

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

JACK POWELL,)
)
Plaintiff,)

vs.)

KNOLOGY OF CHARLESTON INC.,)
)
Defendant.)

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IN THE COURT OF COMMON PLEAS
MAY 16 2016

SC Court of Appeals

Civil Action No. 2013-CP-10-6019

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JULIE ARMSTRONG
CLERK OF COURT

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

THIS MATTER comes before this Court on Defendant's motion for summary judgment. A full hearing on the matter took place on April 2, 2015 at the Charleston County Courthouse. Present at the hearing were Benjamin Davis, Esquire, of McAngus Goudelock & Courie, LLC, representing the Defendant, and Plaintiff Jack Powell, Pro Se. After considering the motion, oral arguments, supporting materials, and legal memoranda submitted, the Court finds that there are no genuine issues of material fact, and that Defendant is entitled to judgment as a matter of law.

Facts

Plaintiff's Complaint alleges causes of action labeled as gross negligence and negligent supervision of employees and subcontractors against Defendant. Plaintiff alleges that he was walking up a right of way beside Folly Road at around 9:00 p.m. on 6-21-12 and tripped on an unburied cable line in the dark. (Compl. ¶ 1.) He alleges he was knocked unconscious and injured his head, neck, shoulder and knee. He alleges the fall occurred at 930 Folly Road in front of the Folly Oaks Center. (Compl. ¶ 3.) Plaintiff alleges that, "After investigating, the two Knology unburied cable lines were exposed for months and running through the front yard of the Folly Oaks Center for about 30 feet in the right of way. They were connected to a telephone pole

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that was located about one foot from busy Folly Road.” (Compl. ¶ 3.)

Plaintiff alleges that Defendant was grossly negligent in failing to breach its duty to supervise employees and/or subcontractors and as a result, failed to protect Mr. Powell from being knocked unconscious and sustaining injuries to his neck, shoulder and knee. (Compl. ¶ 4.) Plaintiff also alleges that Defendant was negligent in failing to repair, bury, notify, or otherwise warn of the hazardous condition. (Compl. ¶ 5.)

Standard

Summary judgment is appropriate if the pleadings and other supporting documents “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(e), SCRPC. In determining whether to grant summary judgment, a court must view the evidence and its reasonable inferences in the light most favorable to the nonmoving party. Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433,439 (2003). However, an adverse party may not rest upon the mere allegations or denials of his pleadings to withstand summary judgment, but must set forth specific facts showing a genuine issue exists for trial. Rule 56(e), SCRPC. The rule governing summary judgment provides that “supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.” Rule 56(e), SCRPC.

A motion for summary judgment on the basis of the absence of a duty is a question of law for the court to determine. Oblachinski v. Reynolds, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 393, 593 S.E.2d 183, 186 (Ct. App. 2004). Allegations made upon information and

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belief do not meet the “personal knowledge” requirements of Rule 56(e). Dawkins, 354 S.C. at 68, 580 S.E.2d at 438 (2003).

Law/Analysis

Defendant Knology’s motion for summary judgment centered around the lack of evidence that it owned or controlled the cables described in Plaintiff’s Complaint. Likewise, Knology argued it neither possessed nor had control over the right of way on which the cables rested at any time leading up to the Plaintiff’s alleged trip and fall. As a result, Knology argued that it owed no duty to the Plaintiff, and thus, was entitled to summary judgment as a matter of law. Under South Carolina law, one who has no control owes no duty. Miller v. City of Camden, 329 S.C. 310, 314 (1997).

Photographs attached to Plaintiff’s Complaint depicted 3 unburied cables in the area of his fall on June 21, 2012. Knology argued that it had no record or evidence whatsoever of ownership or control of any of the 3 cables depicted in the photographs. It also pointed to Plaintiff’s Complaint as lacking the specificity as to which of the cables caused his fall. Knology pointed to written discovery it had produced in the case as the only possible record of any installation activities in the vicinity as being back in 2006. Those records also indicate that services to those cables concluded in 2009.

Where the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the Court is required under Rule 56 to grant summary judgment, if, under the facts presented by the Defendant, it is entitled to judgment as a matter of law. Humana Hospital-Bayside v. Lightle, 305 S.C. 214, 216 (1991). Under the facts presented by Knology, neither owned, installed, controlled, or otherwise had any connection to the cables sufficient to give rise to any duty owed to the Plaintiff.

In defense of the motion, Plaintiff failed to produce any evidence that would support an inference to the contrary. Plaintiff argued that various third party witnesses would be able to support his allegations that the cables belonged to Knology, but failed to submit any supporting affidavits, or their equivalents. An adverse party may not rest upon the mere allegations or denials of his pleadings to withstand summary judgment. Rule 56(e), SCRPC.

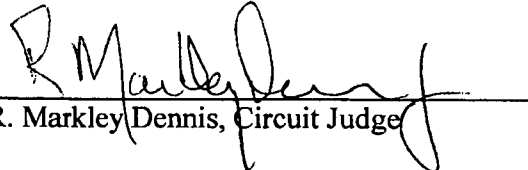
As an alternative defense, Plaintiff also alleged various deficiencies in Defendant's responses to written discovery, insisting that Defendant was in possession of evidence it owned 2 of the 3 cables. This Court recognizes that summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is "not merely engaged in a 'fishing expedition.'" Id. at 112, 410 S.E.2d at 544. Upon further inquiry, the Court determined that the issues raised by Plaintiff were either (1) originally decided in favor of Defendant during a prior discovery hearing; or (2) never raised through a proper motion. Moreover, discovery in the case had progressed for more than a year. Thus, Plaintiff failed to demonstrate that further discovery would likely uncover additional relevant evidence as to Knology's alleged responsibility for the cables.

Conclusion

In viewing the evidence and its reasonable inferences in a light most favorable to the Plaintiff, this Court finds no genuine issue as to the material facts and allegations Knology raised in support of its motion for summary judgment, and therefore, as the moving party, it is entitled to a judgment as a matter of law.

It is therefore, ORDERED, ADJUDGED, and DECREED that Defendant's Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.


R. Markley Dennis, Circuit Judge

Dated: 4/5/16

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