

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 10-00031

GIOVANI ROMAGNOLE

vs.

DANIEL KEEFE & another<sup>1</sup>

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT DANIEL  
KEEFE'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Plaintiff Giovanni Romagnole ("Romagnole") seeks damages from his former landlord, defendant Daniel Keefe ("Keefe"), for injuries allegedly caused by three intruders at Romagnole's rental premises. Romagnole alleges counts of negligence and breach of the implied warranty of habitability.<sup>2</sup> Keefe now moves for summary judgment on all counts. After a hearing, and for the reasons set forth below, Keefe's motion for summary judgment is ALLOWED in part and DENIED in part.

DISCUSSION

A. Summary Judgment Standard

Summary judgment is a "device to make possible the prompt disposition of controversies on their merits without a trial, if in essence there is no real dispute as to the salient facts or if only a question of law is involved." *Cassesso v. Comm'r of Corr.*, 390 Mass. 419, 422 (1983), quoting *Community Nat'l Bank v. Dawes*, 369 Mass. 550, 553 (1976). Summary judgment is granted when there is no genuine issue of material fact and the summary judgment record entitles the moving party to judgment as a matter of

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<sup>1</sup> Nelva Dos Santos

<sup>2</sup> At oral argument, the parties agreed that summary judgment should enter on Count II.

law. Mass. R. Civ. P. 56(c); *Cassesso*, 390 Mass. at 422. The moving party bears the burden of affirmatively demonstrating the absence of a triable issue and that the summary judgment record entitles it to judgment as a matter of law. *Pederson v. Time, Inc.*, 404 Mass. 14, 17 (1989). The moving party may satisfy its burden either by submitting affirmative evidence that negates an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element. *Flesner v. Technical Commc'ns Corp.*, 410 Mass. 805, 809 (1991); *Kourouvacilis v. Gen. Motors*, 410 Mass. 706, 716 (1991). Once the moving party establishes the absence of a triable issue, the burden shifts to the nonmoving party to respond by "set[ting] forth specific facts showing that there is a genuine issue for trial." Mass. R. Civ. P. 56(e); *Kourouvacilis*, 410 Mass. at 716.

#### **B. Analysis**

Count I of Romagnole's complaint alleges negligence based on three separate theories. First, Romagnole alleges that Keefe negligently failed to manage his rental property in a safe and reasonable manner (hereinafter called Count I(a)). Second, Romagnole asserts that Keefe negligently supervised Nelva Dos Santos ("Dos Santos"), the alleged property manager for Romagnole's rental property (hereinafter called Count I(b)). Finally, Romagnole claims that Keefe negligently hired Dos Santos to manage the rental property (hereinafter called Count I(c)).

Summary judgment must be allowed on Count I(a) because Romagnole has not shown a reasonable expectation of proving that Keefe was legally obligated to protect Romagnole from the risk that allegedly caused him harm. While a landlord must exercise reasonable care in protecting the occupants of the premises, *Or v. Edwards*, 62 Mass.

App. Ct. 475, 476 (2004), the landlord's duty of care extends only to those risks that are reasonably foreseeable. *Whittaker v. Saraceno*, 418 Mass. 196, 198 (1994) (foreseeability defines the limits of a duty of care). Here, the record is devoid of any evidence that Romagnole's attack was reasonably foreseeable to Keefe. Romagnole has advanced no evidence that Keefe knew or reasonably should have known that a physical attack might occur at the rented premises. Because Romagnole has not responded with facts that would establish a triable issue as to Keefe's duty of care, Keefe is entitled to summary judgment on this claim. See *Pederson*, 404 Mass. at 17.

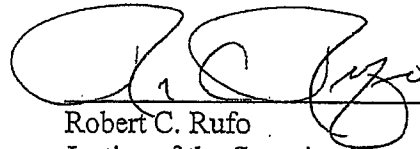
There is a genuine issue of material fact as to whether Keefe hired Dos Santos to manage Romagnole's rental premises. Romagnole testified in his deposition that he believed Dos Santos managed the rental property. Romagnole's belief stems from allegations that his initial meeting regarding the rental was with Dos Santos only, that Dos Santos collected the rent and money for utilities on a monthly basis, and that Keefe instructed him to speak with Dos Santos if problems arose. The existence of this factual dispute defeats Keefe's motion as to Romagnole's claims for negligent supervision (Count I(b)) and negligent hiring (Count I(c)).<sup>3</sup>

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<sup>3</sup> At oral argument, counsel for Keefe alternatively argued that the record is devoid of any evidence indicating that Dos Santos was an unfit hire, and that, therefore, summary judgment should enter on Count I(c). This argument, however, was not put forth in Keefe's motion or supporting memoranda. As such, Romagnole was not obligated to set forth specific facts showing a genuine issue for trial. Mass. R. Civ. P. 56(e).

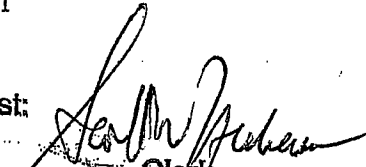
ORDER

For the foregoing reasons, defendant Keefe's motion for summary judgment is ALLOWED with respect to Romagnole's claims for negligent failure to manage rental premises in a safe manner (Count I(a)) and breach of the implied warranty of habitability (Count II). Keefe's motion for summary judgment is DENIED with respect to Romagnole claims for negligent supervision (Count I(b)) and negligent hiring (Count I(c)).

  
Robert C. Rufo  
Justice of the Superior Court

Dated: June 13, 2011

A true copy, Attest:

  
Clerk