

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-005625

08/14/2017

HON. SHERRY K. STEPHENS

CLERK OF THE COURT
T. DeRaddo
Deputy

VIOLET KAPLAN

DIEGO RODRIGUEZ

v.

ALLEN L SVEC, et al.

EDWIN A BARKEL
DAVID C POTTS

UNDER ADVISEMENT RULING

The Court has considered Defendant AAM, LLC's Motion for Partial Summary Judgment on Plaintiff's Claims for Emotional Injuries filed May 4, 2017, Defendant AAM, LLC's Motion for Summary Judgment filed May 12, 2017, Defendant AAM, LLC's Statement of Facts in Support of its Motion for Summary Judgment filed May 12, 2017, the Response to Defendant AAM, LLC's Motion for Summary Judgment filed June 13, 2017, Defendant AAM's Reply in Support of its Motions for Summary Judgment filed July 3, 2017, and the oral argument conducted on August 10, 2017.

Plaintiff owned a residential unit at Regency House. Defendant AAM is the property manager for Regency House. Two other defendants, Allen Svec and Michael Bowers, who have since been dismissed from the case, owned units at Regency House. Svec used his unit as a temporary residence and allowed guests to stay in his unit. Alex Rodriguez was a long term guest of Svec and received a key fob from Defendant which provided access to the common areas. To obtain a key fob, an application was submitted to AAM with the consent of the owner of the unit. Rodriguez, Plaintiff and another resident of Regency House were socializing in a unit at Regency House located across the hall from Plaintiff's unit. Rodriguez left that unit and went to Plaintiff's unit and stole items (an engagement ring, necklace and \$1,200 in cash) from

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her unit. Plaintiff had left her unit unlocked. Plaintiff claims AAM was negligent in the drafting and implementation of rules controlling access to the property, including the procedures tenants were required to follow to provide a guest with a security key fob. Further, Plaintiff alleges Defendant failed to properly maintain security on the property as required by the duty of care owed to the unit owners.

At oral argument, Defendant conceded she is not entitled to punitive damages on any claim and that summary judgment should be granted on her claim for emotional distress and her claim for negligent entrustment.

Summary judgment is appropriate only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Johnson v. Earnhardt's Gilbert Dodge, Inc.*, 212 Ariz. 381, 385, 132 P.3d 825, 829 (2006). Thus, a motion for summary judgment should only be granted if the acts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense. *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). The facts must be viewed in a light most favorable to the party against whom it was direct and summary judgment is inappropriate if there is any doubt as to whether an issue of material fact exists. *Joseph v. Markovitz*, 27 Ariz.App. 122, 125, 551 P.2d 571, 574 (1976).

To establish a claim for negligence, Plaintiff must prove the existence of: (1) a duty requiring the defendant to conform to a certain standard of care; (2) a breach by the defendant of that standard of care; (3) a causal connection between the defendant's conduct and the resulting injury; and (4) actual damages. *Gipsev v. Kasey*, 150 P.3d 228, 230 (2007). Plaintiff's theory is that Defendant had a duty to create rules and regulations for issuing key fobs that would result in maintaining proper security for the common areas at Regency House. Apparently, Plaintiff theory is that Rodriguez would not have had access to Plaintiff's unit unless he had the key fob issue by Defendant. Plaintiff agrees Defendant had no duty to control the conduct of a third person.

The Court finds that by issuing key fobs to guests, a jury could conclude Defendant created a duty to the residents of Regency House to monitor the issuance of those key fobs in a manner consistent with maintaining security in the common areas. The Court finds there are issues of material fact that include: (1) Did Rodriguez use a key fob to access the common areas at Regency House on the day the theft occurred? (2) Did Defendant breach a duty to Plaintiff in the issuance of the key fob to Rodriguez? (3) Was Defendant's conduct in the issuance of the key fob reasonable? (4) By leaving her unit unlocked, was Plaintiff solely or partially responsible for the theft of items taken from her unit? See Restatement (Second) Torts, § 283.

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For the reasons stated above:

IT IS ORDERED denying the motion for summary judgment as to the negligence claim.

IT IS FURTHER ORDERED dismissing the negligent entrustment claim, the emotional distress/mental anguish claim, and the claim for punitive damages.