IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CIVIL DIVISION

WAKIL WAKIL, YARA D. ALAKHRAS, **Plaintiffs** **- VS -** **BIRDIE PROPERTIES, LLC,** **Defendant**	))))))	**File No. 2018-C-1674**

ORDER

AND NOW, this day of September, 2019, upon consideration of Defendant's Motion for Summary Judgment, filed May 8, 2019, and Plaintiffs' response thereto, filed June 7, 2019, and after argument on September 3, 2019,

IT IS ORDERED said motion is **GRANTED**. Summary judgment is granted in favor of Defendant, Birdie Properties, LLC, and against Plaintiffs, Wakil Wakil and Yara D. Alakhras. The above-captioned matter is hereby **DISMISSED WITH PREJUDICE**.

By the Court:

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Douglas G. Reichley, J.

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CIVIL DIVISION

WAKIL WAKIL, YARA D. ALAKHRAS,	)	
Plaintiffs	)	
- VS -	)	**File No. 2018-C-1674**
BIRDIE PROPERTIES, LLC,	)	
Defendant	)	
	)	

September 11, 2019

Appearances:

Andrew G. Hunt, Esq. for Plaintiffs

Alan S. Battisti, Esq. for Defendant

Douglas G. Reichley, J.

Memorandum Opinion

Birdie Properties, LLC, Defendant, filed a Motion for Summary Judgment on May 8, 2019 against Wakil Wakil and Yara D. Alakhras, Plaintiffs. In its motion, Defendant asserts that there is not any evidence that it proximately caused a fire which damaged Plaintiffs' property. For the reasons set forth herein, Defendant's motion is **GRANTED**.

Factual and Procedural Background

This case involves a fire that broke out at a rowhome located at 337 North 3rd Street, Allentown, Lehigh County, Pennsylvania on October 1, 2017. The fire caused damage to Plaintiffs' adjoining property.

The rowhome at which the fire occurred is owned by Defendant. Plaintiffs argue that a tenant who had resided in that rowhome regularly kept trash in the back yard. Plaintiffs note that Defendant incurred a sweep violation ticket on May 30, 2017 for a violation of Allentown Ordinance § 720.09(A)(2), relating to the presence of trash and debris on property. (*See* Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment, Ex. F.) However,

the description of the alleged violation only refers to "Trash/Debris Accumulation," and does not include any reference to the mattresses which eventually were set on fire on October 1, 2017. Plaintiffs further assert that "[t]he state of the property attracted crime, including drive by shootings (plural) . . . and vandals breaking the windows." (Plaintiffs' Brief in Opposition to Defendant's Motion for Summary Judgment, at [3].) There was not any evidence produced of arsons or any acts of trespass involving the subject premises. On August 17, 2017, the Defendants were notified by the City of Allentown that the subject property was deemed "Unfit for human habitation due to conditions." (Plaintiffs' Brief, Ex. I.) According to the deposition testimony of Raymond Leister, the tenant was evicted and vacated the property the first week of September of 2017. (Plaintiff's Brief, Ex. J, p. 44.)

Following the tenant's eviction, Defendant undertook to clean up and sell the premises. Two mattresses, apparently infested with bed bugs, were placed on the back porch while the property was being shown to prospective buyers. (*Id.* at 64-65.) It is not clear how long the mattresses had been placed on the back porch, but due to the schedule for trash pick-up for the City of Allentown, the mattresses had not been taken by Waste Management as of October 1, 2017.

As noted above, on October 1, 2017, a fire broke out at the row home. An unknown arsonist lit the mattresses on fire. The resultant blaze damaged the row home and Plaintiffs' adjoining property. During her deposition, Plaintiff Yara Alakhras testified that she had never noticed anyone breaking into the backyard of the neighboring property where the fire started, that she never noticed anyone starting fires in the backyard of the neighboring property, or that she had to call the police to complain about strangers behind her home. (Plaintiff's Brief in Opposition, Ex. G, pp. 27-28.) While she did recall her family suffering from a flattened tire to

their car when it was parked in the neighborhood, Alakhras did not recall anyone ever trying to break into her home or to set it on fire. (*Id.* at 31-32.)

Co-Plaintiff Wakil Wakil testified at his deposition that he had never had problems with any drunk or homeless person in the neighborhood prior to the fire. (Plaintiff's Brief, Ex. H., p. 19.) Wakil similarly testified that before the fire, he did not recall ever hearing about anyone breaking into or stealing from any homes in the neighborhood. (*Id.* at 33.) Wakil was not aware of anyone trying to set a fire at the neighboring property prior to the date of the incident. (*Id.* at 44.)

Plaintiffs filed a Complaint on June 29, 2018 alleging that Defendant was negligent for the way the property was maintained. On May 8, 2019, Defendant moved for summary judgment. Plaintiff filed a response on June 7, 2019, and the Court heard oral argument on September 3, 2019 and took the matter under advisement.

Discussion

In its summary judgment motion, Defendant argues that Plaintiff has not established that it proximately caused the fire. Similarly, Defendant argues that it is not liable for the intervening actions of the unknown arsonist who ignited the fire. Lastly, Defendant claims that Plaintiffs have not established the existence of a duty Defendant owed to them such that it can be held liable for the fire.

> A trial court properly enters summary judgment if "there is no genuine issue of any material fact as to a necessary element of the cause of action." Pa.R.C.P. 1035.2(1). The moving party's right to summary judgment has to be clear and free from doubt after examination of the record in a light most favorable to the non-moving party and resolution of all doubts as to the existence of a genuine issue of material fact against the moving party.

Liss & Marion, P.C. v. Recordex Acquisition Corp., 983 A.2d 652, 657 (Pa. Super. 2009).

"'Proximate causation is defined as a wrongful act which was a substantial factor in bringing about the plaintiff's harm.'" *Eckroth v. Pennsylvania Electric, Inc.*, 12 A.3d 422, 428 (Pa. Super. 2010) (quoting *Lux v. Gerald E. Ort Trucking, Inc.*, 887 A.2d 1281, 1286 (Pa. Super. 2005)). In evaluating proximate causation, a court must inquire whether the negligence alleged by the plaintiff "was so remote that as a matter of law, the defendant cannot be held legally responsible for the subsequent harm." *Id.* (quoting *Holt v. Navarro*, 932 A.2d 915, 921 (Pa. Super. 2007)).

> Therefore, the court must determine whether the injury would have been foreseen by an ordinary person as the natural and probable outcome of the act complained of. The court must evaluate the alleged facts and refuse to find an actor's conduct was the legal cause of harm when it appears to the court highly extraordinary that the actor's conduct should have brought about the harm.

Id.

In their Brief in Opposition to Defendant's motion, Plaintiffs relied upon the Pennsylvania Supreme Court's decision in *Ford v. Jeffries*, 379 A.2d 111 (Pa. 1977). In *Ford*, the defendant owned a house which was purchased as an investment to rent to tenants. However, after certain tenants vacated the premises in 1968, the property fell into a state of disrepair. The following year, two separate fires broke out on the premises. After the first fire, the defendant did not undertake to repair the property. In September of 1969, a second fire broke out on the second floor of the house. The second fire spread to the plaintiff's house and resulted "in almost total destruction" of the plaintiff's house. *Ford*, 379 A.2d at 112.

The Supreme Court reversed a compulsory non-suit granted by the trial court. It determined that there was a jury question as to whether the defendant should have realized that the condition of the property "was such that third persons might avail themselves of the opportunity to commit a tort or a crime." *Id.* at 115. The court further determined that the issue

of whether negligent maintenance of a property caused it to be a fire hazard such that proximate causation could be established was properly before the jury. *Id.* at 114.

The case at bar is distinguishable from the *Ford* case. Unlike *Ford*, there is not any evidence that Defendant was on notice of the prospect that a third party would set the items in the back yard on fire. Plaintiffs argue Defendant's maintenance of its property and its placement of mattresses in the back effectively invited third parties to engage in criminal or tortious conduct.

Pennsylvania recognizes a duty owed by every property owner to take steps to ensure that property does not fall into disrepair such that it creates a risk to others outside of the land, including circumstances where that risk includes predictable criminal acts of third parties. *Mascaro v. Youth Study Center*, 523 A.2d 1118, 1123 (Pa. 1987) ("We have already noted that at common law a negligent act includes permitting real property to fall into disrepair, thereby creating an unreasonable risk to others outside the land, and that generally speaking, such a risk can include the predictable criminal acts of third parties."). However, there must still be proximate causation in order to support a finding of liability. The harm must be reasonably foreseeable. *Eckroth*, 12 A.3d at 428 (citation omitted).

Plaintiffs claim that the back yard of Defendant's property was regularly in a state of disrepair for an extended period of time prior to the fire while Defendant's tenant resided in the premises. They point to the sweep violation ticket as evidence in support of this assertion. There is not any evidence that the relative state of disrepair of the premises was such that it created a risk of predictable criminal acts by third parties. Plaintiff Wakil testified about drive-by shootings and other unrelated criminal activity during his deposition. He did not identify any

prior acts of arson or property damage extending to his or any of the other neighboring properties as a result of the state of the property at issue in this case.

Plaintiffs also argue that Defendant is negligent *per se* due to its violation of applicable City of Allentown ordinances. Under a negligence *per se* theory, duty and breach are established where it is shown that a person violated "an applicable statute, ordinance, or regulation designed to prevent a public harm." *Ramalingam v. Keller Williams Realty Group, Inc.*, 121 A.3d 1034, 1042-43 (Pa. Super. 2015) (citation omitted). To establish negligence *per se*, a party must show:

> (1) The purpose of the statue must be, at least in part, to protect the interest of a group of individuals, as opposed to the public generally;
>
> (2) The statute or regulation must clearly apply to the conduct of the defendant;
>
> (3) The defendant must violate the statute or regulation; and
>
> (4) The violation of the statute or regulation must be the proximate cause of the plaintiff's injuries.

Id.

The ordinances in question are from the City of Allentown Property Rehabilitation and Maintenance Code. The purpose of the ordinance is "to protect the public health, safety and welfare in buildings and on the premises [by establishing minimum standards] "for safety from fire [and] for safe and sanitary maintenance" of properties located within the City. City of Allentown Property Rehabilitation and Maintenance Code § 1741.03. Section 1752.07 mandates that yards belonging to an unoccupied or vacant structure be cleared and maintained free of trash, debris, or other material that cause litter "and accumulated to unhealthy and blighting proportion." *Id.* § 1752.07.

A review of the Property Rehabilitation and Maintenance Code indicates that Article 1745 deals specifically with fire prevention. Plaintiffs did not allege Defendant violated any of

the fire prevention provisions of the Property Rehabilitation and Maintenance Code. Additionally, Article 1752.04 is entitled "Safety from Fire" and applies to vacant buildings. (*Id.*) There is not any evidence that Defendant violated any of the provisions of Articles 1745 or 1752.04. The provisions Plaintiffs assert Defendant violated pertain to the property maintenance, not to fire safety. Plaintiffs have not established a proximate cause link between the provisions upon which they rely, and the fire started by an unknown third-party arsonist.

As set forth in the *Ford* case, where intentional tortious or criminal acts of a third party are within the scope of the risk created by a property owner, a jury could reasonably find proximate cause has been established. *Ford*, 379 A.2d at 115. In this case, there is not any evidence of any prior arsons at or around the subject premises. The violations of the ordinances identified by Plaintiffs led to Defendant's property being poorly maintained, but there is not evidence of a causal connection between the state of the property and the arson. There is not any evidence the Defendants were placed on notice of a risk that a fire would be started involving the mattresses in the backyard of the subject property. A reasonable trier of fact could not conclude that it was foreseeable that leaving the mattresses in the back yard of the premises would invite an arsonist to ignite the mattresses.

Conclusion

Because Plaintiffs have not produced any evidence from which a reasonable jury could determine that Defendant's actions proximately caused the harm to Plaintiffs' property, summary judgment is **GRANTED** in favor of Defendant.

By the Court:

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Douglas G. Reichley, J.