VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 21-CV-00685

William Doherty v. Town of Woodstock, et al

DECISION ON MOTIONS FOR SUMMARY JUDGMENT

William Doherty sues the Town of Woodstock and Alphonse Sorrentino for injuries sustained when he slipped and fell on the Town's sidewalk adjacent to a building owned by one of Mr. Sorrentino's businesses. Both Defendants move for summary judgment. The court grants both motions.

The standards on a motion for summary judgment should be so familiar as to make their recitation unnecessary. Here, while he pays lip service to those standards, Mr. Doherty's responses fall short of meeting them. Thus, at the risk of belaboring the obvious, the court repeats the standards.

Under Rule 56, the initial burden falls on the moving party to show an absence of dispute of material fact. *E.g.*, *Couture v. Trainer*, 2017 VT 73, ¶ 9, 205 Vt. 319 (citing V.R.C.P. 56(a)). When the moving party has made that showing, the burden shifts to the non-moving party; that party may not rest on mere allegations, but must come forward with evidence that raises a dispute as to the facts in issue. *E.g.*, *Clayton v. Unsworth*, 2010 VT 84, ¶ 16, 188 Vt. 432 (citing *Alpstetten Ass'n, Inc. v. Kelly*, 137 Vt. 508, 514 (1979)). Where that party bears the burden of proof on an issue, if fairly challenged by the motion papers, it must come forward with evidence sufficient to meet its burden of proof on that issue. *E.g.*, *Burgess v. Lamoille Housing P'Ship*, 2016 VT 31, ¶ 17, 201 Vt. 450 (citing *Poplaski v. Lamphere*, 152 Vt. 251, 254–55 (1989)). The evidence, on either side, must be admissible. *See* V.R.C.P. 56(c)(6); *Gross v. Turner*, 2018 VT 80, ¶ 8, 208 Vt. 112 ("Once a claim is challenged by a properly supported motion for summary judgment, the nonmoving party may not rest upon the allegations in the pleadings, but must come forward with admissible evidence to raise a dispute regarding the facts."). The court must give the non-moving party the benefit of all reasonable doubts and inferences. *Carr v. Peerless Ins. Co.*, 168 Vt. 465, 476 (1998). Thus, "[i]n determining the existence of genuine issues of material fact, courts must accept as true the allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other

evidentiary material." *Gates v. Mack Molding Co.*, 2022 VT 24, ¶ 13, 279 A.3d 656 (quotation omitted).

Here, both Mr. Sorrentino's and the Town's motion papers fairly called out Mr. Doherty, shifting the burden to him to come forward with admissible evidence to meet his burden of proof. Specifically, both challenged him to come forward with evidence that they knew or should have known of the existence of a dangerous condition. In response, Mr. Doherty merely alludes to facts concerning the general condition of the sidewalk in the area where he claims to have fallen and makes a number of self-serving *ipse dixit* assertions. Neither suggests the existence of a dangerous condition, much less anyone's actual or constructive knowledge of such a condition. Thus, on the most elemental level, Mr. Doherty's claims fail. *See Dooley v. Economy Store, Inc.*, 109 Vt. 138, 142 (1957) ("In order to impose liability for injury to an invitee by reason of the dangerous condition of the premises, the condition must have been known to the owner or have existed for such time that it was his duty to know it.").

Other, equally fundamental defects also doom Mr. Doherty's efforts to impose liability on either Defendant. With respect to Mr. Sorrentino, Mr. Doherty offers no evidence to rebut the contention, well supported by admissible evidence, that Mr. Sorrentino does not own or control the premises where Mr. Doherty claims to have fallen. This failure occurs on two levels. First, apart from bald *ipse dixit*, he offers no basis for piercing the veil of the entity that owns the property adjoining the sidewalk where he fell. *Cf. Winey v. Cutler*, 165 Vt. 566, 567–68 (1996) (recognizing the general rule, per 11A V.S.A. § 6.22(b), that a shareholder is not personally liable for debts of corporation, but allowing piercing of corporate veil where the corporation is being used to perpetrate fraud against creditors). Second, Mr. Doherty offers no evidence that Mr. Sorrentino or even his corporation owns or controls the sidewalk in question. *See Grann v. Green Mtn. Racing Corp.*, 150 Vt. 232, 234 (1988) ("In [slip and fall] cases . . . , unless the area where the accident occurs is under the control of the defendant at the time of the accident, a plaintiff cannot make out a cause of action in negligence against the defendant, because there is no proof that the defendant owes the plaintiff any duty of care."). At most, per ordinance, the corporation may owe a duty to the Town, to remove snow on the abutting sidewalk within 24 hours. This is a far cry, however, from a duty to users of the sidewalk to maintain it free from all defects, whenever and however they may occur.

With respect to the Town, Mr. Doherty's claims trip on the doctrine of municipal liability. It is well established in Vermont that municipal liability in tort arises "only where the negligent act arises out of a duty that is proprietary in nature as opposed to governmental." *Hillerby v. Town of Colchester*, 167 Vt. 270, 272 (1997). It is equally well established that "[t]he building and maintenance of streets

and sidewalks are governmental functions." *Dugan v. City of Burlington*, 135 Vt. 303, 304 (1977)). Mr. Doherty offers no cogent rationale for taking this case out of the operation of these rules—apart, again, from unsupported *ipse dixit*. This, bluntly, is not the stuff of competent summary judgment practice.

ORDER

The court grants both motions for summary judgment. By separate paper, per V.R.C.P. 58, the court will enter judgment for Defendants, Mr. Doherty to take nothing from this case. Counsel for Defendants shall confer and submit a proposed form of judgment.

Electronically signed pursuant to V.R.E.F. 9(d): 3/14/2023 4:47 PM

Samuel Hoar, Jr.
Superior Court Judge

Vermont Superior Court
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