

872 N.E.2d 840 (2007)

70 Mass.App.Ct. 1101

Sandra HANSEN,

v.

Paul GETCHELL, trustee, [1] & another. [2]

No. 06-P-1086.

Court of Appeals of Massachusetts

Aug. 30, 2007

**Editorial Note:**

This is an Unpublished Opinion. See MA R A PRAC Rule 1:28

*MEMORANDUM AND ORDER PURSUANT TO RULE 1:28*

The plaintiff, Sandra Hansen, a resident of the Beal's Cove Village condominium complex (Beal's Cove), was injured when she fell after being startled by a squirrel that leapt from a dumpster she had opened to deposit some trash. Hansen brought claims of negligence against Getchell, as trustee of the Beal's Cove Village Condominium Trust, and Waste Management, Inc., the waste removal contractor. In particular, Hansen claimed that the dumpster had a hole in the lid that provided squirrels an unfettered means of access, and that the defendants were negligent in not repairing the hole. Summary judgment was granted to the defendants because Hansen failed to produce evidence sufficient to establish a duty owed by the defendants, and failed to demonstrate a sufficient causal relationship between the claimed negligence and her resulting injury. We affirm.

*Facts.* Hansen has owned a condominium unit at Beal's Cove since 1997. During her years there, Hansen was aware of and had actually seen animals such as raccoons and squirrels on the property, which is closely situated to an area of conservation land. Hansen had also seen animals at Beal's Cove near a dumpster different from the one at which she was injured.

On July 5, 2000, Hansen approached a dumpster located outside her condominium unit to discard some household trash. Upon opening the lid to accomplish this task, a squirrel jumped out, startled Hansen, and she fell. The squirrel did not touch Hansen. As a result of her fall, she suffered serious injury to her hip.

The plastic lid to the dumpster in question had a

hole in it the size of a tennis ball. The hole was large enough to provide a squirrel a means of entry for the otherwise closed dumpster. There was evidence that the hole in the lid had been there for several weeks. Hansen's expert opined that the failure to repair the hole in the lid was a substantial contributing cause of her injuries.

*Discussion.* Whether analyzed from the standpoint of the defendants' duty to Hansen or from the standpoint of whether the claimed breach thereof proximately caused Hansen's injury, the requisite foreseeability is absent. See *Whittaker v. Saraceno*, 418 Mass. 196, 198 (1994).

"The word 'foreseeable' has been used to define both the limits of a duty of care and the limits of proximate cause. As a practical matter, in deciding the foreseeability question, it seems not important whether one defines a duty as limited to guarding against reasonably foreseeable risks of harm or whether one defines the necessary causal connection between a breach of duty and some harm as one in which the harm was a reasonably foreseeable consequence of the breach of a duty."

*Id.* at 198-199 (citation omitted).

Although there was evidence that the parties were aware that animals frequented the area of the dumpster, squirrels and other animals are a naturally occurring condition that the defendants did not create. Moreover, there was no evidence that squirrels (or other animals)--having gained entry through the hole in the dumpster's lid--had made a practice of leaping out at unknowing depositors of trash. See *Foley v. Boston Hous. Authy.*, 407 Mass. 640, 646 (1990), quoting from *Husband v. Dubose*, 26 Mass.App.Ct. 667, 669 (1988) ("There is no duty owed when the risk which results in the plaintiff's injury is not one which could be reasonably anticipated by the defendant").

Even given the pesky and mischievous nature of squirrels, it was not foreseeable that such an event would lead to a condominium tenant becoming injured. In other words, it was not reasonably foreseeable that, as a direct result of the unrepaired hole in the lid, a person accessing the dumpster would be startled, fall, and become injured. Cf. *Pardue v. AT & T Tel. Co.*, 799 So.2d 710, 713-714 (La.Ct.App.2001) (even assuming utility provider had a duty to trim trees surrounding its lines, it was not foreseeable that a breach of that duty would permit a squirrel to access the line, cause a power surge, and injure the plaintiff while she spoke on the phone). Neither Getchell nor Waste Management, Inc., had a duty to guard against such an unforeseeable harm. See *Palsgraf v. Long Island R.R. Co.*, 248 N.Y. 339, 344 (1928) (the scope of a duty to take or not to take action is limited to persons likely to be injured by the act or omission). To

the extent there was any duty created by the condominium bylaws or industry standards for dumpsters, and further assuming a breach, the ultimate harm that befell Hansen was not a reasonably foreseeable consequence of the breach. Summary judgment was properly granted to the defendants.

*Judgment affirmed.*

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Notes:

[1] Of the Beal's Cove Village Condominium Trust.

[2] Waste Management, Inc.

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