COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

09-P-839

KIMBERLY MOLLOY

vs.

BOARD OF DIRECTORS OF LAUREL GREEN & others.[1]

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

This is an appeal from a summary judgment for the defendants involving a slip and fall on ice that had formed on a stairway of a building after water was sprayed from a malfunctioning sprinkler system. The background, distilled from the summary record, is as follows. In late October, 2001, while leaving her apartment building in the Laurel Green complex, the plaintiff Molloy slipped and fell on an outside staircase and suffered a compression fracture of her spine. The complaint alleged negligence against the board of directors of Laurel Green, James Xarras, who was a director of Laurel Green and also did business as Summit Management, the entity that managed the property, and Tim Taylor Landscaping, the independent contractor who installed the sprinkler system, and thereafter serviced the system annually.

1James Xarras, doing business as Summit Management and Tim Taylor, doing business as Tim Taylor Landscaping.

A Superior Court judge granted summary judgment for all three defendants, ruling that the defendants had no duty to remove the ice as a natural accumulation[2] and that the plaintiff's attribution of the formation of the ice to water spread from the misdirected sprinkler system, as well as the plaintiff's claim that the defendants were aware of the condition, were "mere conjecture." We reverse the summary judgment for Laurel Green and Summit Management, but affirm with regard to Tim Taylor Landscaping.

Contrary to the Superior Court judge, we conclude that water deposited by unnatural means, such as a sprinkler, does not constitute a natural accumulation. Cf. Baldassari v. Produce Terminal Realty Corp., 361 Mass. 738, 744 (1972) (holding that snow that melts, drips through a roof, and then freezes into ice is not a natural accumulation). We proceed to discuss the defendants' alternative arguments in favor of summary judgment.

The defendants argue that there was no evidence in the summary judgment record either that the sprinkler system was responsible for the water that turned to ice on the stairway, or that the defendants knew that the sprinkler system sprayed water in that area. We disagree. The evidence taken in the light most favorable to the plaintiff, Remy v. MacDonald, 440 Mass. 675, 676 (2004), shows that Xarras was on the property every day, and acknowledged that he was aware that the sprinklers were not working correctly and that water spread beyond the grass onto the walkways and siding of the buildings. Specifically, in a deposition, Xarras admitted that the sprinkler system "sprays the building, against the vinyl siding, it sprays the walkways," and when "winds blow the water, . . . it would reach the siding of the buildings." Xarras further acknowledged that the sprinkler system was not designed to spray water on the steps or

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2We note that, as to natural accumulations of water and ice, there is a pending case before the Supreme Judicial Court on further appellate review, Papadopoulos v. Target Corp., 74 Mass. App. Ct. 1104, further appellate review granted, 454 Mass. 1108 (2009).

walkways. A photograph in the record depicts the siding as being located further back than the stairs. Therefore, it is a reasonable inference that the misdirected sprinkler water would hit a stairway even before it hit the siding of a building. Given the proximity of the stairs, the walkway and the siding, a jury could find that it was foreseeable that water would hit the stairs. Added to these points is the affidavit of the plaintiff's neighbor, Corey Massaro, which states that on the morning of the plaintiff's accident, the sprinklers were spraying water on the stairs upon which the plaintiff fell and that the stairs were icy.

Given the foregoing, we find the arguments of Laurel Green and Summit Management unpersuasive. First, both defendants may be deemed to have known that the sprinkler was spraying water beyond the lawn and onto walkways and the siding. Second, from such admissions, coupled with photographs (a) depicting the siding as further back than the stairs; and (b) depicting the proximity of the stairs to the walkway, a jury would be entitled to infer that Laurel Green and Summit Management knew or reasonably should have known that water would spray on the stairs. Third, a jury also would be entitled to infer that Laurel Green and Summit Management knew or reasonably should have known that continuing to run the sprinkler system as the weather was getting cold created a risk that misdirected water would freeze and create a slipping hazard. As to causation, the affidavit of Corey Massaro sufficed to establish that the dangerous condition actually existed on the day of the accident, and the plaintiff's testimony, taken in the light most favorable to her, would permit the jury to find that she slipped on ice and not for some other reason.

There is accordingly more than "mere conjecture" in the record, and summary judgment was inappropriate as there are disputed issues of material facts concerning the sprinkler spreading water on the stairs, which turned to ice, and Laurel Green's and Summit Management's

awareness of the circumstances.

As to the defendant Tim Taylor Landscaping, there was no evidence in the record that Taylor was aware, or should have been aware, of the malfunctioning in the sprinkler system, or of the water reaching and forming ice on the stairs so as to create a dangerous condition. Furthermore, the summary judgment record does not demonstrate that Taylor had undertaken any duty to make sure that the sprinklers were turned off by the time ice could form because of colder temperatures. Therefore, summary judgment properly entered for Tim Taylor Landscaping.

The summary judgment for the defendants Laurel Green and Summit Management is vacated.

The summary judgment for the defendant Tim Taylor Landscaping is affirmed.

So ordered.

By the Court (Berry, Cohen
& Katzmann, JJ.),

Clerk

Entered: May 24, 2010.