

The Supreme Court of the State of Louisiana

RHONDA LACOUR, KEISHA CANGELOSI
AND TIMOTHY AUTIN

No. 2021-CC-00953

VS.

PHILLIS M. SINO, STATE FARM MUTUAL
AUTOMOBILE INS. CO., HOFFER'S OF
CHALMETTE, INC., XYZ INS. CO., AARON'S
INVESTMENTS, INC. D/B/A AARON'S
DONUTS, DEF INS. CO., JWS AMUSEMENTS,
L.L.C. AND GHI INS. CO.

IN RE: Aaron's Investments, Inc. d/b/a Aaron's Donuts - Applicant Defendant;
Atlantic Casualty Insurance Company - Applicant Defendant; Aaron Barker -
Applicant Defendant; Applying For Supervisory Writ, Parish of St. Bernard, 34th
Judicial District Court Number(s) 18-0396, Court of Appeal, Fourth Circuit,
Number(s) 2021-C-0300;

March 15, 2022

Writ application granted. See per curiam.

JTG
SJC
WJC
JBM

Weimer, C.J., would grant and docket.
Hughes, J., concurs in the result.
Griffin, J., concurs and assigns reasons.

Supreme Court of Louisiana
March 15, 2022


Chief Deputy Clerk of Court
For the Court

03/15/2022

SUPREME COURT OF LOUISIANA

No. 2021-CC-00953

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HOFFER'S OF CHALMETTE, INC., XYZ INS. CO., AARON'S
INVESTMENTS, INC. D/B/A AARON'S DONUTS, DEF INS. CO., JWS
AMUSEMENTS, L.L.C. AND GHI INS. CO.**

On Supervisory Writ to the 34th Judicial District Court, Parish of St. Bernard

PER CURIAM

In this case, we are presented with the issue of whether a lessee of a shop is responsible for injuries to patrons in the shop caused by a vehicle crashing into the building from the parking lot. For the reasons that follow, we conclude the lessee is entitled to summary judgment.

UNDERLYING FACTS AND PROCEDURAL HISTORY

This case arises from an accident which occurred at a Chalmette strip mall. Phyllis Sino was attempting to park in front of the Aaron's Donuts shop when she mistakenly pressed the accelerator rather than the brake of her vehicle. As a result, Ms. Sino's vehicle accelerated over a parking stop, across the raised sidewalk, and crashed through the exterior wall of the donut shop.

At the time of the accident, plaintiffs were playing video poker in a small room inside of the donut shop. The force of the impact caused the video poker machines to fall on plaintiffs, resulting in injury.

Plaintiffs later filed suit against several defendants, including Aaron's Investment's, Inc. d/b/a Aaron's Donuts and its insurer, Atlantic Casualty Insurance Company (collectively referred to hereinafter as "Aaron's"). Essentially, plaintiffs

alleged defendants were negligent in failing to place a protective barrier in the parking lot to prevent an accident of this nature and by allowing an accident hazard situation in the parking lot.

Aaron's moved for summary judgment. In support of its motion, Aaron's argued it was a lessee of the premises and had no custody or control over the building's exterior, sidewalk, or parking lot pursuant to its lease agreement with Hoffer's of Chalmette, Inc. ("Hoffer's"), the owner of the strip mall. Alternatively, Aaron's asserted it was not liable because the accident was not reasonably foreseeable.

After a hearing, the district court denied Aaron's motion for summary judgment. Aaron's applied to the court of appeal, which denied supervisory relief.

Upon Aaron's application to this court, we ordered written briefing pursuant to the provisions of La. Code Civ. P. art. 966(H).¹ Having received briefs from both parties, we now review the motion for summary judgment on the merits.

DISCUSSION

A summary judgment is reviewed on appeal de novo, with the appellate court using the same criteria that govern the district court's determination of whether summary judgment is appropriate; i.e., whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. *Guidry v. Brookshire Grocery Co.*, 19-1999 (La. 2/26/20), 289 So.3d 1026, 1027; *Murphy v. Savannah*, 18-0991 (La. 5/8/19), 282 So.3d 1034, 1038; *Wright v. Louisiana Power & Light*, 06-1181 (La. 3/9/07), 951 So.2d 1058, 1070.

¹ As required by the article, we permitted the parties an opportunity to request oral argument and entertained plaintiffs' request for argument. After careful consideration, we found oral argument was unnecessary under the facts of this case and therefore elected to exercise our discretion to consider the matter on written briefs only.

Duty is a question of law. *Harris v. Pizza Hut of Louisiana, Inc.*, 455 So.2d 1364, 1371 (La. 1984). In general, store owners owe a duty to patrons to take reasonable care for their safety, although they are not the insurer of the patron's safety. *Brock v. Winn Dixie Louisiana, Inc.*, 617 So.2d 1234, 1237 (La.App. 3 Cir. 1993), *writ denied*, 620 So.2d 848 (La. 1993). The jurisprudence has recognized that the duty of reasonable care requires the storeowner to protect against the probability of injuries foreseeable in law, which has been defined as "those risks that are probable and foreseeable, not those risks which are merely foreseeable in fact as possible." *Mayeur v. Time Saver, Inc.*, 484 So.2d 192, 195 (La.App. 4 Cir. 1986), *writ denied*, 486 So.2d 751, 753 (La. 1986). Applying this reasoning, courts have held the store owner's "duty to provide its patrons a safe entranceway does not encompass the risk that a motorist will negligently drive her car from the parking lot, over the curb, across the walkway and into a patron about to enter the store." *Mayeur*, 484 So.2d at 195; *see also Estate of Loveless v. Gay*, 41,575 (La.App. 2 Cir. 12/13/06), 945 So.2d 233; *Millet on Behalf of Millet v. Knockum*, 503 So.2d 51 (La. App. 5 Cir. 1987), *writ denied*, 503 So.2d 1008 (La. 1987).

Considering the facts of the instant case, we find it was not foreseeable for Aaron's to anticipate that a driver would mistakenly accelerate her vehicle from the parking lot into the wall of its shop and cause video poker machines to fall, resulting in injury to customers within the shop. Although plaintiffs presented evidence of minor traffic accidents in the parking lot in the past, they presented no evidence of any prior accidents of this type or magnitude.

We have long recognized that rules of conduct are "designed to protect *some* persons under *some* circumstances against *some* risks," but "[s]eldom does a rule protect every victim against every risk that may befall him" *Gresham v. Davenport*, 537 So.2d 1144, 1147 (La. 1989) (quoting Malone, *Ruminations on Cause-In-Fact*, 9 Stanford L. Rev. 60, 73 (1956)) [emphasis in original]. The risk

that plaintiffs would be injured under the unique facts presented in this case is simply too remote and attenuated to fall within the scope of the duty Aaron's owed to its customers.² Therefore, we find Aaron's is entitled to judgment as a matter of law.³

DECREE

For the reasons assigned, the writ is granted. The judgment of the district court is reversed. Summary judgment is granted in favor of Aaron's Investment's, Inc. d/b/a Aaron's Donuts and Atlantic Casualty Insurance Company, and plaintiffs' action against these defendants is dismissed with prejudice.

² Our holding should not be read as totally foreclosing the possibility of liability on the part of a store lessee or owner for injuries to customers resulting from the negligence of third parties under different facts. For example, courts have held that a store owner may have a duty to protect customers who are outside of the store or in the process of entering the store from negligent motorists. *Parish v. L.M. Daigle Oil Company*, 98-1716 (La.App. 3 Cir. 6/23/99), 742 So.2d 18; *Martin v. Watson's Grocery*, 615 So.2d 999 (La.App. 1 Cir. 1993).

³ Because of this holding, we pretermitted discussion of whether Aaron's had custody or control over the parking lot.