098-8-405

Circuit Court
OF THE
City of Richmond

John Marshall Courts Building

RANDALL G. JOHNSON
JUDGE

400 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219-1999

December 2, 1998

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Re: Case No. LE-1133-4
Laura Martlock v. Williamsburg Plantation, Inc.

Dear Counsel:

This trip and fall case is before the court on defendant's demurrer. The motion for judgment alleges that in September 1997, plaintiff and her family were staying at defendant's time-share condominiums under a time-share agreement. On the night of September 25, she and her family were using the indoor swimming pool, one of the common areas maintained by defendant for use by invitees such as plaintiff. At approximately 9:30 p.m., plaintiff left the swimming pool to return to her condominium. To get to her condominium, plaintiff had to go outside the swimming pool building and across a raised brick patio that required her to descend two steps to reach the ground. It was dark outside and the patio material was dark. There was no artificial lighting in the area. When plaintiff got to the end of the patio, she did not see the steps and fell. Her suit claims that defendant had a duty to make the area safe by providing adequate lighting and/or placing handrails or warnings at the steps.

The demurrer is based on two grounds. First, defendant argues that the case of *Knight v. Fourth Buckingham Community, Inc.*, 179 Va. 13, 18 S.E.2d 264 (1942), makes it clear that a property owner does not have a duty to provide lighting in the area of steps and that plaintiff's allegation that the defendant in this case had such a duty must fail. Second, defendant contends that plaintiff's allegations show that she was contributorily negligent as a matter of law.

With regard to defendant's first argument, *Knight* involved a claim by a tenant that her landlord's failure to provide lighting in the common stairway of an apartment building caused her to fall and be injured. The Supreme Court held that the landlord had no duty to provide such lighting:

> In Virginia there is no statute which directs that the landlord must maintain artificial lights in hallways and stairways in apartment houses. Therefore, in this jurisdiction the common law prevails. By the common-law rule the landlord is not obligated to the tenant to light stairways in the leased premises in the absence of express contract. . . .
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> . . . "The common-law liability of a landlord for the safe condition of approaches to, and the stairs and hallways in, premises used in common by different tenants, does not require him to keep the ordinary halls and stairways lighted, and hence he is not liable for injuries received by reason of the unlighted condition of this portion of the premises."

179 Va. at 16 (citations omitted).

The court does not believe that the above holding is applicable to this case.

In the case-at-bar, plaintiff was injured on steps leading from an outside patio adjacent to a swimming pool building, not on steps in an "ordinary hall" or "stairway" of an apartment building. This court is unwilling to extend *Knight's* holding to apply to all steps everywhere. Accordingly, this ground as a basis for the demurrer is rejected.

The court also rejects defendant's argument that plaintiff was contributorily negligent as a matter of law. On this point, defendant relies on the case of *Baker v. Butterworth*, 119 Va. 402, 89 S.E. 849 (1916), which involved a hotel hallway that was alleged in the motion for judgment to have been "without lights," "completely dark," and "wrongfully and carelessly kept in utter darkness." As plaintiff walked along the hall to go to the bathroom, she fell down a stairway and was injured. The Court held that she was contributorily negligent a matter of law:

> It is true plaintiff alleges that she was proceeding "carefully and cautiously" in making her way from her room in search of the toilet in the rear of the hall, but this is but a conclusion of law, since she pleaded no facts that would have justified her use of the hall under the conditions set out. Her declaration affirmatively shows that she attempted to walk through the hall which was "completely" and "in utter darkness."

119 Va. at 405.

The limited application of the above holding was made clear in *Colonial Natural Gas Company v. Sayers*, 222 Va. 781, 284 S.E.2d 599 (1981). There, the tenant of an apartment complex was injured, at night, when he fell while trotting along a footpath commonly used by tenants. Rejecting defendants' argument that the holding of *Baker* and a similar holding in *Smith v. Wiley-Hall Motors*, 184 Va. 49, 34 S.E.2d 233 (1945), required a finding that the tenant was contributorily negligent as a matter of law, the Court said:

> In arguing that the evidence establishes conclusively that Sayers was guilty of contributory negligence, [defendants] rely upon [*Baker* and *Smith*]. In *Baker*, the plaintiff obtained a judgment in the trial court for injuries sustained when she fell down a staircase at the end of an unlighted hotel hallway. We held that the trial court erred in not sustaining the defendants' demurrer on the ground of contributory negligence, since the plaintiff's pleading failed to aver a request for lights and affirmatively alleged that the hallway she used was "in utter darkness." 119 Va. at 406-07, 89 S.E. at 850. We have frequently observed, however, that determinations of contributory negligence as a matter of law turn on the particular facts in the particular case. *Pioneer Const. Co. v. Hambrick*, 193 Va. 685, 689-91, 70 S.E.2d 302, 305-06 (1952). In *Baker*, the overriding factor, within the factual context of the hotel conditions there described, was the plaintiff's own allegation of "complete" and "utter darkness." *Baker*, supra, 119 Va. at 407, 89 S.E. at 850.

> In *Smith*, the plaintiff went into the reception room of a gasoline station to use the toilet. Without asking directions, he opened an unmarked door, entered a dark room, felt along the wall for a light switch, fell into the grease pit, and was injured. The case was submitted to a jury, which returned a verdict for the defendant, and the trial court entered judgment on the verdict. On appeal, we affirmed the judgment and observed that the plaintiff was obviously guilty of negligence constituting the sole proximate cause of his injuries and that the trial court might properly have sustained the defendant's motion to strike the plaintiff's evidence. 184 Va. at 52, 34 S.E.2d at 234.
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> *Baker* and *Smith* are distinguishable from the present case. In *Baker*, the plaintiff was walking in total darkness; Sayers was walking where he could see by the reflection of street lights the path underfoot and large objects in front of him. In *Smith*, the plaintiff was in an unfamiliar place walking into an area where he had no right to go; Sayers was on a familiar path where he had a right to be.

222 Va. at 785-86.

The facts of the case-at-bar are also distinguishable from the facts in *Baker* and *Smith*. The present plaintiff, unlike the plaintiff in *Baker*, does not claim that the area in which she fell was in complete or utter darkness. The present plaintiff, unlike the plaintiff in *Smith*, was where she had a right to be. Although the present plaintiff does allege that she was unfamiliar with the area in which she fell, which was one -- *but only one* -- of the factors cited in *Baker* and *Smith* as an element of contributory negligence in those cases, this court is unwilling to hold that such fact, *by itself*, makes this plaintiff negligent as a matter of law. Giving the plaintiff the benefit of all inferences to which she is entitled at this stage of the proceedings, *see, e.g., Lentz v. Morris*, 236 Va. 78, 80, 372 S.E.2d 608 (1988), the demurrer must be overruled.

A copy of an order consistent with this opinion, and which I have entered today, is enclosed.

Very truly yours,

Randall G. Johnson