

We conclude that Allstate has alleged facts that bring the claim within the real estate exception, exposing the PHA to liability. Those facts, if proven, will show that the PHA failed to maintain and repair its property, creating a dangerous condition that caused or contributed to the cause of the fire. Therefore, we shall deny the PHA's motion.

Factual Background

On January 14, 2018, a fire occurred in a vacant property owned by the PHA.⁴ The fire spread to the adjacent property owned by Allstate's insured, Felix Torres,⁵ causing substantial damage.⁶ Pursuant to the homeowner's insurance policy covering the loss, Allstate paid for the repairs to its insured's property.⁷

In its second amended complaint, Allstate alleges that the PHA property had been vacant and abandoned since 2005.⁸ The building had no lighting, electricity, running water, or working smoke detectors; and, it had "broken, non-existent, or non-functioning locks, doors, and/or windows."⁹ Vagrants stripped the copper pipes and wiring.¹⁰ Numerous complaints regarding the "dangerous condition" of the building had been reported to the City of Philadelphia.¹¹

In 2012, the Department of Licenses and Inspections ("L&I") issued a violation for

⁴ SAC ¶¶ 5, 22.

⁵ *Id.* ¶¶ 3, 28-29. Although the complaint is brought by Allstate as subrogee of both Felix and Evelyn Torres, the insurance policy is in Felix Torres's name only. See *Id.* ¶ 3.

⁶ *Id.* ¶¶ 3, 28-29, 32.

⁷ *Id.* ¶¶ 3, 32.

⁸ *Id.* ¶ 9.

⁹ *Id.* ¶¶ 10-11.

¹⁰ *Id.* ¶ 12.

¹¹ *Id.* ¶¶ 13-15.

failure to clean and maintain the lot.¹² Three years later, L&I issued three violations, declaring the building an “Unsafe Structure” and ordering demolition.¹³ On May 30, 2017, L&I issued a violation for failing to register the property as vacant.¹⁴ Despite the order to demolish the property and cure the violations, the PHA did nothing and allowed the building to “continue to deteriorate from its already unsafe condition.”¹⁵

On January 14, 2018, a fire started in the kitchen area of the property.¹⁶ The “Fire Marshal was unable to determine the cause of the fire.”¹⁷

Allstate alleges that the fire could not be extinguished and spread because there was no running water or working smoke detectors.¹⁸ Additionally, the lack of locks, doors, and windows allowed anyone, including squatters, to enter the property.¹⁹ Allstate alleges that the PHA breached its duty to maintain its property in a safe condition.²⁰ It contends that had the property been safe and secure with working locks, utilities, and smoke detectors, or alternatively, been properly demolished, the fire would not have occurred,

¹² *Id.* ¶ 16; L&I Violation History, SAC Ex. A (ECF No. 23).

¹³ SAC ¶ 17, L&I Violation History, SAC Ex. B (ECF No. 23). Under the Philadelphia Property Maintenance Code 108.1.1, an “unsafe structure” is defined as “one that is found to be dangerous to the life, health, property, or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.”

¹⁴ SAC ¶ 18; L&I Violation History, SAC Ex. C (ECF No. 23).

¹⁵ SAC ¶ 19.

¹⁶ *Id.* ¶ 22.

¹⁷ SAC ¶ 23; Fire Marshal Report, SAC Ex. D (ECF No. 23).

¹⁸ SAC ¶¶ 25-26.

¹⁹ *Id.* ¶ 27.

²⁰ *Id.* ¶ 35.

spread, and caused damage to its insured's property.²¹

In moving to dismiss, the PHA argues that, as a Commonwealth agency, it enjoys sovereign immunity.²² It disputes Allstate's contention that the real estate exception applies.²³ It argues that the fire was started by a third party and was not caused by a condition of the real estate.²⁴

Discussion²⁵

The Pennsylvania Sovereign Immunity Act grants the Commonwealth and its agencies²⁶ immunity from tort liability, unless one of eight exceptions applies. The real estate exception exposes a Commonwealth agency to liability for injury caused by "a dangerous condition of Commonwealth agency real estate." 42 Pa.C.S. § 8522(b)(4).

To impose liability under the real estate exception, the plaintiff must satisfy three requirements. The plaintiff must show: (1) the injury was caused by a dangerous condition; (2) the dangerous condition was a condition of the real estate; and (3) absent immunity, it could recover damages from the person who caused the injury. *Cagey v.*

²¹ *Id.* ¶¶ 30, 37.

²² Def.'s Mem. in Supp. of Mot. to Dismiss at 12-15 (ECF No. 25).

²³ *Id.*

²⁴ *Id.*

²⁵ Relevant parts of this discussion are taken from our July 11, 2019 Memorandum Opinion and Order and recited here.

²⁶ For the purposes of the immunity provisions of 42 Pa.C.S. § 8521, the PHA is considered a Commonwealth agency. See *Irish v. Lehigh Cty Hous. Auth.*, 751 A.2d 1201 (Pa. Commw. Ct. 2000); *Byard v. Phila. Hous. Auth.*, 629 A.2d 283 (Pa. Commw. Ct. 1993); *Battle v. Phila. Hous. Auth.*, 594 A.2d 769, 771 (Pa. Super. Ct. 1991); *Crosby v. Kotch*, 580 A.2d 1191 (Pa. Commw. Ct. 1990). Although some courts have concluded that the PHA is a local governmental agency and not a Commonwealth agency, these cases have not been in the context of sovereign immunity under 42 Pa.C.S. § 8521. See, e.g., *James J. Gory Mech. Contracting, Inc. v. Phila. Hous. Auth.*, 855 A.2d 669, 678-79 (Pa. 2004) (finding PHA a local agency for jurisdictional purposes); *Swift v. McKeesport Hous. Auth.*, No. 08-0275, 2009 WL 3856304, at *7 (W.D. Pa. Nov. 17, 2009) (holding the local housing authority as a municipality to be a local governmental agency and therefore not entitled to Eleventh Amendment immunity from suit in federal court).

Commonwealth, 179 A.3d 458, 463 (Pa. 2018) (citations omitted). Allstate’s allegations meet this test.

Addressing the first and second requirements, the PHA argues that the fire did not derive, originate, or have as its source the PHA real estate itself.²⁷ The cause, according to the PHA, was a squatter, and the PHA had no obligation to anticipate the acts of squatters.²⁸ It contends that Allstate’s second amended complaint fails to allege that a dangerous condition of the property caused the harm.²⁹

Allstate counters that the second amended complaint sufficiently alleges that the physical condition of the property itself caused its insured’s damages.³⁰ It avers that three conditions caused or contributed to the fire:³¹ (1) the property was not secure, allowing trespassers to access it;³² (2) the property lacked running water, utilities, and working smoke detectors, which contributed to the spread of the fire;³³ and (3) the property was structurally unsound, resulting in its collapse in the fire.³⁴ Allstate alleges that these conditions made the property dangerous and unsafe.³⁵ It alleges that the

²⁷ Def.’s Mem. in Supp. of Mot. to Dismiss at 5-7 (ECF No. 25).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Pl.’s Opp’n to Def.’s Mot. to Dismiss at 10 (ECF No. 26-1).

³¹ *Id.*

³² *Id.*

³³ *Id.* Allstate also notes that the PHA argued it had no duty to maintain proper utilities or smoke detectors because the property was vacant. However, the PHA only registered the property as vacant after the fire. Because the PHA knew that the property was occupied, Allstate contends the PHA should have kept the building up to code and “complied with its general duty to maintain its property so as not to create a hazardous condition” *Id.* at 10.

³⁴ *Id.*

³⁵ SAC ¶¶ 30, 37, and 38.

conditions resulted from the PHA's failure to maintain and repair its property. Despite being on clear notice, the PHA did nothing to maintain its property and allowed it to be occupied by trespassers in its dangerous condition.

"The term 'dangerous condition' is unambiguous and plainly encompasses any condition that presents a danger." *Cagey*, 179 A.3d at 464. The PHA argues that the property's dangerous condition may have facilitated the plaintiffs' harm, but it did not cause it.³⁶ We disagree. Construed in favor of Allstate, the alleged facts show that the property's condition did not merely facilitate the injury. The defects in the property caused or contributed to the fire. It was foreseeable that unauthorized persons would enter the unsecured building and act recklessly, causing harm to the property and adjacent properties. Not only was it foreseeable, the PHA knew about it. L&I had ordered the property sealed and the PHA had received complaints of squatters in the property.

Allstate has also sufficiently pled that the dangerous condition derived, originated from, or had as its source the PHA real estate. It has alleged that the property was "unsafe for the purpose for which it was intended." *Dean v. Dep't of Transportation*, 751 A.2d 1130, 1134 (Pa. 2000). The doors, windows, locks, and smoke alarms were either non-operable or non-existent. The property was so unstable and unsafe that L&I ordered its demolition. Consequently, it was not fit for its intended use as a habitable dwelling. In essence, Allstate alleges that a dangerous condition allowing unfettered access to the property by trespassers existed and that condition was created by a defect in the maintenance and repair of the property.

Allstate alleges that the doors, locks, windows, and smoke alarms were either

³⁶ Def.'s Mem. in Supp. of Mot. to Dismiss at 5 (ECF No. 25).

inoperative or non-existent. If they did not exist, they were not a part of the property. However, if they were inoperative, they were a condition of the property.

Allstate also alleges that the property was structurally unsound. The structural integrity of the property is a condition of the property. If it was compromised by the PHA's failure to maintain it, it was a dangerous condition and defect in the property. When the property collapsed as a result of the dangerous condition, it caused the harm to Allstate's insured's property.

Allstate's allegations, if proven, show that the PHA's negligent failure to maintain and repair its property made it unsafe, and a dangerous condition or defect in the real estate caused the insured's harm. *See Thornton v. Philadelphia Housing Authority*, 4 A.3d 1143, 1152 (Pa. Commw. Ct. 2010).

With respect to the third requirement, Allstate has alleged facts showing that absent immunity, it can recover damages from the PHA. Pennsylvania courts have consistently "held landowners liable for failing to take precautions against unreasonable risks that stem directly or indirectly from the property including the contemplated acts of third parties" *Mascaro*, 523 A.2d 1118, 1122 (Pa. 1987) (collecting cases).

The Restatement (Second) of Torts provides:

"[a] possessor of land is subject to liability to others outside of the land for physical harm caused by the disrepair of a structure or other artificial condition thereon, if the exercise of reasonable care by the possessor or by any person to whom he entrusts the maintenance and repair thereof (a) would have disclosed the disrepair and the unreasonable risk involved therein, and (b) would have made it reasonably safe by repair or otherwise."

Restatement (Second) of Torts § 365 (1965). Although Section 365 speaks to physical harm, courts have held that the rationale for imposing liability on a landowner for harm caused by disrepair of a structure applies to property damage. *See Ford v. Jeffries*, 379

A.2d 111, 113 (Pa. 1977) (denying summary judgment to defendant where a fire occurring on defendant's dilapidated property almost totally destroyed plaintiff's adjacent house); *Schropp v. Solzman*, 314 N.W.2d 413, 415 (Iowa 1982) (affirming judgment to plaintiff for water and mud damages to property caused by negligence of adjacent landowners); *Jerome Thriftway Drug, Inc. v. Winslow*, 717 P.2d 1033, 1037 (Idaho 1986).

In a factually similar case, the Pennsylvania Supreme Court held that “[a] property owner can reasonably be expected to know that the visible conditions of vacant property in a state of disrepair may attract, for various purposes, children or adults, who, having entered the property, might act, either negligently or intentionally, in a manner that would cause a fire.” *Ford*, 379 A.2d at 113. In *Ford*, the defendant owned a rental property on the lot adjoining the plaintiff's home. The rental property had been vacant for almost ten years and was dilapidated. *Id.* Two fires broke out. *Id.* The second one almost totally destroyed the plaintiff's home. *Id.* The Pennsylvania Supreme Court held that “[w]hen one negligently maintains property so as to create a fire hazard to an adjoining property and fire harm results, we refuse to conclude, as a matter of law, that the negligent conduct in maintaining the fire hazard was an insignificant cause. This issue is therefore one for the jury to consider.” *Id.* at 114.

As alleged by Allstate, the PHA failed to take any action to eliminate or mitigate unreasonable risks for over a decade. It ignored multiple violation notices to secure and later to demolish its property. Vandalism was foreseeable and occurred frequently on the property. Accepting the allegations as true and viewing them in the light most favorable to Allstate, we conclude that Allstate has stated a cause of action against PHA for negligence in failing to maintain and repair its property, rendering it unsafe and

dangerous. See Sections 364, 365, and 448 of the Restatement of Torts (Second).

Allstate contends that even if a trespasser started the fire, the PHA can be held liable as a joint tortfeasor.³⁷ Allstate is not alleging that the PHA is vicariously liable.³⁸ Instead, it argues that it has adequately pled that the condition of the real estate contributed to and was a concurrent cause of the injury.³⁹

The fact that a squatter started the fire does not absolve the PHA from liability. A Commonwealth entity can be jointly liable with another tortfeasor, provided an exception to immunity applies. See *Powell v. Drumheller*, 653 A.2d 619, 622 (Pa. 1995); *Crowell v. City of Phila.*, 613 A.2d 1178, 1184 (Pa. 1992); *Kiley by Kiley v. City of Philadelphia*, 645 A.2d 1118, 1186 (Pa. 1994); *Dean*, 751 A.2d at 1132-33. Stated differently, just because the injury was caused by a third party does not mean the governmental agency is immune. So long as a dangerous condition of the real estate contributed to the injury, the exception applies.

Under Pennsylvania law, a governmental entity can still be held liable even if another party also caused the injury as long as the governmental agency's negligence was a substantial cause in bringing about the plaintiff's harm. *Powell*, 653 A.2d at 624-625. The *Powell* court instructed that the "determination of whether an act is so extraordinary as to constitute a superseding cause is normally one to be made by the jury." *Id.* For a governmental entity to escape liability, the negligence of a third party must be an intervening cause that supersedes the governmental entity's negligence.

³⁷ Pl.'s Opp'n to Def.'s Mot. to Dismiss at 10-15 (ECF No. 26-1).

³⁸ *Id.*

³⁹ *Id.*

The PHA argues that the acts of the squatter were an intervening cause that supersedes its own negligence and relieves it of liability. “In determining whether an intervening force is a superseding cause, the test is whether the intervening conduct was so extraordinary as not to have been reasonably foreseeable.” *Bleman v. Gold*, 246 A.2d 376, 380 (Pa. 1968). See also *Eshbach v. W.T. Grant’s & Co.*, 481 F.2d 940, 945 (3d Cir. 1973); *Wilson v. American Chain & Cable Co.*, 364 F.2d 558, 561 (3d Cir.1966).

Whether the acts of a third party were so extraordinary to render them a superseding cause is a factual question for a jury to decide. *Id.* (citing *Mascaro*, 523 A.2d at 1122 and *Ford*, 379 A.2d at 115). So also is the question of whether there was a dangerous condition or defect in the property that caused the harm to the adjacent property. *Thornton*, 4 A.3d at 1153.

Conclusion

Because Allstate has alleged that a dangerous condition in the PHA’s real estate caused its insured harm, it has satisfied the real property exception to Commonwealth immunity. Therefore, we shall deny the defendant’s motion.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALLSTATE VEHICLE AND	:	CIVIL ACTION
PROPERTY INSURANCE	:	
COMPANY, A/S/O Felix Torres	:	
	:	
v.	:	
	:	
PHILADELPHIA HOUSING AUTHORITY	:	NO. 19-1354

ORDER

NOW, this 10th day of October, 2019, upon consideration of the Defendant Philadelphia Housing Authority's Motion to Dismiss Plaintiff's Second Amended Complaint Pursuant to Rule 12(b)(6) (Document No. 25) and the plaintiff's response, it is **ORDERED** that the motion is **DENIED**.

/s/ TIMOTHY J. SAVAGE J.