NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 1881

MARGARET SEAGO AND MICHAEL SEAGO

VERSUS

BENEDICT'S OF MANDEVILLE, INC. AND MARKEL INTERNATIONAL INSURANCE COMPANY LIMITED

Judgment Rendered: May 2, 2012

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 541,793

Honorable Wilson E. Fields, Judge

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George R. Blue, Jr.
Covington, LA

Attorney for
Plaintiffs – Appellants
Margaret Seago and
Michael Seago

C. David Vasser, Jr.
Baton Rouge, LA

Attorney for
Defendants – Appellees
Teresa Bourgeois, Philadelphia
Indemnity Insurance Company
and Stonecroft Ministries, Inc.

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BEFORE: PETTIGREW, McCLENDON AND WELCH, JJ.

Pettigrew, J. concurs with the result only and assigns Reasons

WELCH, J.

Plaintiffs, Margaret and Michael Seago, appeal the granting of a summary judgment in favor of defendants, Theresa Bourgeois, Stonecroft Ministries, Inc. (Stonecroft) and Philadelphia Indemnity Insurance Company (Philadelphia), and dismissing her lawsuit. We affirm.

BACKGROUND

On November 9, 2005, Mrs. Seago attended a ladies luncheon at Benedict's Restaurant in Mandeville, Louisiana, hosted by Stonecroft Ministries, Inc. (Stonecroft). After Mrs. Seago left the luncheon, she tripped and fell in Benedict's parking lot, which was comprised of a limestone aggregate surface. On March 24, 2006, the Seagos filed this lawsuit seeking damages against Benedict's of Mandeville Inc., and its insurer, Markel International Insurance Company Limited, claiming that the parking lot was unreasonably dangerous and that the condition caused Mrs. Seago's fall. On April 23, 2009, the Seagos filed an amended petition adding Stonecroft, its insurer, Philadelphia, and Ms. Bourgeois, the chairperson for the Mandeville-Covington Louisiana Christian Women's Club (CWC), who organized the luncheon and invited Mrs. Seago to speak at the luncheon, as defendants.

On May 27, 2009, the Seagos dismissed Benedict's and its insurer, Markel, from the litigation.[1] Thereafter, they filed a second supplemental and amending petition adding Liberty Mutual Fire Insurance Company, Ms. Bourgeois' homeowner's insurer, as a defendant. The Seagos particularized their claims against the remaining defendants. They claimed that Ms. Bourgeois was acting as Stonecroft's agent and that Stonecroft was liable under the doctrine of respondeat superior or the law of agency. Plaintiffs alleged that Ms. Bourgeois was notified

[1] Stonecroft and Philadelphia had filed a cross-claim and third-party demand against Benedict's and Markel, but voluntarily dismissed those claims on January 8, 2010.

by a patron at the luncheon before Mrs. Seago's fall that the parking lot was dangerous and that Ms. Bourgeois was responsible for inspecting the luncheon site on behalf of Stonecroft to ascertain that the site had adequate parking, which plaintiffs claimed included reasonably safe walking surfaces within the parking lot. They asserted that Ms. Bourgeois and Stonecroft were negligent, among others, in the following respects: (1) failing to inspect the parking lot for a dangerous or defective condition; (2) failing to provide a safe place for their invitees to walk; (3) failing to warn Mrs. Seago of the dangerous condition of the parking lot; and (4) failing to provide Mrs. Seago with an alternative means to safely depart the banquet after being advised by a patron that the parking lot was dangerous.

Ms. Bourgeois, Stonecroft, and Philadelphia filed a motion for summary judgment, urging that there was no legal basis on which they could be held liable for Mrs. Seago's trip and fall. They argued that there was no legal premise upon which a person who does not own, operate, lease, manage, or otherwise have legal custody or an obligation to maintain a third-party's property could be held liable for a guest's accidental injury due to an alleged defect in the third-party's property, where, as here, Mrs. Seago, who already knew of the dangerous condition, voluntarily chose to encounter it.

In support of their motion for summary judgment, defendants attached thereto a settlement agreement entered into between the Seagos and Benedict's and its insurer, Markel. It also submitted the affidavits of Ms. Bourgeois, Shirley Deluzain, the owner and manager of Benedict's, and Betsy Bilbruck, along with excerpts of Mrs. Seago's deposition. In her affidavit, Ms. Bourgeois attested the CWC began having monthly luncheons at Benedict's at least five years before Mrs. Seago's accident and that she had no involvement in that decision or making those initial arrangements. She stated that when she became the club's chairperson around 2005, she continued the tradition and that no one ever complained to her

that there were any problems with the restaurant's parking lot or that they considered the parking lot to be unsafe. Ms. Bourgeois further attested that prior to the luncheon in question and Mrs. Seago's fall, she did not know or suspect that the parking lot was dangerous or that Benedict's had planned or had done any recent resurfacing of the parking lot. Ms. Bourgeois denied ever owning, operating, managing, leasing, or having legal custody of Benedict's restaurant or its parking lot.

In her affidavit, Betsy Bilbruck, Stonecroft's regional representative, attested that prior to Mrs. Seago's fall in the parking lot, she did not speak with Ms. Bourgeois about the parking lot or inform her that she considered the parking lot to be dangerous and/or defective or that there was any problem with the parking lot. She stated that any discussion she had with Ms. Bourgeois concerning the parking lot at Benedict's took place only after Mrs. Seago's accident.

In her affidavit, Ms. Deluzain, the owner and operator of Benedict's since 1989, explained that throughout the existence of the parking lot at her restaurant, multiple contractors were employed to install aggregate. She stated that in 2005, Hurricane Katrina substantially damaged Benedict's property, including the parking lot, and that Benedict's contracted with a landscaping company to perform work on the parking lot. She added that aside from this incident, no accidents had ever occurred on Benedict's parking lot.

In her deposition, Mrs. Seago testified that she had been invited to a Stonecroft fundraising project by Ms. Bourgeois to speak at the function. She drove her automobile to Benedict's for the luncheon and was accompanied by two passengers. After Mrs. Seago parked her vehicle in Benedict's parking lot, she got out of her car and observed that the parking lot was made up of limestone rocks. She stated that the surface was not stable and as she started to walk, it started to move. Mrs. Seago testified that she and her passengers linked their arms together

to hold onto each other as they walked across the parking lot. She stated that she was wearing high heels, the rocks hurt her feet as she walked, and she believed the parking lot was dangerous. Mrs. Seago admitted that she did not convey her concerns about the condition of the parking lot to Ms. Bourgeois before she left the luncheon. She also admitted that as she and the other women who rode with her were walking back to her car, they were each holding a plant about six inches tall, and that she was holding the plant with both hands.

Thereafter, plaintiffs filed a third supplemental and amending petition in which they alleged that Stonecroft had knowledge, through Ms. Bilbruck, that the parking lot at Benedict's was dangerous and/or defective prior to Mrs. Seago's fall. They alleged that Ms. Bilbruck had a duty to advise the women attending the luncheon of her prior knowledge of the condition of the parking lot and of her knowledge of the dangerous condition of the parking lot on the date of the accident. Plaintiffs asserted that Stonecroft, through the actions or inactions of Ms. Bourgeois and Ms. Bilbruck, was negligent for failing to warn Mrs. Seago of the dangerous condition of the parking lot, by failing to provide patrons with alternative means to get to their cars, and by failing to follow the policies and procedures set forth in a document entitled, "Manual for Stonecroft Ministries."

In opposition to defendants' motion for summary judgment, plaintiffs filed, among other things, excerpts of the depositions of Ms. Bourgeois, Mrs. Seago, Ms. Bilbruck, Ms. Deluzain and her husband, Nicholas, the affidavits of Mrs. Seago and Christie LaPorte, a portion of the Stonecroft policy manual, and discovery responses by defendants. Plaintiffs claimed that Stonecroft is liable for the dangerous condition of the parking lot due to its prior knowledge of that condition and its failure to warn, as well as its rental and guard of the banquet facility at Benedict's. They insisted that its evidence showed that Stonecroft, through Ms. Bilbruck and/or Ms. Bourgeois, its volunteer workers, had knowledge prior to the

accident of the dangerous condition of the parking lot. Plaintiffs urged that Stonecroft, which hosted the private luncheon, owed a duty to warn its invitees of the dangerous condition of the parking lot pursuant to La. C.C. arts. 2317 and 2317.1. They also claimed that by virtue of a company policy, Stonecroft, through Ms. Bourgeois, had a duty to ascertain whether the Benedict's parking lot was safe for its invitees to walk on. Additionally, plaintiffs claimed that the condition of the parking lot was not open and obvious to Mrs. Seago prior to her walking thereon and she did not assume the risk of injury, particularly as Mrs. Seago was not provided an alternative means to get back to her vehicle after the luncheon.

The evidence submitted by plaintiffs shows that at the time of the incident, Ms. Bourgeois was the chair for the Mandeville-Covington CWC and was appointed by Stonecroft's national organization. She served as chairperson over the group's planning team. Ms. Bourgeois testified that she was responsible for welcoming guests to the luncheon and that Mrs. Seago was the chairman of the Slidell Women's Club. Ms. Bourgeois testified that she had been to Benedict's before and had attended luncheons at Benedict's every month until Hurricane Katrina hit, causing the group to miss about two meetings, and that the luncheon in question was the first meeting held after the hurricane. She stated that she also went to Benedict's on other occasions, that it had always had a gravel parking lot, and that she never had a problem with the parking lot, including on the day in question. Ms. Bourgeois testified that she did not recall speaking with Ms. Bilbruck about any difficulties in Benedict's parking lot on the day of the incident. She also acknowledged that the group had its luncheon at Benedict's for more than five years.

In her deposition, Mrs. Seago testified that she had been to Benedict's on one prior occasion in 2003. She stated that Ms. Bourgeois called her and invited her to participate in the program being held at Benedict's on November 9, 2005.

Mrs. Seago testified that on that day, she was wearing two-inch heels when she walked across Benedict's parking lot, which was uneven and was comprised of large and small limestone rocks. She acknowledged that she and her two companions had difficulty walking so they hung onto each other as they traversed the parking lot. Mrs. Seago stated that as she walked back to her car, one of the rocks moved, her heel slipped off the rock, her ankle went over it and she fell backwards. In her affidavit, Mrs. Seago attested that she had no knowledge of the unstable condition surface of the Benedict's parking lot before her November 9, 2005 accident and that no one from Stonecroft or any other person warned her of the condition of the parking lot on that day. She stated that when she exited her vehicle, she had to walk across the parking lot and did not realize until she began walking thereon that the rocks were unstable. Mrs. Seago stated that she walked with caution while walking across the parking lot to enter the facility and the only way back to her vehicle was to cross the unstable parking lot, and she proceeded with caution to return to her vehicle. She attested that she did not appreciate the danger that she might fall on the unstable parking lot and that had she been warned of the dangerous condition of the parking lot, she would not have agreed to speak at the luncheon, and she would not have attended the luncheon.

In her deposition, Ms. Bilbruck testified that she had met Mrs. Seago prior to the incident through the CWC and that she was at Benedict's on the day in question. She also stated that she had been to Benedict's twice that year and had gone there on other occasions, although she did not know how many years ago she had been there. She testified that she had always had a problem with the parking lot area of the restaurant because it is covered with rocks that were large and loose and that the surface was hard to walk on. She stated that on the day in question, she was wearing one inch heels, which sunk into the rocks, and that the rocks were so chunky that she could feel them through the soles of her shoes. She estimated

the size of some of the rocks to be two or three inches. Ms. Bilbruck testified that she told Ms. Bourgeois about her difficulties in the parking lot. In another portion of the deposition, when questioned about whom she spoke with after Mrs. Seago's fall about the cause of the incident, she testified that she expressed her concern to Ms. Bourgeois about the parking lot because she was concerned, as an advisor to the club, that it represented a difficulty for some older members. She stated that their members range in age from 40-80 and added that "everybody knows that the parking lot is unstable." She also testified that when she visited the restaurant in June 2002, she told Benedict's employees that something needed to be done with the parking lot because it was terrible to walk on.

Plaintiffs submitted Stonecroft's manual which set forth its organizational structure and policies for its CWC's regarding holding of meetings. The portion relied on by plaintiffs as establishing a duty on Stonecroft's part to inspect the parking lot of the facilities where it holds functions is a checklist entitled "Restaurant Contacts". This document sets forth 19 questions regarding the availability of a room on a monthly basis at no charge, room capacity, menu, seating, pricing concerns, time limits on the use of the room, and a section entitled "adequate parking." The checklist contains spaces for responses and comments to each of the 19 questions thereon.

Plaintiffs also submitted the affidavit of Christie LaPorte, who stated that she was a customer of Benedict's on the evening before the luncheon, and that the conditions in the parking lot make it difficult to walk on and unstable underfoot because the aggregate was very loose and moved with each step. In her deposition, Mrs. Deluzain testified that the event in question was the first public use of Benedict's facility following Hurricane Katrina and the CWC's group's first meeting after the hurricane. She stated that the group had a standard date at the facility for three years prior to the accident.

SUMMARY JUDGMENT

Appellate courts review summary judgments *de novo*, using the same criteria as the trial court in determining whether summary judgment is appropriate. **Bickham v. Louisiana Emergency Medical Consultants, Inc.**, 10-0535 (La. App. 1st Cir. 11/1/10), 52 So.3d 162, 164. The motion should be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the 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. C.C.P. art. 966(B).

On a motion for summary judgment, the initial burden is on the moving party. However, when the movant will not bear the burden of proof at trial, the movant's burden does not require him to negate all of the essential elements of the adverse party's claim, but rather, to point out to the court an absence of factual support for one or more of the elements essential to the adverse party's claim. Thereafter, if the adverse party fails to provide factual evidence sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact, and summary judgment is properly granted. La. C.C.P. art. 966(C)(2).

Plaintiffs seek to establish liability against defendants based on their alleged custody or "garde" of the Benedict's parking lot under La. C.C. art. 2317.1. To establish liability under this article, plaintiffs must show that: (1) the defendant was the owner or custodian of a thing which caused the damage; (2) the thing had a ruin, vice, or defect that created an unreasonable risk of harm; (3) the ruin, vice, or defect of the thing caused the damage; (4) the defendant knew, or in the exercise of reasonable care, should have known of the ruin, vice, or defect; (5) the damage could have been prevented by the exercise of reasonable care, and (6) the defendant failed to exercise such reasonable care. **Granada v. State Farm Mutual Insurance Company**, 2004-2012 (La. App. 1st Cir. 2/10/06), 935 So.2d

698, 702. Plaintiffs contend that the trial court erred in granting summary judgment because there are genuine issues of material fact with regard to whether Stonecroft had custody or garde of the Benedict's facility where the accident occurred so as to give rise to a duty to timely and adequately warn Mrs. Seago of the dangerous condition of the parking lot.

Plaintiffs' second theory of liability is negligence pursuant to La. C.C. art. 2315. To prevail on a general negligence claim, a plaintiff must prove five separate elements: (1) the defendant had a duty to conform his or her conduct to a specific standard of care; (2) the defendant failed to conform his or her conduct to a specific standard of care; (3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries; (4) the defendant's substandard conduct was a legal cause of plaintiff's injuries; and (5) actual damages. **Christy v. McCalla**, 2011-0366 (La. 12/6/11), 79 So.3d 293, 299. Plaintiffs claim that Stonecroft had a company policy to provide "adequate parking" to their invitees and that company policy gave rise to a duty on its part to provide a parking lot with a safe walking surface for its invitees to reach the building. Further, they insist, this company policy required Stonecroft's agents to inspect the facility they chose to host the luncheon beforehand and if it was determined the Benedict's facility did not provide adequate parking, to find a facility with adequate parking or to warn the invitees, including Mrs. Seago, prior to their arrival at the facility on the day in question. Plaintiffs also submit that Stonecroft had knowledge of the dangerous condition of the parking lot for years based on the deposition testimony of Ms. Bilbruck and that there is a factual dispute over whether Ms. Bourgeois had actual knowledge of the dangerous condition of the parking lot on the day of the event prior to Mrs. Seago's fall.

We first address plaintiffs' argument that Stonecroft's company policy created an affirmative duty on its part to inspect Benedict's parking lot prior to

holding luncheons at the facility and to warn Mrs. Seago of the condition of the parking lot prior to her arrival at Benedict's. In support of this claim, plaintiffs rely on Stonecroft Ministries' Manual setting forth its organizational structure and policies for its CWC's and the responsibilities for its chairpersons. The previously described portion of the policy entitled "Restaurant Contacts" contains blanks to identify the group and restaurant name and contact person, as well as a list of 19 questions regarding the restaurant and sections for responses and comments to each of the 19 questions. The questions pertain to room capacity, availability of the room on a monthly basis at no charge, and the number of months in advance the schedule can be confirmed, the menu and pricing, the type of tables in the banquet room and availability of such things as a podium, PA system and piano, whether individual checks could be written, whether there is a time limit on the use of the room. Item number 18 contains a response and comment section for "Adequate parking?" The policy provides that the Chair is responsible for confirming details with the meeting facility.

We see nothing in the Stonecroft policy manual placing an affirmative duty on it to inspect the condition of the parking lot at facilities where its women's groups held monthly meetings. The restaurant contact checklist is merely a tool to determine whether the facility has the proper amenities, menu, and pricing, and can accommodate a group planning on holding a luncheon. The term "adequate parking" plainly means enough parking spaces to accommodate the number of guests the group is expecting to have.

We next address plaintiffs' claim that Stonecroft had a duty to warn Mrs. Seago about the condition of the parking lot or provide her with an alternative method to return to her car. Two legal theories are asserted by plaintiffs: (1) Stonecroft's prior knowledge of the condition of the parking lot gave rise to such a duty, and (2) Stonecroft had custody or guard of the facility so as to give rise to a

duty on its part to warn Mrs. Seago of the condition of the parking lot. They point out that Mrs. Seago stated in her affidavit that she would not have attended the luncheon at Benedict's had she known in advance the parking lot presented the conditions she discovered that day. Therefore, they claim, the failure to warn by defendants was a proximate cause of the accident and Mrs. Seago's injuries.

To succeed under either theory at trial, Mrs. Seago must establish that the defendants had a duty to warn Mrs. Seago that the Benedict's parking lot had an uneven surface comprised of aggregate limestone. We find that under the undisputed facts of this case, Mrs. Seago cannot meet this burden.

It is well settled that where a risk is obvious, there is no duty to warn or protect against it. **Bridgefield Casualty Insurance Company v. J.E.S., Inc.**, 2009-0725 (La. App. 1st Cir. 10/23/09), 29 So.3d 570, 574; **Moory v. Allstate Insurance Company**, 2004-0319 (La App. 1st Cir. 2/11/05), 906 So.2d 474, 478, writ denied, 2005-0668 (La. 4/29/05), 901 So.2d 1076. The undisputed evidence established that Benedict's has had a gravel parking for many years and that Mrs. Seago's fall is the first accident occurring in the parking lot in the sixteen-year period that Ms. Deluzain owned the facility. It is also beyond dispute that the uneven condition of the aggregate parking lot was an open and obvious risk to all persons traversing across it. Mrs. Seago's deposition testimony establishes that she had knowledge of the very condition she contends Stonecroft, through its agents, should have warned her about. She testified that she and her passengers linked their arms to hold onto each other as they walked across the gravel parking lot and that she believed the parking lot was dangerous. However, despite her knowledge that the parking lot was comprised of large, loose pieces of gravel and was difficult to walk on, Mrs. Seago, who was wearing high heel shoes, chose to traverse the parking lot a second time while holding a potted plant with both hands. Under these circumstances, we find, as a matter of law, defendants did not have a duty to

warn Mrs. Seago of the condition of the parking lot or protect Mrs. Seago from the risk of falling in the parking lot.

Considering all of the evidence submitted in support of and in opposition to the motion, we find no legal basis upon which liability can be imposed upon Ms. Bourgeois, Stonecroft, or its insurer. Accordingly, we find that the trial court correctly granted summary judgment in their favor and in dismissing this lawsuit.

CONCLUSION

For the foregoing reasons, the judgment appealed from is affirmed. All costs of this appeal are assessed to appellants, Margaret and Michael Seago.

AFFIRMED.

MARGARET SEAGO AND MICHAEL SEAGO	NUMBER 2011 CA 1881
VERSUS	COURT OF APPEAL
BENEDICTS OF MANDEVILLE, INC. AND MARKEL INTERNATIONAL INSURANCE COMPANY LIMITED	FIRST CIRCUIT
	STATE OF LOUISIANA

BEFORE: PETTIGREW, McCLENDON AND WELCH, JJ.

PETTIGREW, J., CONCURS WITH THE RESULT ONLY, AND ASSIGNS REASONS.

Although I disagree with the majority's proposition that the plaintiff having traversed the parking lot area that day released defendants of any duty, I agree with the results because I am of the opinion that defendants never had custody or garde of the parking lot, nor did they have notice of the deplorable condition of the parking lot until the day of the event in question.