

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 2010

GERLINDE SALAICES

VERSUS

THE LAKES LIMITED PARTNERSHIP, TCR JEFFERSON PARTNERS LIMITED PARTNERSHIP, TCR LOUISIANA GP, INC., KENNETH J. VALACH, J. RONALD TERWILLIGER, HARLAN R. CROW, RIVERSTONE RESIDENTIAL SC, LP, RIVERSTONE RESIDENTIAL SC, LLC, LIBERTY INTERNATIONAL INSURANCE AGENCY, INC., and ABC INSURANCE COMPANY

Judgment Rendered: May 3, 2012.

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 570,409

The Honorable R. Michael Caldwell, Judge Presiding

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Underwriters

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BEFORE: CARTER, C.J., PARRO AND HIGGINBOTHAM, JJ.

CARTER, C. J.

The plaintiff appeals a summary judgment dismissing her suit for damages.

FACTS AND PROCEDURAL HISTORY

Gerlinde Salaices filed suit alleging that on September 3, 2007, she suffered serious injuries after falling in the parking lot of Jefferson Lakes Apartments, where she lived. Salaices contended that the fall occurred when she “stepped in one of the many holes, cracks, gaps, breaks, and other defects” of the “severely marred parking lot” of the apartment complex. Salaices named as defendants multiple entities, individuals, and insurers, including those with which she contracted for the lease of her apartment, claiming that the defendants are jointly and solidarily liable to her for the damages she sustained.¹

Approximately two-and-one-half years after suit was filed, the defendants moved for summary judgment on the basis that Salaices was unable to produce evidence establishing that deviations in the concrete constituted a defect, posed an unreasonable risk of harm, or were the cause of Salaices’s damages. The trial court granted the motion for summary judgment and dismissed Salaices’s claims against the defendants. Salaices now appeals.

DISCUSSION

A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine issue of material fact. *All Crane Rental of Georgia, Inc. v. Vincent*, 10-0116 (La. App. 1 Cir. 9/10/10), 47 So.

¹ Salaices’s claims against the individuals named as defendants were dismissed on her motion. The remaining defendants appeared jointly and, for ease of reference, will be referred to herein as “the defendants.”

3d 1024, 1027, *writ denied*, 10-2227 (La. 11/19/10), 49 So. 3d 387. Summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. La. Code Civ. Proc. Ann. art. 966B. Summary judgment is favored and designed to secure the just, speedy, and inexpensive determination of every action. La. Code Civ. Proc. Ann. art. 966A(2).

Appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. *All Crane*, 47 So. 3d at 1027. On a motion for summary judgment, the burden of proof is on the mover. La. Code Civ. Proc. Ann. art. 966C(2). If, however, the mover will not bear the burden of proof at trial on the matter that is before the court on the motion, the mover's burden does not require that all essential elements of the adverse party's claim, action, or defense be negated. *Id.* Instead, the mover must point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. *Id.* Thereafter, the adverse party must produce factual evidence sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. *Id.* If the adverse party fails to meet this burden, there is no genuine issue of material fact, and the mover is entitled to summary judgment as a matter of law. La. Code Civ. Proc. Ann. art. 966C(2); *All Crane*, 47 So. 3d at 1027.

In ruling on a motion for summary judgment, the court's role is not to evaluate the weight of the evidence or to determine the truth of the matter but, instead, to determine whether there is a genuine issue of triable fact. *All*

Crane, 47 So. 3d at 1027. A court cannot make credibility decisions on a motion for summary judgment. *Id.* In deciding a motion for summary judgment, the court must assume that all of the witnesses are credible. *Id.* Factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor. *Id.* Whether a particular fact in dispute is "material" for summary judgment purposes is viewed in light of the substantive law applicable to the case. *Richard v. Hall*, 03-1488 (La. 4/23/04), 874 So. 2d 131, 137.

In her petition, Salaices asserted multiple theories of recovery requiring proof that the parking lot contained a defect. *See* La. Civ. Code Ann. arts. 2317, 2317.1, 2696, and 2697. The existence of a defect may not be inferred solely from the fact that an accident occurred. *Thompson v. BGK Equities, Inc.*, 04-2366 (La. App. 1 Cir. 11/4/05), 927 So. 2d 351, 355, *writ denied*, 05-2405 (La. 3/17/06), 925 So. 2d 550. Rather, the plaintiff is required to prove, by a preponderance of the evidence, that a defect existed and caused the alleged damages. *Id.*

The defendants moved for summary judgment contending that Salaices could not establish the existence of a defect in the parking lot. The defendants supported their motion with excerpts of Salaices's deposition, in which she describes the heel of her flat-soled shoes falling in a "hole." However, Salaices could not remember the location of the hole. The defendants also submitted the affidavit of Sheila Gager, who was assistant manager of the apartment complex at the time of the fall. Gager attested that after Salaices informed her of the fall, "Ms. Salaices took me to the area in the parking lot where she claims to have fallen. She pointed out an area

near an expansion joint. There was a minor crack near the expansion joint which was less than ¼ inch wide and had a height variance of less than ¼ inch.” Gager specified that there were no holes in the area of the parking lot where Salaices claimed to have fallen.

The defendants also offered deposition excerpts of Salaices’s daughter, Denise Lucero, who states that she witnessed the fall and that the area of the fall was depicted in a photograph showing cracked concrete. Salaices, however, denied that the photograph showing cracked concrete depicted the area where she fell.

Louisiana Code of Civil Procedure article 967B provides that if the mover has put forth supporting proof through affidavits or otherwise, the adverse party may not rest on the mere allegations or denials of her pleading, but her response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial. If she fails to do so, summary judgment, if appropriate, shall be rendered against her. La. Code Civ. Pro. Ann. art. 967B. The appellate record contains no opposition by Salaices to the defendants’ motion for summary judgment.² Having failed to produce factual evidence sufficient to establish that she will be able to satisfy her evidentiary burden of proof at trial, summary judgment in favor of the defendants was appropriate.

² The appellant is charged with the responsibility of completeness of the record for review, and the inadequacy of the record is imputable to the appellant. *Luper v. Wal-Mart Stores*, 02-0806 (La. App. 1 Cir. 3/28/03), 844 So. 2d 329, 333 n.3. Moreover, after the defendant’s brief pointed out that the record does not contain an opposition to the motion for summary judgment, Salaices made no attempt to argue that an opposition was properly filed and made no request to supplement the appellate record accordingly.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed.

Costs of this appeal are assessed to Gerlinde Salaices.

AFFIRMED.