

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

CYNTHIA GAYLE

NO. 2017 CW 1170

VERSUS

DIXIE ELECTRIC MEMBERSHIP
CORPORATION

APR 17 2018

In Re: Dixie Electric Membership Corporation, applying for supervisory writs, 21st Judicial District Court, Parish of Livingston, No. 143227.

BEFORE: WHIPPLE, C.J., GUIDRY, PETTIGREW, McDONALD AND CRAIN, JJ.

WRIT GRANTED. To prevail on her claims, plaintiff must show that defendant knew or should have known of the alleged defective condition (rot) in the utility pole. See La. Civ. Code art. 2317.1. Because there is no assertion or evidence that defendant knew of that condition, the issue presented is whether the defendant should have known. Without such evidence, plaintiff's claim must fail. See **Parveen v. Tiki Tubing, LLC**, 2011-1477 (La. App. 1st Cir. 3/23/12), 2012 WL 994632, writ denied, 2012-0903 (La. 6/15/12), 90 So.3d 1063. In support of its motion for summary judgment, defendant presented evidence of its inspection policies and practices, and established that it complied with those policies and practices. Plaintiff then asserted that the inspection policies were not enough, pointing solely to the fact that the pole fell. While such evidence may have sufficed under strict liability to create a material question of fact, it is no longer sufficient. See La. Civ. Code art. 2317.1; **Ponder v. SDT Waste & Debris Services, L.L.C.**, 2015-1656 (La. App. 1st Cir. 8/16/17), 2017 WL 3498159, (recognizing that as part of the tort reform undertaken in 1996, the legislature enacted Louisiana Civil Code article 2317.1, which effectively eliminated strict liability and converted liability to a negligence standard that requires proof that the owner or custodian knew or should have known of the defect). While the existence or non-existence of an extraordinary weather event causing the pole to fall is disputed, plaintiff presented nothing to establish that defendant's standard of inspection was not reasonable, was not in compliance with industry standards, or was not followed. The expert, McPhate, opined that the pole should not have fallen, but did not address whether defendant should have discovered the allegedly defective condition. Consequently, plaintiff failed to carry her burden of producing factual support sufficient to establish the existence of a genuine issue of material fact as to whether defendant "should have known" of the alleged defective condition or that defendant is not entitled to judgment as a matter of law. See La. Code Civ. P. art. 966D(1). Accordingly, summary judgment is granted and judgment is entered in favor of Dixie Electric Membership Corporation, dismissing plaintiff's claims with prejudice.

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Whipple, C.J., dissents for the reasons assigned by Pettigrew, J.

Pettigrew, J., dissents for the following reasons: I find there are material issues of fact still in dispute concerning the hazardous condition of the pole and the constructive knowledge of defendant which precludes summary judgment at this time.

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A handwritten signature in black ink, appearing to read "Pamela L. Reed", is written over a horizontal line.

DEPUTY CLERK OF COURT
FOR THE COURT