

**IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND**

AE SUK KO individually and as Personal \*  
Representative of the Estate of \*  
CHUNG HWAN PARK \*  
Plaintiff \*

v. \* Case No. C-10-CV-18-000634  
\*  
SEOK HO MOON, *et al.* \*  
\*  
Defendants \*

\* \* \* \* \*

**OPINION AND ORDER**

This matter came before the court on Defendants' Motion for Summary Judgment and the Plaintiffs' opposition thereto. Following a hearing on the record on August 7, 2019, it is this **8th day of August 2019**, by the Circuit Court for Frederick County, Maryland **ORDERED** that the Defendants' Motion for Summary Judgment be **GRANTED** on all counts.

**BACKGROUND**

Anna Prayer is a Korean non-denominational Christian retreat located in Frederick County, Maryland. Anna Prayer hosts church groups for worship or retreats, as well as individuals seeking prayer counseling.

Rev. Moon is a Korean pastor who oversees several churches and places of worship in the United States, including Anna Prayer. Ex. 4., Deposition of Ae Suk Ko ("Ko. Dep") at 11-13.

Kyungsook Lee resided at Anna Prayer at the time of the incident in question but was retired. Ko Depo. at 17:6-13. According to Ms. Ko, Kyungsook Lee did not have any authority concerning who was permitted to stay at Anna Prayer. *See* Ko Depo. at 18:2-4 ("E Sang Man is the person that you have to go talk to and he's the one that decides whether a person or a group

can stay [at Anna Prayer] or not").

Plaintiff Ae Suk Ko and her husband, Chung Hwan Park, came to Anna Prayer on July 1, 2015, at the direction of Rev. Moon. Ko Dep. at 13:13-19. Prior to that time, Ms. Ko and Mr. Park worked for Rev. Moon's church in Flushing, New York. Ko Dep. at 13:3-11.

When Ms. Ko and Mr. Park came to Anna Prayer on July 1, 2015, they performed duties as the cook and the landscaper, respectively. Ko Dep. at 13:21-14:6. They were not compensated for their work at Anna Prayer, but were paid by Rev. Moon as employees of his church in Flushing, New York. Ko Dep. at 21:17-22:10; *see also* Ex. B., Plaintiff's Answers to the First Set of Interrogatories at Answer 3 ("When I came to the U.S. I was sponsored by Defendant Moon's organization, Anna Prayer, for a green card and I worked for no pay."). Ms. Ko and Mr. Park reported to Pastor E Sang Man during their stay at Anna Prayer. Ko Dep. at 16:10-17:19.

In early to mid-July 2015, Song Su Kim was brought to Anna Prayer by his mother. *See* Ko Depo. at 18:20-19:1. Ms. Ko was the first to meet them, but as she was not the person to make the decision as to who can stay at Anna Prayer, she contacted Pastor E Sang Man and advised that Mr. Kim and his mother had arrived, and they were interested in Mr. Kim's staying at Anna Prayer. *Id.*; Ko Dep. at 20:4-6.

Ms. Ko testified that she told Pastor E Sang Man that Mr. Kim "looks scary, he smokes" and "we shouldn't accept him to our establishment." Ko Dep. at 20:4-16. Ms. Ko also testified that she was afraid of Mr. Kim based on "his physical appearance when [she] first saw him. . . he was smoking. He was kind of big build. And especially [his] eyes. It was just scary, spooky." Ko Dep. at 18:16-19:8. After Pastor E Sang Man spoke with Mr. Kim and his mother, he permitted Mr. Kim to stay at Anna Prayer. Ko Dep. at 20:17-20.

On July 25, 2015, the day prior to the incident, four police officers came to Anna Prayer after being called by Mr. Kim. He called them because the weather was very hot and he did not like the food. *See* Ko Dep. at 53:20-55:11. The officers did not take Mr. Kim away, despite Ms. Ko's urging, and Ms. Ko did not testify that the officers cited or warned Mr. Kim before leaving. Ko Dep. at 55:7-8. Ms. Ko testified that after this incident she again told Pastor E Sang Man that she was scared of Mr. Kim. Ko Dep. at 55:4-6.

On the evening of July 26, 2015, during a prayer service attended by Ms. Ko, Mr. Park, and several others, Mr. Kim arrived late and, unprovoked, using a knife from Anna Prayer's kitchen, stabbed Mr. Park and Ms. Ko. Ms. Ko was attempting to defend her husband, by holding a metal chair. The assault led to Mr. Park's death. Ms. Ko was transported by helicopter to University of Maryland Shock Trauma center for treatment. *See* Ko Dep. at 24-32; 36:20-37:3; 38:6-39:5; 47:7-11. Subsequently, Mr. Kim was found guilty for first degree murder and attempted first degree murder, was found "Not Criminally Responsible," and was committed for institutional, inpatient care. *See* Ex. C, January 20, 2016 Court Order.

Ms. Ko testified that prior to the incident, Mr. Kim did not have any violent incidents or outbursts during his stay at Anna Prayer, Mr. Kim did not appear to have any issues with his relationships with others at Anna Prayer (in fact he mostly kept to himself during his stay), nor did Ms. Ko recount that Mr. Kim made any threats to her or her husband (or anyone else) during Mr. Kim's stay. *See* Ko Dep. at 14:12-18; 15: 10-18; 20:20-21:3; 52:13-53:3; 56:13-17; 59:7-13.

### **STANDARD OF REVIEW**

#### **MOTION FOR SUMMARY JUDGMENT**

Defendants move for summary judgment pursuant to Maryland Rule 2-501. A Court should grant a motion for summary judgment if "the motion and response show that there is no



genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Maryland Rule 2-501(e). In deciding whether to grant a motion for summary judgment, the Court must draw all inferences in a light most favorable to the non-moving party. *Remsburg v. Montgomery*, 376 Md. 568, 580 (2003). If there are no disputed material facts, summary judgment is appropriate.

When ruling on a motion for summary judgment, the function of the Court is not to decide disputed facts, but to determine whether there exists any real dispute over material facts. *Robb v. Wancowicz*, 119 Md. App. 531, 536-37 (1998). A material fact is defined as one that will affect the outcome of the case. *Id.* at 536. If there is a genuine dispute as to any material fact, summary judgment would not properly be granted." *Brown v. Suburban Cadillac, Inc.*, 260 Md. 251, 255, 272 A.2d 42, 44 (1971). Even in situations where the underlying facts are undisputed, but are susceptible to more than one permissible inference, the choice between those inferences should not be made as a matter of law, but should be submitted to the trier of fact." *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 138, 265 A.2d 256, 258 (1970).

When the moving party has set forth sufficient grounds for summary judgment, the party opposing the motion must show with some precision that there is a genuine dispute as to a material fact. *Shatzer v. Kenilworth Warehouses, Inc.*, 261 Md. 88, at 95, 274 A.2d 95, at 98 (1971). A bare allegation in a general way that there is a dispute as to material facts is never sufficient to defeat a motion for summary judgment. *Lynx, Inc. v. Ordnance Products, Inc.*, 273 Md. 1, 7-8, 327 A.2d 502, 509 (1974). General allegations which do not show facts in detail and with precision are insufficient to prevent the entry of summary judgment. *Davis v. Montgomery County*, 267 Md. 456, 298 A.2d 178 (1972).

## DISCUSSION

### **Foreseeability that Mr. Kim would cause harm to anyone at Anna Prayer**

The Defendants argue that the Plaintiff cannot, as a matter of law, establish a claim for negligence against any of the three Defendants; Rev. Moon, Kyungsook Lee or Anna Prayer. The Defendants argue that no evidence was presented to permit a reasonable factfinder to believe it was foreseeable to any of the Defendants that one of Anna Prayer's guests would attack and injure the Plaintiffs. Defendants argue that Ms. Ko's testimony regarding her personal fear and apprehension is not sufficient evidence to establish that it was foreseeable to the Defendants that Mr. Kim would act violently towards others.

The Plaintiffs argue that given the warnings that Ms. Ko gave to Pastor E Sang Man and other persons, the church had a duty to take some remedial action with respect to Mr. Kim in order to protect Plaintiff or any others from Mr. Kim. Plaintiffs contend that it was reasonably foreseeable that Mr. Kim could have caused a disturbance and become violent.

While the Court takes note of the grave nature of this case and sympathizes with the loss that Ms. Ko has endured, the Court does not find a legal duty on the part of the Defendants. Determining if a duty exists is a question of law for the Court to decide. *See Corinaldi v. Columbia Courtyard, Inc.*, 162 Md. App. 207, 218 (2005). "[W]hether there is adequate proof of the required elements needed to succeed in a negligence action is a question of fact to be determined by the fact finder; *but, the existence of a legal duty is a question of law to be decided by the court.* *Valentine v. On Target, Inc.*, 353 Md. 544, 549 (1999) (emphasis added). Thus, the court is in the position to resolve this matter by determining if a duty exists. "To maintain an action in negligence, a plaintiff must assert the following elements: " '(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that

the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty.' *Muthukumarana v. Montgomery County*, 370 Md. 447, 486 (2002) (citations omitted). As such, the Plaintiffs offered no compelling argument on how a duty was created for the Court to consider. Even if the court were to analyze the case under a premise liability theory, the Plaintiffs would fail:

The highest duty is that owed to an invitee; it is the duty to "use reasonable and ordinary care to keep [the] premises safe for the invitee and to protect [the invitee] from injury caused by an unreasonable risk which the invitee, by exercising ordinary care for [the invitee's] own safety will not discover."

*Deboy v. City of Crisfield*, 167 Md. App. 548, 555 (2006) (quoting *Rowley v. Mayor*, 305 Md. 456, 465 (1986)).

Again, Ms. Ko was afraid of Mr. Kim because of his oddities, not his violent tendencies. Furthermore, this court would have to find a circumstance rejected by the Court of Appeals: that the dangerous condition was the mere presence of Mr. Kim, creating a "floating duty" which would follow him as he moved about the prayer center. *Rhaney v. Univ. of Md. E. Shore*, 388 Md. 585 at FN9.

A duty could also be imposed by a special relationship. "There is no duty generally to control the conduct of a third person so as to prevent him or her from causing physical harm by criminal acts or intentional torts, absent a special relationship." *Id.* at 596-597. Absent a "special relationship" there is generally *no duty* on the part of the alleged tortfeasor to control the actions of third parties. *Id.* This has been held to be true even with criminal acts on the part of the third person. See *Lamb v. Hopkins*, 303 Md. 236 (1985). In *Lamb*, the Court adopted § 319 of the Restatement of Torts (Second) which states: "[o]ne who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is



under a duty to exercise reasonable care to control the third person to prevent him from doing such harm.” *Id.* at 243.

The Court went on to state, however, that

[t]he operative words of this section, such as “takes charge” and “control,” are obviously vague, and the Restatement makes no formal attempt to define them. The comment to § 319, however, indicates that the rule stated in that section applies to two situations. First, § 319 applies to those situations where the actor has charge of one or more of a class of persons to whom the tendency to act injuriously is normal. Second, § 319 applies to those situations where the actor has charge of a third person who does not belong to such a class but who has a peculiar tendency so to act of which the actor from personal experience or otherwise knows or should know.

*Lamb*, 303 Md. at 243.

From all the case law this court has reviewed, it appears that in any instance for a “special relationship” to exist, it is the initiative of the alleged tortfeasor, and the reliance of the plaintiff which establishes the duty, and when one undertakes that duty, he or she must act reasonably. *See Ashburn v. Anne Arundel County*, 306 Md. 617 (1986), *see Remsburg v. Montgomery*, 376 Md. 568 (2003), *see Rhaney, supra.*, *see Lamb, supra.* Under the facts of this case, the court cannot find that a “special relationship” existed. There was no knowledge from which the Defendants could have known that Mr. Kim would cause bodily harm. More importantly, there was no evidence that Rev. Moon, nor the prayer center “took charge” of him. He was simply allowed to stay there at the request of his mother. There is no evidence that the Defendants recognized a threat, affirmatively agreed to protect others from that threat, and that others relied on their protection.

Furthermore, to impose liability, the Court must be able to determine that there was foreseeable risk. No facts were presented to establish any sufficient pattern of behavior that would put the Defendants on notice of the potential for a violent attack. Mr. Kim had no criminal history or history of issues at Anna Prayer. There was no knowledge on the part of the

Plaintiffs or the Defendants that Mr. Kim had a history or pattern of violent behavior other than his mother's representation that he had been physically violent with her. There was no description of that harm, however, nor its frequency. Ms. Ko testified that she was afraid of him because of his size, the appearance of his eyes, and that he smoked. She testified that Kim was not violent prior to the attack. There was no information known to any of the Defendants from which a fatal assault could have been foreseen.

Further, Defendants argue that there are no facts to support a negligence claim against Defendant Kyungsook Lee. Defendants contend that, at the time of the incident, Kyungsook Lee did not have the authority to refuse Mr. Kim from staying at Anna Prayer, or to act on behalf of Anna Prayer.

For the foregoing reasons, the Defendants Motion for Summary Judgment is granted in favor of all Defendants.

**ORDER**

**WHEREFORE**, this matter having come before the Court on Defendants' Motion for Summary Judgment and Plaintiffs' responses thereto, and having heard argument on August 7, 2019, it is, this 8th day of August 2019, by the Circuit Court for Frederick County, Maryland,

**ORDERED**, Defendants' Motion for Summary Judgment is hereby **GRANTED** on all counts.

  
THERESA M. ADAMS, Judge

Entered: Clerk, Circuit Court for  
Frederick County, MD  
August 9, 2019