

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS.

BROCKTON DISTRICT COURT
C.A. NO.: 991SCV1409

PHILLIP HUNT,)
Plaintiff,)
)
v.)
)
CHAMPION BUILDERS, INC.,)
Defendant/Third Party)
Plaintiff,)
)
v.)
)
ALLSTATE OVERHEAD DOOR COMPANY and)
LINDA HUNT D/B/A HUNT ENTERPRISES,)

Third Party Defendants)

ALLSTATE OVERHEAD DOOR COMPANY'S MOTION FOR SUMMARY JUDGMENT

Now comes the third-party defendant Allstate Overhead Door Company ("Allstate") and respectfully moves for summary judgment on the grounds that neither the plaintiff nor the third party plaintiff have presented any evidence that a garage door which allegedly injured the plaintiff was defective or negligently installed by Allstate.

In further support of this motion, the Allstate relies on the attached memorandum of law.

THE THIRD PARTY DEFENDANT,
ALLSTATE OVERHEAD DOOR COMPANY,
BY ITS ATTORNEY,

DATED:

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ALLSTATE OVERHEAD DOOR COMPANY'S MEMORANDUM IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT

The third-party defendant Allstate Overhead Door Company ("Allstate") respectfully moves for summary judgment on the grounds that neither the plaintiff nor the third party plaintiff have presented any evidence that a garage door which allegedly injured the plaintiff was defective or negligently installed by Allstate.

UNDISPUTED FACTS

Plaintiff Phillip Hunt alleges that on May 3, 1998, he was working at a construction site for which defendant/third-party plaintiff Champion Builders, Inc. ("Champion") was the general contractor. (See complaint, attached as Exhibit 1, at para. 3-4.) He alleges that as he exited the house under construction, a garage door came down and struck him on the head. (See complaint at para. 5.) Mr. Hunt alleges that Champion was negligent in

installing the garage door and in failing to warn him that the garage door could come down suddenly and without warning. (See complaint at para. 6.)

Champion filed a third party complaint against Allstate, alleging that Allstate installed the subject garage door, and apparently seeking contribution and indemnity against it. (See third party complaint, attached as Exhibit 2.)

Champion hired Allstate to supply and install the electric garage doors for the house under construction. (See deposition of Matthew Dacey, attached as Exhibit 3, at p. 36, 42.) Allstate installed them on April 23, 1998. (See Allstate's answers to Champion's interrogatories, attached as Exhibit 4, at answer # 9.)

The doors had electronic sensors a few inches off the ground that shot a beam lengthwise across the door opening. (See deposition of Matthew Dacey at p. 66.) If a person or object crossed the beam while the door was closing, the door would automatically stop closing and retract to the open position. (See deposition of Matthew Dacey at p. 42-43.) The bottom of the garage doors were covered with rubber weather stripping an eighth inch to a quarter inch thick. (See deposition of Matthew Dacey at p. 87.) The weather stripping has rounded corners. (See deposition of Matthew Dacey at p. 87-88.)

Champion commonly tests the garage doors after installation. (See deposition of Matthew Dacey at p. 66.) After installation, the garage door were frequently opened and closed by Champion's other subcontractors as construction continued. (See deposition of

Matthew Dacey at p. 57.) Champion is unaware of any problems with the installation of the garage door at the subject house. (See deposition of Matthew Dacey at p. 53.)

The plaintiff was hired at the construction site in order to insulate pipes in the basement. (See deposition of Phillip Hunt, attached as Exhibit 5, at p. 20.) When he arrived at the jobsite on May 3, 1998, only his brother, Paul Hunt, for whom he was working, his brother's wife, Linda Hunt, and a cleaning crew were present. (See deposition of Phillip Hunt at p. 28-30.) His brother told him to leave through the garage door. (See deposition of Phillip Hunt at p. 38.) When the plaintiff finished work for the day, the garage door was open. (See deposition of Phillip Hunt at p. 43.) When the plaintiff was directly under the garage door it started to come down and hit him on the head. (See deposition of Phillip Hunt at p. 47.)

The plaintiff did not see it start to come down. (See deposition of Phillip Hunt at p. 48.) He does not know why the garage door started to come down. (See deposition of Phillip Hunt at p. 48, 51.)

After the alleged accident, two Champion employees tested the garage door and opener and they seemed to work fine. (See deposition of Matthew Dacey at p. 84.) They also tested the sensor several times by having one person press the button to close the garage door and having the other person put his foot through the sensor beam. Each time this action stopped the door from closing and made it retract. (See deposition of Matthew Dacey

at p. 85-86.) Matt Dacey, the president of Champion Builders who testified on its behalf at a 30(b)(6) deposition of Champion, stated that he does not believe that Allstate did anything wrong to cause the alleged accident. (See deposition of Matthew Dacey at p. 7, 95.)

ARGUMENT

Summary judgment should be granted where there are no material facts in dispute and the moving party is entitled to judgment as a matter of law. Cassesso v. Commissioner of Correction, 390 Mass. 419, 422 (1983); Community National Bank v. Dawes, 369 Mass. 550, 553 (1976); Mass. R. Civ. P. 56c. The moving party bears the burden of affirmatively demonstrating the absence of a triable issue, and that the moving party is entitled to judgment as a matter of law. Pederson v. Time, Inc., 404 Mass. 14, 16-17 (1989). Where the party moving for summary judgment does not have the burden of proof at trial, this burden may be met by either submitting affirmative evidence that negates an essential element of the opponent's case, or by "demonstrating that proof the at that element is unlikely to be forthcoming at trial." Flesner v. Technical Communications Corp., 410 Mass. 805, 809 (1991); Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991). Once the moving party establishes the absence of a triable issue, the party opposing the motion must respond and allege specific facts establishing the existence of a material fact in order to defeat the motion. Pederson, supra at 17.

In order to go forward on a claim of negligence, the

plaintiff must submit evidence that the defendant, either by omission or by action, failed to exercise that degree of care, vigilance, and forethought which a person of ordinary caution and prudence ought to exercise under the particular circumstances. Altman v. Aronson, 231 Mass. 588, 591 (1919). The mere fact that an unfortunate event occurs does not furnish evidence that it was caused by negligence; the plaintiff must point to some negligent act or omission on the part of the defendant. Mendum v. M.B.T.A., 1 Mass. App. Ct. 873 (1974); Conley v. Town Taxi, Inc., 298 Mass. 130 (1937); Moynihan v. Boston & Main R.R. Co., 227 Mass. 180 (1917). If the precise cause is left to conjecture and may be as reasonably attributed to a condition which did not arise from the defendant's negligence, the a plaintiff may not recover against the defendant. Wardwell v. George H. Taylor, 333 Mass. 302, 305 (1955). When an accident occurs after a seller of a product has surrendered control of it, the plaintiff must show that the alleged defect existed when he surrendered control. Kourouvacilis v. General Motors Corp., 410 Mass. 706, 708 (1991).

In this case, neither the plaintiff nor the third party plaintiff has put forth any evidence to suggest that the garage door installed by Allstate was defective or negligently installed, or that Allstate was negligent in any manner. Accepting the facts as stated by the plaintiff, the evidence demonstrates only that after several other contractors had been using the garage doors following their installation, the door closed for an unknown reason while the plaintiff was walking under it. This is not

evidence that Allstate was negligent. Therefore, summary judgment should be granted.

CONCLUSION

As neither the plaintiff nor the third party plaintiff have presented any evidence that a garage door installed by Allstate was defective or negligently installed, summary judgment should be granted to Allstate.

WHEREFORE, Allstate respectfully requests that the court grant this motion for summary judgment.

THE THIRD PARTY DEFENDANT,
ALLSTATE OVERHEAD DOOR COMPANY,
BY ITS ATTORNEY,

DATED:

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