NNH CV23-6128749 S	: SUPERIOR COURT
BRANDI BLACK	: JUDICIAL DISTRICT OF : NEW HAVEN
V.	: AT NEW HAVEN
FPJ AMITY HOLDINGS, LLC, ET AL	: MAY 31, 2024

MEMORANDUM OF DECISION
ON MOTION FOR SUMMARY JUDGMENT No. 114.00

One of the defendants, FPJ Amity Holdings, LLC, moves for summary judgment, arguing that it owed no duty to the plaintiff, Brandi Black. FPJ argues that it owed her no duty at the time she allegedly fell because FPJ was not in possession or control of the premises. Although FPJ owned the property, FPJ asserts that it leased those premises to People's United Bank, and therefore, FPJ was not in possession or control. The plaintiff opposes the motion, arguing that the lease does not refer to "parking lot" or snow removal, and therefore there is a genuine issue of fact as to control.

Undisputed Material Facts

The defendant accompanied its motion with its verified interrogatory responses, in which it admitted that it was an owner of the premises. Its response to the interrogatory that asked who had a possessory interest, was "People's United Bank." Its response to the interrogatory that asked who was responsible for maintenance and inspection of the premises at the time of the injury, also was "People's United Bank." It also stated that insurance coverage was provided by People's United Bank. The defendant also relies upon its document production, including a lease for premises identified as 198 Amity Road in Woodbridge, Connecticut.

The lease is a 40-year lease originally entered into in 1986 between Chester and Marilyn Perrotti as landlords and MSB Real Estate Corporation as tenant. That lease was the subject of an Assignment and Assumption of Lease dated July 31, 2020, that identified FPJ Amity Holdings, LLC as the successor in interest to Chester and Marilyn Perrotti. In that document, MSB Real Estate Corporation assigned its interests as tenant under the lease to People's United Bank.

On February 8, 2021, the plaintiff slipped and fell on ice in the parking lot at 198 Amity Road. Complaint, ¶¶ 6, 7. At the time, she was an employee of the People's United Bank branch located on the premises. Id., ¶ 5.

Summary Judgment Standard

Summary judgment "shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Practice Book § 17-49; *Provencher* v. *Enfield,* 284 Conn. 772, 790-91, 936 A.2d 625 (2007). "A 'genuine' issue has been variously described as a 'triable,' 'substantial' or 'real' issue of fact; ... and has been defined as one which can be maintained by substantial evidence." (Citations omitted.) *United Oil Co.* v. *Urban Redevelopment Commission,* 158 Conn 364, 378, 260 A.2d 596 (1969). A "material fact" is one that would make a difference in the outcome of the case. *Hammer* v. *Lumberman's Mutual Casualty Co.,* 214 Conn. 573, 578, 573 A.2d 699 (1990).

This court must view the evidence in the light most favorable to the nonmoving party. *Romprey* v. *Safeco Ins. Co. of America*, 310 Conn. 304, 312, 77 A.3d 726 (2013). "[S]ummary judgment is appropriate only if a fair and reasonable person could conclude only one way ...

[A] summary disposition ... should be on evidence which a jury would not be at liberty to disbelieve and which would require a directed verdict for the moving party ... [A] directed verdict may be rendered only where, on the evidence viewed in the light most favorable to the nonmovant, the trier of fact could not reasonably reach any other conclusion than that embodied in the verdict as directed." (Citations omitted; internal quotation marks omitted.) *Dugan* v. *Mobile Medical Testing Services, Inc.,* 265 Conn. 791, 815, 830 A.2d 752 (2003).

"[I]t is only [o]nce [the moving party]'s burden in establishing [its] entitlement to summary judgment is met [that] the burden shifts to [the non-moving party] to show that there is a genuine issue of fact exists justifying a trial. ... Accordingly, the rule that the party opposing summary judgment must provide evidentiary support for its opposition applies only when the moving party has first made out a prima facie case for summary judgment. ... [I]f the party moving for summary judgment fails to show that there are no genuine issues of material fact, the nonmoving party may rest on mere allegations or denials contained in his pleadings." (Citations omitted; internal quotation marks omitted.) *Romprey* v. *Safeco Ins. Co. of America*, supra, 310 Conn. at 320-21.

Once the moving party has made out a prima facie case for summary judgment, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. *Maffucci* v. *Royal Park Ltd. Partnership,* 243 Conn. 552, 554-55, 707 A.2d 15 (1998). It is not enough for the opposing party to assert the existence of a disputed issue of fact. Id. The opposing party must demonstrate that it has sufficient counterevidence to raise a genuine issue of material fact as to each of the essential elements of its cause of action. See *Stuart* v. *Freiberg,* 316 Conn. 809, 822-23, 116 A.3d 1195 (2015).

Legal Analysis

"The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury." *RK Constructors, Inc.* v. *Fusco Corp.,* 231 Conn. 381, 384, 650 A.2d 153 (1994). "The existence of a duty is a question of law and [o]nly if such a duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand." (Internal quotation marks omitted.) Id., 384, 650 A.2d 153, 155. "[T]he issue of whether a defendant owes a duty of care is an appropriate matter for summary judgment because the question is one of law." (Internal quotation marks omitted.) *Mozeleski* v. *Thomas,* 76 Conn. App. 287, 290, 818 A.2d 893, cert. denied, 264 Conn. 904, 823 A.2d 1221 (2003).

The parties do not dispute that the plaintiff, who was an employee of People's United Bank, was a business invitee. They also do not dispute the nature of the duties that could be owed to the plaintiff. "A business owner owes its invitees a duty to keep its premises in a reasonably safe condition. … In addition, the possessor of land must warn an invitee of dangers that the invitee could not reasonably be expected to discover. …" (Citations omitted, internal quotation marks omitted.) *DiPietro* v. *Farmington Sports Arena, LLC,* 306 Conn. 107, 116, 49 A.3d 951 (2012). See also *Kurti* v. *Becker,* 54 Conn. App. 335, 340, 733 A.2d 916 (1999). What is in dispute is whether those duties exist here.

The first dispositive issue in deciding whether these duties exist here is whether FPJ had "any right to possession and control of the property." *Cuozzo* v. *Town of Orange,* 178 Conn. App. 647, 655, 176 A.3d 586 (2017). "Liability for injuries caused by defective premises … does not depend on who holds legal title, but rather on who has possession and control of the property." *LaFlamme* v. *Dallessio,* 261 Conn. 247, 251, 802 A.2d 63 (2002).

"The general rule regarding premises liability in the landlord-tenant context is that landlords owe a duty of reasonable care as to those parts of the property over which they have retained control." *Fiorelli* v. *Gorsky,* 120 Conn. App. 298, 308, 991 A.2d 1105 (2010).

This court will begin its analysis with the language of the lease. The question to be answered is whether that lease gave the tenant, People's United Bank, the tenant, possession and control over the parking lot or whether the landlord, FPJ, retained possession and control. "Retention of control is essentially a matter of intention to be determined in the light of all the significant circumstances. ... The word control has no legal or technical meaning distinct from that given in its popular acceptation ... and refers to the power or authority to manage, superintend, direct or oversee." (Citation omitted.) *Fiorelli* v. *Gorsky,* supra, 120 Conn. App. at 308.

"*Unless it is definitely expressed in the lease,* the circumstances of the particular case determine whether the lessor reserved control of the premises or whether they were under the exclusive dominion of the tenant, and it becomes a question of fact ...." (Emphasis in original; citation omitted.) *Fiorelli* v. *Gorsky,* supra 120 Conn. App. at 308. "In other words, if the terms of control are not express between the parties, the question of who retains control over a specific part of the property is an issue of fact and a matter of intent that can be determined only in light of all the relevant circumstances." *LaFlamme* v. *Dallessio,* supra, 261 Conn. at 257. See also *Panaroni* v. *Johnson*, 158 Conn. 92, 98, 256 A.2d 246 (1969). Conversely, "if the issue of control is expressed definitively in the lease, it becomes, in effect, a question of law" for the court. *Fiorelli,* supra at 309.

Therefore, the court must consider whether the lease definitively gave a right of possession or control over the parking lot to People's United Bank. Because the lease is a written contract, the court must keep in mind the following "three elementary principles":

> "(1) The intention of the parties is controlling and must be gathered from the language of the lease in light of the circumstances surrounding the parties at the execution of the instrument; (2) the language must be given its ordinary meaning unless a technical or special meaning is clearly intended; [and] (3) the lease must be construed as a whole and in such a manner as to give effect to every provision, if reasonably possible."

(Citation omitted.) *Fiorelli* v. *Gorsky,* supra, 120 Conn. App. at 309.

The lease defines the "Premises" as "the real estate (land and improvements) described in Schedule A." Section 1.1. Schedule A is a legal description of "all that certain piece or parcel of land with all the improvements thereon commonly known as 198 Amity Road, situated in the Town of Woodbridge ...." The "Leased Premises" are defined in Section 1.2 as "the Premises consisting of approximately one-half (1/2) acres, more or less, the address of which Premises is known as 198 Amity Road, Woodbridge, Connecticut;

> "TOGETHER with all right, title and interest of the Landlord in and to any street, open or proposed and the right and easement, on behalf of Tenant, its customers, invitees and others to whom Tenant may from time to time give such right, for access by vehicle or otherwise, to and from the Premises to any such street;
>
> "TOGETHER with the appurtenances and all the estate and rights of the Landlord in and to the Premises;
>
> "TOGETHER with all right, title and interest of the Landlord in and to any strips or gores of land adjoining or included within the above described Premises."

Section 1.2 goes on to state:

> "Except as expressly provided to the contrary in the Lease, reference to 'Premises' is to the described land plus any described appurtenances, exclusive of any improvements now or hereafter located on the Premises,

> notwithstanding that any such improvements may or shall be construed as affixed to and as constituting part of the real property, and without regard to whether ownership of the improvements is in the Landlord or the Tenant."

The term "Building" is defined separately from the "Premises" in Section 1.3. Article 6, entitled "Construction," provides that the tenant, People's United Bank, shall proceed with construction of the Building and other improvements on the Premises, "all at Tenant's sole cost and expense, and without cost to Landlord." Section 6.1.

Section 8.1 addresses repairs. It states that "[t]he Tenant shall take good care of the Premises and of the Building and improvements hereafter erected thereon, both inside and outside ...." It also requires the tenant to make all repairs, at the tenant's expense, "interior and exterior." The list of structures to be kept in repair by the tenant include sidewalks and curbs. Section 8.2 addresses alterations and decoration. That section provides that improvements shall belong to the tenant during the term of the lease, "but all permanent improvements (except as otherwise provided herein) shall belong to Landlord and become a part of the realty, upon the expiration or sooner termination of this Lease."

The court interprets all of these provisions as giving possession and control of an entire piece of real estate, not just a bank branch building, to the tenant during the period of the lease.

The plaintiff does not dispute any of the facts detailed above. She also does not dispute the language quoted from the lease above. Instead, she argues that the lease is ambiguous as to whether FPJ retained control as landlord Sections 1.2, 8.1 and 8.2 do not refer to "parking lot" or "snow removal." She relies upon the statement in *Panaroni* v. *Johnson*, supra, 158 Conn. at 98, that "[u]nless it is definitely expressed in the lease, the circumstances of the particular case determine whether the lessor has reserved control of the premises or whether they were under the exclusive dominion of the tenant, and it becomes a question of fact and

is a matter of intention in the light of all the significant and attendant facts which bear on the issue." Memorandum no. 134.00 at 6. The plaintiff argues that because the lease does not address "snow removal" or the "parking lot," there is a genuine issue of material fact as to whether FPJ had control over removing snow from the parking lot.

"A 'genuine' issue has been variously described as a 'triable,' 'substantial' or 'real' issue of fact; ... and has been defined as one which can be maintained by substantial evidence." (Citations omitted.) *United Oil Co.* v. *Urban Redevelopment Commission,* supra, 158 Conn at 378. Based on the law regarding ambiguity, and the court's interpretation of the lease, the silence as to "parking lot" and "snow removal" does not raise a genuine issue.

"[W]hen the language of the [lease] is clear and unambiguous, [it] is to be given effect according to its terms. A court will not torture words to import ambiguity [when] the ordinary meaning leaves no room for ambiguity." *Bristol* v. *Ocean State Job Lot Stores of Connecticut, Inc.,* 284 Conn. 1, 8, 931 A.2d 837 (2007). Moreover, "any ambiguity in a [lease] must emanate from the language used in the [lease] rather than from one party's subjective perception of [its] terms." Id. "[I]t is generally true that silence alone does not necessarily equate to ambiguity," but "silence or a lack of detail may amount to ambiguity." (Emphasis omitted; citations omitted.) *Centerplan Construction Co., LLC* v. *Hartford*, 343 Conn. 368, 410, 274 A.3d 51 (2022).

In *Davis* v. *CIL Realty, Inc.*, a superior court confronted a lease and a fact pattern almost identical to this case. Superior Court, judicial district of Waterbury, Docket No. CV11-6011101 (December 4, 2012, *Roche, J.*). The plaintiff slipped and fell on ice or snow on the driveway of the premises owned by the moving defendant. The defendant moved for summary judgment on the grounds that it had no possession or control because it had leased the entire

premises to the plaintiff's employer. Like this lease, the *Davis* lease leased the premises at a specific street address as described in a legal description attached to the lease. That description referred to a "certain piece or parcel of land, with all improvements thereon." The lease required the tenant to make all repairs at its own expense, and it required the tenant to indemnify the landlord. The court found that the broad grant of the entire premises, including the land, eliminated the issue of possession. As to control, the court observed that the lease, like this lease, had no provision expressly addressing snow removal.

The *Davis* court acknowledged that snow removal was not a "repair." [1] Nevertheless, the court found that none of the provisions in the lease placed responsibility on the landlord. It construed the entire lease as conferring control on the tenant, not the landlord. *Davis* v. *CIL Realty, Inc.*, supra, Superior Court, Docket No. CV11-6011101. This court agrees with that interpretation.

The lease between FPJ and People's United Bank, read as a whole, confers possession and control on People's United Bank. There is no genuine issue of material fact, and the court grants the motion for summary judgment.

Judgment shall enter for FPJ on the first count of the complaint.

BY THE COURT,

Stewart, J.

Hon. Elizabeth J. Stewart

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[1] The plaintiff cites two other superior court cases for the proposition that snow removal is not a repair. In each of those decisions, the court held that because snow removal was not a repair, the lease provisions that allowed the landlord to enter under certain circumstances to make repairs did not raise a genuine issue that the landlord remained in control of snow removal. Each decision granted summary judgment for the landlord. *Waller* v. *W.E.F. Associates, LLC*, Superior Court, judicial district of New Haven, Docket No. CV04-5000118-S (May 2, 2006, *Licari, J.*) (41 Conn. L. Rptr. 291); *Rivera* v. *TH Real Estate Holdings,* Superior Court, judicial district of Fairfield, Docket No. CV03-0400816-S (April 1, 2005, *Dewey, J.*).