S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

ESTATE OF ANTHONY B. LAGOS through its Personal Representative, BASILE J. LAGOS,

Plaintiff-Appellee,

v

WILLIAM DAVIS III and MAPLE VILLAGE SELF STORAGE, INC.,

Defendants-Appellants.

UNPUBLISHED
June 9, 2011

No. 296837
Washtenaw Circuit Court
LC No. 08-000669-NO

Before: OWENS, P.J., and O'CONNELL and METER, JJ.

PER CURIAM.

Defendants appeal by leave granted from an order denying their motion for summary disposition in this case involving claims of negligence and breach of contract. We reverse and remand for entry of judgment in favor of defendants.

This action arose from the tragic death of Anthony B. Lagos, who died after accidentally locking himself in the trunk of his automobile while the vehicle was parked on the premises of the Maple Village Self-Storage facility owned by defendants.

On April 30, 2003, the decedent and defendant's agent Gerald E. Block executed a rental agreement, under which the decedent leased from defendants "storage unit number 222 . . . to be used as storage for personal or business property . . . ." The rental agreement contains the following statement: "**TENANT ACKNOWLEDGES THAT HE HAS READ THE NOTICE AND CONDITIONS OF THE NEXT PAGE AND AGREES TO BE BOUND BY THEM.**" (Capitals and boldface in original.) The conditions page of the agreement contains the following provisions:

> 2. . . . Tenant assumes responsibility for any loss or damage to property stored by Tenant in the premises and may or may not elect to provide insurance coverage for the same. MANAGEMENT DOES NOT MAINTAIN INSURANCE FOR THE BENEFIT OF TENANT, WHICH IN ANY WAY COVERS ANY LOSS WHATSOEVER THAT TENANT MAY HAVE OR CLAIM BY RENTING THE STORAGE SPACE OR PREMISES AND EXPRESSLY RELEASES MANAGEMENT FROM ANY LOSSES AND/OR DAMAGE TO SAID PROPERTY CAUSED BY FIRE, THEFT, WATER,

> RAINSTORMS, TORNADO, EXPLOSION, RIOT, RODENTS, CIVIL DISTURBANCES, INSECTS, SONIC BOOM, LAND VEHICLES, UNLAWFUL ENTRY OR OTHER CAUSE WHATSOEVER, NOR SHALL MANAGEMENT BE LIABLE TO TENANT AND/OR TENANT'S GUEST OR INVITES [sic] OR AGENTS WHILE ON OR ABOUT MANAGEMENT PREMISES.
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> * * *
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> 8. . . . AT ALL TIMES, MANAGEMENT WILL NOT SUPERVISE USE OF UNIT IN ANY WAY. . . . [Capitals in original.]

Defendants also provided the decedent with an informational sheet at the time of the rental agreement's execution. The decedent initialed the informational sheet and thereby acknowledged that he would abide by the rules set forth in the document. The informational sheet contains the following provisions:

> 13. Gate hours are from 7:00 a.m. to 9 p.m. seven days a week. **The exit gate will not open after 9:15 p.m. so please be out on time.**
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> 14. Office hours are from 9:00 a.m. to 5:00 p.m. Monday through Friday and 9:00 a.m. to 12:00 p.m. on Saturday. **Management is on the property after hours for security reasons only**.
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> * * *
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> 19. Please leave aisles clear and do not block another tenant's door.
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> * * *
>
> 25. We will strictly enforce all policies and conditions in our contract. We do not make exceptions! [Boldface in original.]

The decedent stored a red 1977 Oldsmobile Cutlass Supreme automobile at the storage facility. He "worked on" the automobile at the storage facility and was a frequent visitor at the facility. Usually, the decedent would ride his bicycle to the facility, take the Cutlass out for a drive, return the Cutlass to storage, and then ride out on his bicycle.

According to defendants' activity log, the decedent entered defendants' premises on July 9, 2005, at 4:56:37 p.m. He left the facility at 5:06:58 p.m. The decedent reentered the facility at 9:35:14 p.m. The activity log contains no entry indicating that the decedent left the premises after returning this second time on July 9. Defendant William Davis III authorized the decedent to have access to the facility 24 hours a day, seven days a week, because the decedent's work schedule prevented him from entering the facility before 9 p.m. on some days.

Upon the decedent's return to the storage facility on July 9, 2005, the decedent parked the Cutlass outside of his storage unit, partially blocking access to the storage units immediately adjacent on either side of his unit. Plaintiff alleges that sometime between 9:35 p.m. and 10

p.m., the decedent crawled into the trunk of the Cutlass to repair an inoperable taillight assembly and the trunk lid closed, trapping the decedent inside the vehicle's trunk.

Defendants' facility manager Gerald Block was on vacation on July 9, 2005. In Block's absence, defendant William Davis III, the owner of the facility, performed the inspection round of the facility on July 9 to ensure that the gates were closed, to ensure that all storage units were closed, and to inspect for damage to the facility. Between 9:45 p.m. and 10 p.m., Davis drove his Jeep Grand Cherokee past the decedent's Cutlass, which was parked in front of the decedent's storage unit. Davis slowed his vehicle as he passed because he was looking to see if the unit's door was closed. Plaintiff alleges that at that time the decedent's car keys were dangling from the trunk and that the decedent's milk crate, screwdriver, baseball cap, flashlight, spray can, and shoes were all scattered behind the Cutlass. Additionally, plaintiff alleges that the driver's side door of the Cutlass was open. Davis indicates that he observed a "box" behind the Cutlass, but did not recall seeing any shoes or discarded clothing behind the vehicle. He denied seeing any keys dangling from the trunk's lock. Davis also indicated that, as he recalled, the vehicle's windows were up. He did not see the decedent on the premises. Davis did not stop to investigate because the circumstances "didn't appear out of place relative to the habits we were aware of for Mr. Lagos." Moreover, according to Davis, if the circumstances would have appeared out of place, he still would not have approached the Cutlass because "[t]he personal property of the tenants is not something the company would have access to and I certainly would not myself and would discourage my staff from accessing personal property of a tenant, if it was not otherwise, you know, a clear situation." Davis indicated that he did not know whether the decedent was trapped in the trunk when he passed the decedent's vehicle. He also indicated that he observed nothing to make him suspect that the decedent was trapped in the vehicle's trunk. He did not hear any sounds coming from the vehicle and did not observe any movement in or of the vehicle. Davis had his vehicle's windows rolled up and the air conditioning on.

On July 10, 2005, defendants' facility manager, Block, returned from vacation and reentered the storage facility's premises at approximately 7 or 7:30 p.m. Upon returning to the facility, Block observed the decedent's vehicle unattended and parked in front of the decedent's storage facility. Block conducted an inspection round shortly before the facility's 9 p.m. closing time. He passed the decedent's vehicle three or four times during a 30-minute period. Each time he passed the Cutlass, he observed personal items on the ground behind the Cutlass. According to Block, it was out of character for the decedent to leave his car unattended. After the third or forth pass, and after not locating the decedent elsewhere on the premises, Block stopped and "closely observed" the Cutlass. Upon stopping and approaching the Cutlass, Block observed that the windows of the Cutlass were down and that the keys were dangling from the trunk lock. Because Block knew that the decedent was not the type of person who would leave his keys in the trunk lock, he made the decision to open the vehicle's trunk. Block approached the vehicle, opened the trunk, and discovered the decedent laying "lifeless" in the trunk. He then closed the trunk lid and contacted authorities.

The decedent died accidentally "by rapid asphyxia by suffocation resulting from entrapment in this tightly sealed and locked trunk of an older automobile . . . ."

Plaintiff commenced this negligence and breach of contract action in the Washtenaw Circuit Court on July 8, 2008. The court granted summary disposition to defendant Davis on

plaintiff's breach of contract claim by order dated November 24, 2008. That ruling is not a subject of this appeal.

Defendants subsequently moved for summary disposition under MCR 2.116(C)(10), arguing that defendant corporation breached no contractual obligation to the decedent, that defendants owed no duty to rescue the decedent from the trunk of his own vehicle, that the rental agreement signed by the decedent contained a waiver of liability, and that defendants had no statutory or common-law duty to open the trunk of the Cutlass.

Plaintiff answered and asserted that (1) defendants had an affirmative duty to rescue the decedent because defendants were engaged in a special relationship (contractual and landlord/tenant) with the decedent, (2) defendants voluntarily assumed a duty of due care towards the decedent, and (3) part of this duty was for defendants to conduct their regular inspection of the rental unit facility in a reasonable fashion, particularly under the circumstances of this case. According to plaintiff, defendants had a duty to do sooner what defendants actually eventually did, that being opening the trunk.

Subsequently, plaintiff submitted "supplemental" evidence in opposition to the summary-disposition motion. It consisted of a page from defendants' Operations Manual, upon which appears the following instruction:

> 3. Police the entire facility regularly throughout the day, check on tenants in buildings, and be certain that tenants are in their own space. Most burglaries are by tenants. If you don't recognize someone, ask questions.

This excerpt appears in that portion of the Operations Manual titled "ON-SITE MANAGER RESPONSIBILITIES." (Capitals in original.)

The trial court entertained arguments on the motion on September 25, 2009. The court denied the motion from the bench, opining:

> I don't find that there is a special relationship created under the law, but I do think that there is, as you noted in your brief, a duty to exercise due care towards their client and part of that ordinary duty was to conduct the regular nightly inspection of the rental unit facility in a reasonable fashion under the circumstances that is [sic] in this case. I am not the finder of fact. Six people, our peers, six people from the community is [sic] the finder of fact. And, I think that the language that you have provided on the responsibilities paragraph three from the manual that says police the entire facility regularly throughout the day, check on tenants in buildings, and be certain that tenants are in their own space; it also has in that language, most burglaries are by tenants. If you don't recognize someone, ask questions.
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> So, I think that the manual itself says, you know, you'd have some sort of duty to do an inspection, to check into things if something appears, or might be, out of order. And, the fact that this—the individual did in fact absolutely open the trunk indicates that was a foreseeable thing that could have been done and a fact finder may conclude that he should have done it at an earlier time.

> Therefore, I think there are material factual disputes. I don't think there is a special duty, a special relationship, but I think it's the duty of ordinary care under the circumstances in this case. . . .

This Court reviews de novo a trial court's decision to grant summary disposition. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002).

> A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim. The moving party must first "specifically identify the issues as to which [it] believes there is no genuine issue as to any material fact," and has the initial burden of supporting its position with affidavits, depositions, admissions, or other admissible documentary evidence. Once this initial burden has been met, the burden shifts to the nonmoving party to establish the existence of a genuine issue of material fact for trial. "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in [the] pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." In determining whether a genuine issue of material fact exists, the court must consider all documentary evidence in a light most favorable to the nonmoving party. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." "Summary disposition is proper under MCR 2.116(C)(10) if the affidavits and other documentary evidence show that there is no genuine issue concerning any material fact and that the moving party is entitled to judgment as a matter of law." [*Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 474-475; 776 NW2d 398 (2009) (citations omitted).]

Moreover, as stated in *In re Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007):

> The proper interpretation of a contract is a question of law that this Court reviews de novo. In interpreting a contract, this Court's obligation is to determine the intent of the parties. This Court must examine the language of the contract and accord the words their ordinary and plain meanings, if such meanings are apparent. If the contractual language is unambiguous, courts must interpret and enforce the contract as written. [Citations omitted.]

Finally, whether a defendant owes a duty to a plaintiff is a question of law that this Court reviews de novo. *Fultz v Union-Commerce Assoc*, 470 Mich 460, 463; 683 NW2d 587 (2004).

Defendants argue that there is no question of fact regarding whether Maple Village owed a duty to plaintiff to inspect the trunk of the Cutlass under the rental agreement. We agree. First, the contract plainly indicates that "management will not supervise use of unit in any way." Accordingly, Maple Village was not contractually obligated to investigate how the decedent was using his storage unit. Moreover, even assuming that the informational sheet constituted part of the contract, this sheet states that "[m]anagement is on the property after hours for security reasons only." As noted by defendants in its brief, Maple Village acted in accordance with this

provision. Maple Village did not owe a duty to inspect the trunk of plaintiff's vehicle parked outside of plaintiff's unit, where it was often parked. Plaintiff relies on rules 19 and 25, arguing that these rules indicated that defendants had a duty to exercise reasonable care in "keeping the aisles clear" and that, therefore, defendants should have discovered sooner that the decedent was locked in the trunk of his vehicle. However, as noted, the informational sheet stated that "[m]anagement is on the property after hours for security reasons only." There is simply no basis to conclude that defendants, "after hours," had a duty to inspect the decedent's vehicle to ensure that aisles were clear. Moreover, as noted by defendants, it was not unusual for the decedent to park his vehicle in the position in which Davis saw it on the day in question.

As for the excerpt from the operations manual, there is no evidence that this constituted part of the contract between the parties. It is, instead, a document that Maple Village used in the training of employees. At any rate, the pertinent provision states that employees should "[p]olice the entire facility regularly throughout the day, check on tenants in buildings, and be certain that tenants are in their own space. Most burglaries are by tenants. If you don't recognize someone, ask questions." The allegation here is that Maple Village should have investigated the trunk of the decedent's car not during "the day," but after hours. The operations manual thus does not support the existence of a duty under the facts in issue.

Finally, the parties' contract contained an express release of liability. "[A] party may contract against liability for harm caused by his ordinary negligence . . . ." *Lamp v Reynolds*, 249 Mich App 591, 594; 645 NW2d 311 (2002). In *Skotak v Vic Tanney, Inc*, 203 Mich App 616, 618; 513 NW2d 428 (1994), mod on other grounds by *Patterson v Kleiman*, 447 Mich 429; 526 NW2d 879 (1994), this Court provided the following guidance with regard to determining whether a contract for release has been validly entered into:

> The validity of a contract of release turns on the intent of the parties. To be valid, a release must be fairly and knowingly made. A release is invalid if (1) the releaser was dazed, in shock, or under the influence of drugs, (2) the nature of the instrument was misrepresented, or (3) there was other fraudulent or overreaching conduct.

There is no allegation that any of the invalidating circumstances were present in the instant case. The rental agreement contains language appearing in boldface that indicates that the conditions' page attached to the agreement is part of the agreement and that the tenant agrees to be bound by those conditions. Condition 2 contains the following language: "NOR SHALL MANAGEMENT BE LIABLE TO TENANT AND/OR TENANT'S GUEST OR INVITES [sic] OR AGENTS WHILE ON OR ABOUT MANAGEMENT PREMISES." (Capitals in original.) This language immediately follows language releasing defendants for all liability for damage to property of a tenant stored on the premises. The position and context in which the above-quoted language appears in condition 2 reflects an intent to release defendants from liability for injury to persons sustained while on the premises. Given the plain language of the rental agreement, defendants have a valid release of liability.

Based on the foregoing analysis, we find that the trial court erred in finding that the parties' contract supported the existence of a duty and in denying summary disposition based on breach of contract.[1]

Moreover, even disregarding the existence of a release of liability, there is no basis for a finding of negligence under traditional common-law principles. "The threshold question in a negligence action is whether the defendant owed a duty to the plaintiff" because, absent such a duty, there can be no tort liability. *Fultz*, 470 Mich at 463. The Michigan Supreme Court has characterized "duty" as an "expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is entitled to protection." *In re Certified Question From the Fourteenth District Court of Appeals of Texas*, 479 Mich 498, 505; 740 NW2d 206 (2007) (internal citations and quotation marks omitted). Consequently,

> the ultimate inquiry in determining whether a legal duty should be imposed is whether the social benefits of imposing a duty outweigh the social costs of imposing a duty. The inquiry involves considering, among any other relevant considerations, the relationship of the parties, the foreseeability of the harm, the burden on the defendant, and the nature of the risk presented. [*In re Certified Question*, 479 Mich at 505 (internal citations and quotation marks omitted).]

When determining whether a duty is owed, "[t]he most important factor to be considered is the relationship of the parties." *In re Certified Question*, 479 Mich at 505. "The determination of whether a legal duty exists is a question of whether the relationship between the actor and the plaintiff gives rise to any legal obligation on the actors [sic] part to act for the benefit of the subsequently injured person." *Rodriguez v Detroit Sportsmen's Congress*, 159 Mich App 265, 270; 406 NW2d 207 (1987). "Where there is no relationship between the parties, no duty can be imposed, but where there is a relationship, the other factors must be considered to determine whether a duty should be imposed" because the existence of a relationship between the parties does not necessarily establish the presence of a duty. *In re Certified Question*, 479 Mich at 508-509.

> [W]here the harm is not foreseeable, no duty can be imposed, but where the harm is foreseeable, other factors must be considered to determine whether a duty should be imposed. Before a duty can be imposed, there must be a relationship between the parties and the harm must have been foreseeable. Once it is determined that there is a relationship and the harm was foreseeable, the burden that would be imposed on the defendant and the nature of the risk presented must be assessed to determine whether a duty should be imposed. [*In re Certified Question*, 479 Mich at 509.]

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[1] It appears that plaintiff, at page 35 of his appellate brief, has waived any claim of breach of contract. Nevertheless, for the sake of completeness we find that no viable breach-of-contract claim existed here. Nor, contrary to plaintiff's implications, did the contract or accompanying documents create any common-law duty that was subsequently breached.

Foreseeability depends fundamentally on knowledge, but also "upon whether or not a reasonable man could anticipate that a given event might occur under certain conditions." *Samson v Saginaw Professional Bldg*, *Inc*, 393 Mich 393, 406; 224 NW2d 843 (1975). "Knowledge has been defined as the consciousness of the existence of a fact, and fact includes not only objects apparent to the senses but the characteristics and traits of people and animals and the properties and propensities of things—the laws of nature, human and otherwise." *Id*. at 405 (internal citation and quotation marks omitted). Moreover, "[a] plaintiff need not establish that the mechanism of injury was foreseeable or anticipated in specific detail. It is only necessary that the evidence establish that some injury to the plaintiff was foreseeable or to be anticipated." *Schultz v Consumers Power Co*, 443 Mich 445, 452 n 7; 506 NW2d 175 (1993); see also *Lockridge v Oakland Hosp*, 285 Mich App 678, 683; 777 NW2d 511 (2009).

In the present case, a relationship existed between the decedent and defendants. The decedent was both a tenant and business invitee of defendants. The existence of this relationship alone, however, does not establish that defendants owed a particular duty to the decedent. Plaintiff characterizes this case as a premises-liability action. However, the danger present on the premises in this case, i.e., a trunk lid that would not remain open by itself, is not a danger traditionally associated with the nature of the relationships between the parties in this case. Indeed, the danger is not one created by defendants or otherwise a condition of the land to which defendants subjected the decedent by inviting the decedent onto their premises. In fact, the dangerous condition was brought onto the premises by the decedent and there is no evidence that defendants had any knowledge of the presence of the dangerous condition. Where a dangerous condition is readily apparent to reasonable people and the injured party is in a position to protect himself or herself from the condition, the courts of this state are loath to impose a duty. See, e.g., *Dykema v Gus Macker Enterprises*, *Inc*, 196 Mich App 6, 10-11; 492 NW2d 472 (1992) (organizer of a basketball tournament had no duty to warn of an approaching thunderstorm). Because the decedent knew of the danger and was in the best position to protect himself from it, a duty to protect or rescue the decedent should not be imposed on defendants.

At any rate, because a relationship existed between the decedent and defendants, the question becomes "whether it is foreseeable that the actor's conduct may create a risk of harm to the victim." *Goldman v Phantom Freight*, *Inc*, 162 Mich App 472, 481; 413 NW2d 433 (1987). In *In re Certified Question*, 479 Mich at 517-518, the Supreme Court indicated that the risk of "take home" asbestos exposure was not foreseeable when the plaintiff worked for his employer between 1954 and 1965, before knowledge of asbestos risks was highly developed. Likewise, in the present case, it was not foreseeable that, if defendants failed to inspect a vehicle parked on their premises, outside a storage unit and after business hours, a tenant would sustain physical injury. Moreover, to the extent that plaintiff is asserting that defendants owed a duty to open the trunk, the possibility of a tenant being accidentally locked in a vehicle trunk is not an injury that would be readily foreseeable.

Plaintiff seeks to avoid such a conclusion by arguing that the "duty" to open the trunk was a logical and reasonable extension of the duty to inspect the premises in a non-negligent manner. Plaintiff correctly observes that defendants, as the owners of the premises, had a duty to inspect the premises for dangerous conditions. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000). However, as noted above, the dangerous condition was

not one of the land, but one known to the decedent and brought onto the premises by the decedent—and not one readily apparent to defendants.

Plaintiff also correctly observes that "where a person voluntarily assumes the performance of a duty . . . , he is required to perform it carefully, not omitting to do what an ordinarily prudent person would do in accomplishing the task." *Sponkowski v Ingham Co Rd Comm*, 152 Mich App 123, 127; 393 NW 579 (1986). Both Davis and Block testified that defendants inspected the premises nightly after closing. There is evidence indicating that the premises were inspected for damage to the facility, for criminal activity, and to ensure that each storage unit was locked. We find that requiring defendants to open the trunk of a vehicle parked on the premises after hours is outside the scope of any inspection duty assumed by defendants, especially where it was not foreseeable that the decedent would be injured if Davis did not undertake the affirmative act of opening the trunk.

In sum, we find that defendants owed no duty to plaintiff in the context of this tragic accident. Accordingly, we reverse the order denying defendants' motion for summary disposition.

Reversed and remanded for entry of judgment in favor of defendants. We do not retain jurisidiction.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Patrick M. Meter