



Dedham Executive Center
990 Washington Street, Suite 104
Dedham, MA 02026
Tel: (781) 772-6985
Fax: (781) 772-6986
www.hardinggurley.com

CONFIDENTIAL COMMUNICATION – ATTORNEY-CLIENT PRIVILEGE

November 14, 2024

White Island Shores Community Association, Inc.
c/o Peggy Stewart, President
Park Circle,
East Wareham, MA 02538

**Re: Talia Raftes vs. The White Island Shores Community Association, Inc.
C.A. No.: 2283CV00517**

Dear WISCA members:

As you know, my office has been defending The White Island Shores Community Association Inc. (“WISCA”), through its insurer, in the above-referenced civil action concerning a jet ski collision that occurred on the White Island Pond on July 20, 2019. WISCA successfully argued its motion for summary judgment in the case, and the Plymouth Superior Court issued judgment in favor of WISCA on October 11, 2024. Enclosed is Judge William White’s memorandum of decision in connection with WISCA’s motion, finding that WISCA cannot be held legally responsible for the July 20, 2019 accident and Plaintiff Talia Raftes’ claimed injuries.

The Plaintiff did have the option of appealing the Superior Court’s decision to the Massachusetts Court of Appeals. In order to do this, she was required to file a written notice with the Superior Court within 30 days of the MSJ decision, notifying the Court of her intention to appeal the decision. The deadline to file this notice of appeal has since expired, and no notice has been filed with the Court. Hence, it appears that Plaintiff will be forgoing an appeal of the MSJ decision in WISCA’s favor. Accordingly, at this time, WISCA’s insurer has instructed me to close out my file, as no further litigation upon WISCA is anticipated with respect to this matter.

I wanted to take the time to relay my utmost gratitude to WISCA members Paul Driscoll and Denise Diseglio, whose tireless efforts and dutiful cooperation significantly aided WISCA’s defense in this case. We surely would not have achieved this great result without their support.

Additionally, I would like to express my sincere appreciation for the patience shown by all WISCA members during the course of this lengthy litigation. I know you have a profound interest in preserving your association, and this lawsuit was undoubtedly concerning to you all. Thank you for your fortitude throughout this legal process; it did not go unnoticed.

It was truly a pleasure representing WISCA, and I wish you all the best of luck in the future.

Very Truly Yours,

/s/ Melissa Curran

Melissa S. Curran

Enclosure

CLERK'S NOTICE

DOCKET NUMBER

2283CV00517

**Trial Court of Massachusetts
The Superior Court**



CASE NAME:

Raftes, Talia vs. Sherman, Jared et al

Robert S. Creedon, Jr., Clerk of Courts
Plymouth County

TO:

Melissa Susan Allison Curran, Esq.
Harding Gurley, LLP.
990 Washington St Suite 104
Dedham, MA 02026

COURT NAME & ADDRESS

Plymouth County Superior Court - Brockton
72 Belmont Street
Brockton, MA 02301

You are hereby notified that on 10/11/2024 the following entry was made on the above referenced docket:

**Endorsement on Motion for Summary Judgement (#25.0): ALLOWED
See Memorandum of Decision and Order**

Judge: White, Jr., Hon. William M

DATE ISSUED

10/11/2024

ASSOCIATE JUSTICE/ ASSISTANT CLERK

Hon. William M White, Jr.

SESSION PHONE#

(508)583-8250

29

SUMMARY JUDGMENT
MASS. R. CIV. P. 56

Trial Court of Massachusetts
The Superior Court



DOCKET NUMBER

2283CV00517

Robert S. Creedon, Jr., Clerk of Courts
Plymouth County

CASE NAME

Raftes, Talia
vs.
Sherman, Jared et al

COURT NAME & ADDRESS

Plymouth County Superior Court - Brockton
72 Belmont Street
Brockton, MA 02301

JUDGMENT FOR THE FOLLOWING DEFENDANT(S)

The White Island Shores Community Association

JUDGMENT AGAINST THE FOLLOWING PLAINTIFF(S)

Raftes, Talia

This action came before the Court, Hon. William M White, Jr., presiding, upon Motion for Summary Judgment of the defendant named above, pursuant to Mass. R. Civ. P. 56. The parties having been heard, and/or the Court having considered the pleadings and submissions, finds there is no genuine issue as to material fact and that the defendant is entitled to a judgment as a matter of law.

It is ORDERED and ADJUDGED:

That the Plaintiff's claims against The White Island Shores Community Association, Inc. (Counts III and IV of the Plaintiff's Complaint) are hereby Dismissed.

DATE JUDGMENT ENTERED

10/11/2024

CLERK OF COURTS/ ASST. CLERK

X

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

SUPERIOR COURT
2283CV00517

TALIA RAFTES

vs.

JARED SHERMAN & others¹

MEMORANDUM OF DECISION AND ORDER ON
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Talia Raftes ("Raftes") filed this action against Jared Sherman, Corey Hutchinson, and the White Island Shores Community Association ("WISCA") to recover for serious personal injuries she sustained in a jet-ski accident. For the reasons discussed below, Defendant White Island and Shores Community Association's Motion For Summary Judgment is ALLOWED.

BACKGROUND

The summary judgment record reveals the following facts. On July 19, 2019, Raftes was seriously injured in a jet-ski accident on White Island Pond located in Plymouth, Massachusetts. Raftes was a passenger on a jet-ski operated by Jared Sherman ("Sherman") that collided with another jet-ski operated by Corey Hutchinson ("Hutchinson").

White Island Pond is a great pond that extends into both the Town of Plymouth and the Town of Wareham. WISCA is a non-profit private organization under G.L. c. 180 which owns, regulates, and maintains a private beach and boat launch facility located on the Wareham side of

¹Corey Hutchinson and The White Island Shores Community Association, Inc.

CC: J.G., V.S., M.C.
J.S., C.H.

White Island Pond for the recreational use of its members. Guests of WISCA members are permitted to use and access the property, as are emergency personnel. However, WISCA does not provide general access for public use of its property.

To join WISCA as a member, a family has to reside within certain boundaries outlined in WISCA's bylaws. The boundaries of the area which is served by WISCA are "both sides of Plymouth Avenue from Plymouth town line to Ashberry Road, both sides of Ashberry Road to Hunter Avenue, and both sides of Hunter Avenue from Ashberry Road to the lake's edge." These boundaries define the limits of eligibility for membership in WISCA. Wareham residents within these boundaries are eligible to become members of WISCA if they pay dues to WISCA. Member dues are used to pay WISCA's expenses. Non-members who do not pay dues to WISCA are not permitted to use WISCA property. Members were issued a "tag" that they were required to display to use the beach and boat launch.

The WISCA organization includes several committees, one of which is the beach patrol committee. WISCA members of this committee patrol and monitor the WISCA beach during the summer season of June through Labor Day. The purpose of WISCA's beach patrol is to enforce WISCA's rules and keep non-members off the WISCA beach to ensure that it is only being used by WISCA members. The beach patrol permitted non-member guests on the beach, but had no system for documenting their identities. They simply relied on a WISCA member's representation that a guest member was allowed to be on the property. Members were required to show their tags to beach patrol staff. When non-WISCA members are identified, the beach patrol staff directs them to leave WISCA property. The beach patrol member on duty is the only paid position within WISCA because he is scheduled to be present on WISCA property for specifically scheduled times during the summer season.

WISCA has a boat launch and basin on its property that WISCA members use to load their watercrafts on the Wareham side of White Island Pond. The WISCA basin contains docks that WISCA members can rent for the purpose of storing their personal watercraft. The WISCA basin connects to the Wareham side of White Island Pond via a channel. With the exception of the Wareham Harbormaster Department, which is authorized to use WISCA's boat launch and basin for emergency access to White Island Pond on the Wareham side, WISCA's boat launch is designated for the exclusive use of WISCA members for recreational purposes.

On July 20, 2019, WISCA had multiple No Trespassing signs posted on its property advising individuals that WISCA property, including its beach, boat launch and basin, was private property for the use of WISCA members only. WISCA displayed its rules and regulations through signs on its property, which included the prohibition of alcoholic beverages on its property.

At the boat launch and basin, WISCA had installed a gate operated by an electronic gate system that dues paying members could access by using a key-fob issued and activated by WISCA. It does not appear, or at least it is unclear, if anyone was actively monitoring whether people were locking the gate after use. WISCA had a committee member designated the WISCA "harbormaster," a non-governmental position. The WISCA harbormaster's responsibilities were to keep track of the WISCA members who paid for dock rentals located within the WISCA basin, monitor the boat launch gate, and maintain the gate for the WISCA boat launch and basin to ensure that WISCA members who paid their dues could access the basin and boat launch through the locked gate.

On July 20, 2019, Sherman, Hutchinson and Ivana Papadopoulos arrived in Sherman's truck at Park Circle in Wareham, which is a public residential roadway adjacent to the WISCA property. Sherman's truck hauled two jet-skis owned by Sherman. Sherman parked his truck along the side of Park Circle. The three trespassed on WISCA property and used WISCA's boat launch and basin to launch the jet-skis into the water at White Island Pond on the Wareham side. Neither Sherman, Hutchinson, nor Papadopoulos was a WISCA member. Hutchinson did not recall if the electronic gate was open when he and Sherman arrived. Hutchinson recalled that Sherman's truck was backed into the water where they launched the jet-skis.

After entering the water, Hutchinson, Sherman and Papadopoulos rode the jet-skis through the channel that connects the WISCA basin to the White Island pond on the Wareham side of the pond. Sherman and Hutchinson, with Papadopoulos as a passenger, operated the jet-skis to various locations on White Island Pond.

Raftes and her friend visited the Plymouth side of White Island Pond. Raftes was never a member of WISCA, nor was she ever physically present on WISCA property. Raftes and her friend went out on the water in a pontoon boat. While on the pontoon boat, Sherman approached on his jet-ski and offered Raftes a ride. Raftes accepted the offer even though she had not known Sherman before that day.

While riding on the jet-ski on the Plymouth side of White Island Pond with Sherman operating and Raftes as his passenger, there was a jet-ski collision with the jet-ski operated by Hutchinson. The collision occurred on the Plymouth side of White Island Pond approximately 50 to 200 yards offshore from the private seasonal home of Stephen Mattaliano located at 5 Mohawk Circle in Plymouth, approximately .8 miles away from the WISCA property. A witness who was on a pontoon boat near the accident scene saw the jet-skis involved in the collision

being operated unsafely on the pond just prior to the collision. The jet-skis were traveling at a fast speed, doing “donuts” in the water, splashing each other, and traveling too closely to one another. Raftes suffered severe injuries due to the unsafe operation of the jet-skis by both Hutchinson and Sherman.

Raftes filed this action on July 19, 2022. Count I of her complaint alleges negligence by Sherman, Count II alleges negligence by Hutchinson, and Count III alleges negligence by WISCA. Count IV alleges negligent hiring, training, retention, and supervision by WISCA.²

DISCUSSION

Summary judgment is appropriate when, viewing the evidence in the light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); *Cargill, Inc. v. Beaver Coal & Oil Co.*, 424 Mass. 356, 358 (1997). The court considers the pleadings, deposition transcripts, answers to interrogatories, admissions on file, and affidavits. Mass. R. Civ. P. 56(c). The moving party bears the burden of affirmatively demonstrating the absence of a triable issue. *Pederson v. Time, Inc.*, 404 Mass. 14, 17 (1989). The court views the factual record drawing “all logically permissible inferences” from the facts in favor of the non-moving party. *Willits v. Roman Catholic Archbishop of Boston*, 411 Mass. 202, 203 (1991). The party opposing the motion may not rest on its pleadings and mere assertions of disputed facts to defeat the motion for summary judgment. *LaLonde v. Eissner*, 405 Mass. 207, 209 (1989).

²On September 29, 2023, Raftes obtained a default judgment and assessment of damages against Sherman and Hutchinson in the amount of \$3,750,000.

WISCA contends that it is entitled to judgment as a matter of law because Raftes has no reasonable expectation of proving that it owed her a duty of care. Before liability for negligence can be imposed, there must first be a legal duty owed by the defendant to the plaintiff, and a breach of that duty proximately resulting in the injury. *Williams v. Steward Health Care Sys., LLC*, 480 Mass. 286, 290 (2018); *Dos Santos v. Coleta*, 465 Mass. 148, 154 (2013); *Jupkin v. Kask*, 447 Mass. 141, 146 (2006). Whether a duty exists is a question of law that is appropriate for resolution on summary judgment. *Helpman v. Northeastern Univ.*, 485 Mass. 308, 315 (2020). Courts will find a duty where reasonable persons would recognize it based on existing social values and customs and appropriate social policy. *Jupkin v. Kask*, 447 Mass. at 146-147.

An owner of land owes a duty to all lawful visitors to maintain the premises in a reasonably safe condition. *Bowers v. P. Wile's, Inc.*, 475 Mass. 34, 37 (2016). If a property owner knows or reasonably should know of a dangerous condition on his property, he has a duty to provide a warning or make other reasonable efforts to protect against the danger. *Papadopoulos v. Target Corp.*, 457 Mass. 368, 383 (2010). Here, however, Raftes was never physically present on WISCA property and was not injured by a defect in WISCA property. Rather, she was injured in a jet-ski accident on the pond almost a mile away from WISCA's property.

“[A] duty of care may arise from the right to control land, even where the person held to such a duty does not own the land in question.” *Davis v. Westwood Group*, 420 Mass. 739, 745 (1995). However, the summary judgment record is devoid of evidence that WISCA had any control over the pond itself, where the accident occurred, or the conduct of individuals operating jet-skis on the pond. The record shows that only governmental entities, including but not limited to the Plymouth and Wareham Harbormasters, had the authority to ensure that people on the

pond were operating jet-skis in a safe manner. Accordingly, Raftes has no reasonable expectation of establishing that WISCA owed her a duty with respect to the pond where the accident occurred. See *Davis v. Westwood Group*, 420 Mass. at 745-746 (racetrack that owned land on both sides of highway and abutted highway had no duty to ensure pedestrian safety across highway where it had no control over highway); *Holloway v. Madison Trinity Ltd. P'ship*, 95 Mass. App. Ct. 628, 632-633, rev. den., 483 Mass. 1104 (2019) (property owner in high crime area had no duty to protect plaintiff from drive-by shooting on abutting public sidewalk which it did not control); *Gage v. Westfield*, 26 Mass. App. Ct. 681, 685, rev. den., 404 Mass. 1103 (1988) (city that owned playground abutting railroad tracks did not have duty to take measures to keep people off those tracks). Cf. *McCarthy v. Hamilton*, 2000 WL 282929 at *3 (Mass. Super. Ct.) (Botsford, J.) (there was genuine issue of material fact whether town owed duty to swimmer who drowned in lake where town did not own lake but exercised some control over it by providing lifeguards, conducting weed control, and maintaining beach by picking up trash).

Nonetheless, Raftes contends that WISCA, in limiting access to its boat launch, assumed a duty to protect her and breached that duty, resulting in her injuries. Raftes argues that WISCA should have prevented Sherman and Hutchinson, who were trespassers on WISCA's property, from accessing the pond. If a person voluntarily assumes a duty or undertakes to render services to another that should have been seen as necessary for her protection, that person may be liable for harm caused by his negligent performance of the undertaking. *Davis v. Westwood Group*, 420 Mass. at 746; *Thorson v. Mandell*, 402 Mass. 744, 748 (1988). There is no evidence in the summary judgment record that in enforcing its membership rules with respect to gate access, WISCA undertook to protect all members of the public using the pond. Cf. *Cohen v. Elephant Rock Beach Club, Inc.*, 53 F. Supp.3d 130, 141-142 (D. Mass. 2014) (it was factual question

whether beach club voluntarily assumed duty to swimmers to warn of danger of jumping from rock located 250 feet from shore, where club exercised some control over rock and voluntarily took precautions such as hiring lifeguards and implementing flag system to indicate when it was unsafe to use rock).

Moreover, a landowner generally has no duty to take affirmative steps to protect against the dangerous or criminal acts of third parties unless there is a special relationship between the landowner and the plaintiff. *Helfman v. Northeastern Univ.*, 485 Mass. at 315; *Luoni v. Berube*, 431 Mass. 729, 731-732 (2000); *Holloway v. Madison Trinity Ltd. P'ship*, 95 Mass. App. Ct. at 631. A special relationship may be imposed by statute or may arise from a plaintiff's reasonable expectations and reliance on the defendant to anticipate harmful acts of third parties and take appropriate measures to protect her from harm. *Luoni v. Berube*, 431 Mass. at 732 (noting that such special relationships include college and student, and hotel and guest). The summary judgment record is devoid of evidence that would give rise to a special relationship, where Rafté was neither a member of WISCA nor the guest of a paying member, and there is no evidence that she reasonably relied on WISCA to prevent trespassers from accessing the pond or for protection from the dangerous operation of jet-skis. See *Holloway v. Madison Trinity Ltd. P'ship*, 95 Mass. App. Ct. at 631 (property owner in high crime area had no duty to protect plaintiff on public sidewalk in front of its building from drive-by shooting where she was not a tenant, had no relationship with property owner, and shooting did not occur on property leased or managed by defendant).

In addition, a defendant is not liable where it neither knows nor should know of the unreasonable risk of harm to the plaintiff. *Dzung Duy Nguyen v. Massachusetts Inst. of Tech.*, 479 Mass. 436, 449 (2018). See also *Helfman v. Northeastern Univ.*, 485 Mass. at 325 (where

university was not on notice that it would be required to step in and protect intoxicated student, there was no legal duty). Even if WISCA was on notice that non-members were accessing the pond through its property, there is no evidence that they had notice that such trespassers operated jet-skis in a dangerous manner on the pond.

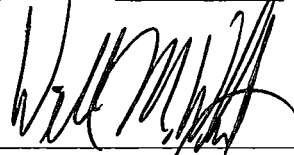
Finally, the summary judgment record fails to raise a genuine issue of material fact with respect to Rafte's claim of negligent hiring, training, and supervision. Employers must exercise reasonable care to ensure that their employees do not cause foreseeable harm to a foreseeable class of plaintiffs. *Helpman v. Northeastern Univ.*, 485 Mass. at 326. To establish liability for negligently hiring, training and retaining an employee, the plaintiff must show that the employer was aware or should have been aware of problems with an employee that indicate his unfitness, and the employer failed to take further action such as investigating, discharge, reassignment, or increased supervision. *Id.*; *Foster v. The Loft, Inc.*, 26 Mass. App. Ct. 289, 294-295 (1988). Rafte has failed to produce evidence in the summary judgment record concerning the unfitness of a particular employee or agent of WISCA who improperly allowed Sherman and Hutchinson to access the pond. Accordingly, her claim of negligent hiring, training, retention, or supervision cannot succeed.

Because Rafte has no reasonable expectation of proving that WISCA owed her a duty of care, WISCA is entitled to judgment as a matter of law on the claims against it.³

³Given the conclusion that WISCA owed no legal duty to Rafte, the court need not address whether her decision to accept a jet-ski ride from a stranger who then operated it dangerously was the superseding cause of her injuries. See *Reid v. Boston*, 95 Mass. App. Ct. 591, 601, rev. den., 483 Mass. 1102 (2019) (chain of proximate cause may be broken by intervening act of third party that was not reasonably foreseeable consequence of defendant's negligence).

ORDER

For the foregoing reasons, it is hereby **ORDERED** that Defendant White Island and Shores Community Association's Motion For Summary Judgment be **ALLOWED**.



William M. White, Jr.
Justice of the Superior Court

DATED: October 10, 2024