.I. 2005). However, the key word is unforeseeable. Given the facts and circumstances, this Court fails to find that Mr. Pleau’s actions were so unforeseeable to warrant a summary dismissal of the case. In addition, this Court also fails to find that Mr. Main’s own flight was so unreasonable that he was the proximate cause of his own death. See Henry-Lee v. City of New York, 746 F. Supp. 2d 546, 573 (S.D.N.Y. 2010) (“Where a plaintiff demonstrates ‘a lack of reasonable regard for his own safety,’ the defendant’s conduct can serve as an intervening cause, cutting the chain of causation and absolving the defendant of liability.” (citation omitted)). Whether flight is a reasonable response for a victim in Mr. Main’s position is a question for the jury to decide. These causal issues involve quintessential factual determinations which are improper for this Court to decide on summary judgment.

IV

Conclusion

For the foregoing reasons, Defendant's Motion for Summary Judgment is hereby denied. Genuine issues of material fact still remain as to the applicable standard of care and whether Defendant complied with the standard, as well as whether Defendant proximately caused Mr. Main's injuries. Counsel shall submit an appropriate order for entry consistent with this Decision.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: **Main v. Citizens Financial Group, Inc.**

CASE NO: **PC 11-6234**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **May 18, 2016**

JUSTICE/MAGISTRATE: **Procaccini, J.**

ATTORNEYS:

For Plaintiff: **Mark B. Decof, Esq.; Donna M. DiDonato, Esq.;**
Mark J. Brice, Esq.

For Defendant: **David A. Wollin, Esq.**