IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Dennise Guadalupe Sanchez, as independent administrator of the estate of Cosme Sanchez Silva, deceased,	)	
Plaintiff,	)	
v.	)	No. 20 L 13552
Garl of Illinois, LLC, Goding Electric Company, Home Depot U.S.A., Inc., Home Depot Product Authority, LLC, The Home Depot Special Services, Inc., Home Depot U.S.A., Inc. d/b/a Husky Tools,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Tenants in possession are generally responsible for repairing and maintaining leased property. In this case, the same person executed a lease agreement as the owner-landlord and the corporate-lessee, thereby raising questions as to that person's knowledge of the building's alleged defective electrical system that caused the decedent's electrocution. At this stage, questions of fact remain that are not easily resolved; consequently, the defendant's motion to dismiss must be denied.

Facts

On June 1, 2018, Garl of Illinois, LLC, and Hudapack Metal Treating of Illinois, Inc., entered into a lease agreement for the property located at 550 Mitchell Road in Glendale Heights. The agreement explains that Garl solely owned the property and Hudapack leased it to conduct a metal heat treating business.

The lease contains various provisions relevant to the current dispute. As provided:

Section Four—Alterations, Additions, and Improvements

> [Hudapack] may at any time . . . make any alterations, additions, or improvements in and to the demised premises and the building.
>
> * * *
>
> The plans and specifications for any alterations estimated to cost $5,000.00 or more shall be submitted to [Garl] for written approval prior to commencing work.

Section Five—Repairs

> [Hudapack] shall, at all times during the term of this lease agreement and at its own cost and expense, repair, replace, and maintain in a good, safe, and substantial condition, all buildings and any improvements, additions, and alterations to such buildings, on the demised premises, and shall use all reasonable precaution to prevent waste, damage, or injury to the demised premises; including but not limited to exterior structure, roof, parking lot and driveways.

Section Eleven—Indemnity

> [Hudapack] shall indemnify [Garl] against any and all expenses, liabilities, and claims of every kind . . . arising out of . . . (2) any injury or damage happening on or about the demised premises . . . .

Section Twenty—Liability of Lessor

> [Hudapack] shall be in exclusive control and possession of the demised premises, and [Garl] shall not be liable for any injury or damages to any property or to any person on or about the demised premises or for any injury or

> damage to any property of [Hudapack]. The provisions of this lease agreement permitting [Garl] to enter and inspect the demised premises are made to ensure that [Hudapack] is in compliance with the terms and conditions of this lease agreement and to insure that [Hudapack] makes repairs which [Hudapack] has failed to make. [Garl] shall not be liable to [Hudapack] for any entry on the premises for inspection purposes.

On the lease agreement's last page are the signatures of Earl Pack, both as Garl's manager and Hudapack's president.

On December 21, 2018, Hudapack employed Cosme Sanchez Silva who worked at the Glendale Heights facility. On that day, and while in the scope of his employment, Sanchez Silva was electrocuted and died.

On December 21, 2020, Dennise Guadalupe Sanchez filed a ten-count complaint on behalf of Cosme's estate. Counts one and two are directed against Garl and are brought pursuant to the Wrongful Death and the Survival Acts respectively. Both causes of action are based on a premises liability theory. Dennise alleges that, pursuant to Restatement (Second) of Torts section 343, a possessor or occupier of land has a duty to maintain its premises in a reasonably safe condition. Dennise further alleges that Garl failed to exercise ordinary care to ensure its property was reasonably safe. Dennise claims Garl breached its duty to Cosme by, among other things: (1) operating the facility negligently; (2) allowing damaged or burned electrical outlets to exist; (3) allowing dangerous and improper electrical wiring to exist; (4) allowing a defective electrical system to exist; (5) failing to supply, maintain, or install ground fault circuit interrupters; (6) allowing electrical outlets to exist in wet areas; (7) carelessly maintaining its property; and (8) failing to enforce rules requiring ground fault circuit interrupters be installed and maintained.

On February 24, 2021, Garl filed a motion to dismiss counts one and two of the complaint. Garl's motion argues that Dennise

cannot establish Garl owed Cosme a duty of care based on the lease agreement's terms. Dennise filed a response brief, and Garl filed a reply.

Analysis

Garl brings its motion to dismiss pursuant to Code of Civil Procedure section 2-619. 735 ILCS 5/2-619. A section 2-619 motion to dismiss authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). A court considering a section 2-619 motion must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *See Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). All well-pleaded facts contained in the complaint and all inferences reasonably drawn from them are to be considered true. *See Calloway v. Kinkelaar*, 168 Ill. 2d 312, 324 (1995). A court is not to accept as true those conclusions unsupported by facts. *See Patrick Eng., Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. As has been stated: "The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation." *Czarobski*, 227 Ill. 2d at 369.

One of the enumerated grounds for a section 2-619 motion to dismiss is that "affirmative matter" avoids the legal effect of or defeats the claim. 735 ILCS 5/2-619(a)(9). Affirmative matter is something in the nature of a defense negating the cause of action completely or refuting crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint. *See Illinois Graphics*, 159 Ill. 2d at 485-86. A contract is affirmative matter sufficient to support a motion to dismiss. *Hartz v. Brehm Preparatory Sch., Inc.*, 2021 IL App (5th) 190327, ¶ 40. If a defendant fulfills its burden of going forward with affirmative matter, "the burden then shifts to the plaintiff, who must establish that the affirmative defense asserted either is 'unfounded or requires the resolution of an essential element of material fact before it is proven.'" *Epstein v. Chicago Bd. of Ed.*, 178 Ill. 2d 370, 383 (1997) (quoting *Kedzie & 103rd Currency*

Exchange, Inc., 156 Ill. 2d at 116). The plaintiff may establish this by presenting "affidavits or other proof." 735 ILCS 5/2-619(c).

Garl argues that its lease agreement with Hudapack establishes its divestment of any duty to Hudapack's invitees, including employees. As stated, the general rule is: "the tenant who is in possession, not the landlord, is liable for injuries sustained by third persons because of a failure to keep the property in repair." *Wright v. Mr. Quick, Inc.*, 109 Ill. 2d 236, 238 (1985) (citing cases). "The basic rationale for lessor immunity has been that the lease is a conveyance of property which ends the lessor's control over the premises, a prerequisite to the imposition of tort liability." *Id.* (citing Robert S. Schoshinski, *American Law of Landlord and Tenant* § 4.1, at 186 (Lawyer's Coop. 1980)). There are exceptions to the general rule if, for example: (1) the lessor knew or should have known of a latent defect at the time of leasing that the lessee could not have discovered during a reasonable examination; (2) the lessor fraudulently conceals a known, dangerous condition; (3) the defect causing the harm is a nuisance; (4) the lessor promises the lessee to repair the premises at the time of the leasing; and (5) the lessor violates a statute or ordinance prescribing a duty for the protection and safety of persons to which the lessee belongs and the harm is the kind against which the statute or ordinance is designed to protect. *Gilbreath v. Greenwalt*, 88 Ill. App. 3d 308, 309-310 (3d Dist. 1980) (citing cases).

Garl argues that lease sections five, 11, and 20 cut off any duty it potentially owed to Cosme. Under section five, Hudapack accepted all responsibility to repair, replace, and maintain the building. Under section 11, Hudapack agreed to indemnify Garl of any and all liabilities and claims of every kind. And under section 20, Hudapack remained in exclusive control and possession of the property. Each of these provisions is ultimately unavailing.

The reason Garl's argument fails is found on the lease agreement's last page. There, Earl Pack executed the lease both as Garl's manager as well as Hudapack's president. While Pack's

wearing two different hats for two different companies is permitted under corporate law, it raises questions of fact under the tenant-in-possession rule and the facts of this case. At a minimum, there exists a question as to what Pack, or other Garl corporate representatives, knew about the building's allegedly defective electrical system when Pack executed both sides of the lease. Further, the record does not indicate how long Garl had owned the building and what type of inspections had been conducted prior to the lease's execution, if any. There also exists a question as to whether the building's electrical system violated any Glendale Heights building codes.

As noted above, a section 2-619(a)(9) motion is designed to eliminate easily resolved questions of fact. The questions raised in this matter are, so far, not easily resolved but are ripe for discovery.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendant Garl's motion to dismiss is denied;
2. Garl has until June 21, 2021 to answer the complaint; and
3. The parties are to submit an agreed case management order by July 6 2021.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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