

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-000536-MR

RUTH BRADFORD and  
SCOTT BRADFORD

APPELLANTS

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE SHEILA R. ISAAC, JUDGE  
ACTION NO. 01-CI-02944

LEXINGTON FAYETTE URBAN COUNTY  
GOVERNMENT and LEXINGTON FAYETTE  
URBAN COUNTY GOVERNMENT PUBLIC  
FACILITIES CORPORATION and  
CENTRAL PARKING SYSTEMS  
a/k/a CENTRAL PARKING SYSTEM  
OF KENTUCKY, INC.

APPELLEES

OPINION  
REVERSING  
AND  
REMANDING

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BEFORE: BUCKINGHAM, DYCHE, AND GUIDUGLI, JUDGES.

BUCKINGHAM, JUDGE: Ruth Bradford fell and injured her foot in a government parking garage in Lexington, Kentucky. She filed a civil complaint in the Fayette Circuit Court against the urban county government, the urban county public facilities corporation, and the corporation that had been hired to manage

the garage. Her complaint, as it related to the first two parties, was dismissed by the court based on the doctrine of sovereign immunity.<sup>1</sup> Further, the court granted summary judgment to the corporation that managed the parking garage based on a management agreement between that corporation and the government corporation. Bradford filed this appeal based on her belief that the court erroneously awarded summary judgment to the corporation managing the garage. We agree and thus reverse and remand.

On the date of Bradford's fall and injury, the parking garage was owned by Lexington-Fayette Urban County Government Public Parking Corporation and managed by Central Parking System of Kentucky, Inc. The government corporation had entered into a management agreement with Central Parking in June 1998.<sup>2</sup> Pursuant to that agreement, Central Parking received monthly management fees for managing the garage.<sup>3</sup>

In exchange for the management fees received by Central Parking, the agreement imposed various obligations on

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<sup>1</sup> Although the urban county government and the urban county public facilities corporation were named by Bradford as appellees in this appeal, her appeal was not from the judgments dismissing those parties.

<sup>2</sup> This government corporation was not named as a defendant in Bradford's complaint. Rather, she named Lexington-Fayette Urban County Government Public Facilities Corporation. Regardless, the urban county corporation was dismissed by the court based on sovereign immunity.

<sup>3</sup> The management agreement covered the garage in which Bradford fell as well as two other parking garages owned by the government corporation.

it. Central Parking was required to provide a full-time manager to manage the urban county government garages. It was also required to collect all gross receipts from the operation of the garages and deposit the money into urban county government bank accounts on a daily basis. It was required to keep the garages "in a clean, presentable, and sanitary condition" and was required to procure liability insurance coverage in amounts stated in the agreement.

Further, Central Parking was required to "provide on-going and advisory services to the Urban County Government concerning the management, operation, maintenance, repair and promotion of the parking facilities." Paragraph 12 of Management Agreement. In accordance with this portion of the agreement, Central Parking was also to provide day-to-day consulting and advisory services that included "the observable need for repairs to the structural and mechanical systems of the garages . . . and notification of safety issues." In addition, it was responsible for seeing to it that normal maintenance and repairs were accomplished, including snow removal, repainting stall markings, repairing or replacing signs and minor equipment, and replacing light bulbs.

The agreement also provided that Central Parking was authorized to spend up to \$500 on needed repairs and maintenance without prior approval from the government corporation and that

its failure to do so "shall be considered negligence."

Paragraph 7(B)9 of Management Agreement. It was also responsible for supervising any maintenance or repair work on the premises. Paragraph 13 of Management Agreement. The government corporation agreed that it would be responsible for all claims, expenses, and damages arising from "structural or design deficiencies or by improper work or supervision during construction including, without limitation, settlement, collapse or inadequacy of structure or equipment and all repairs related thereto[.]"

In 1998 the government corporation began a three-phase renovation project on the parking garage. After years of cold temperatures and salting, the concrete floor in the structure had begun to break in places and needed to be repaired. Phase I of the project began in 1998, but repairs ended before any work was done on the level where Bradford fell because the government corporation did not have the funds to continue at that time.

Work began in May 2000 under Phase II, which included repairs on the fourth level of the structure. Repairs halted in June 2000 when the corporation again did not have the funds to proceed. However, at the time Bradford fell, there were notices posted that repairs were ongoing on that level. When Central Parking's summary motion was argued to the circuit court,

counsel of both parties were unaware as to whether construction work had begun in the area where Bradford fell.

On September 28, 2000, Bradford was attending her third day of training at the police department. She parked her car in the parking garage, which was located at 163 East Main Street, Lexington, Kentucky. While on a break, she left the police department and entered the garage to smoke.

After entering the garage, Bradford fell at the bottom of a flight of stairs leading to the structure's fourth level. She alleges that the stairway was dark and that she stepped into a hole at the bottom of the stairs. Bradford claims that she suffered two torn tendons in her right foot as a result of the fall. She stated that while she was waiting for a paramedic to come, "a lady from medical records stated that they had asked them several times to properly light and fix the hole."

Bradford and her husband filed a civil complaint against the urban county government, the government corporation, and Central Parking. As we have noted, Bradford's complaint against the first two parties was dismissed based on sovereign immunity. Bradford argues in this appeal that the circuit court erred when it granted Central Parking's summary judgment motion.

In granting the summary judgment motion, the court accepted Central Parking's argument and held "that under the contract of Central Parking Systems with the Lexington-Fayette

Urban County Government Public Parking Corporation that the city undertook a major repair on the parking structure and assumed the liability pursuant to the contract for any damages resulting." Specifically, the circuit court relied on Paragraph 7(D) of the management agreement which provided that all claims relating to "improper work or supervision during construction" would be the government corporation's responsibility. We agree with Bradford that this holding by the court was erroneous.

The circuit court apparently reasoned that because there was ongoing construction concerning the repairing of cracks and holes in the concrete floor at the time Bradford was injured, then Paragraph 7(D) caused the government corporation to assume any liability of Central Parking. We have problems with this analysis. First, there is no indication in the record that Bradford's fall and her subsequent claim resulted from "improper work or supervision during construction." There is nothing in the record at this point to indicate that the area where Bradford fell had been subject to any repair work or other construction. Furthermore, there is no indication in the record that any repair work or other construction had been done in this entire portion of the fourth level of the garage. Thus, there are fact issues in this regard.

Second, any liability that Central Parking had to third persons could not be avoided by a transfer of that

liability from Central Parking to the government corporation. That is the basis of the court's ruling, and we believe that the analysis is erroneous. In Louisville Cooperage Co., Inc. v. Lawrence, 313 Ky. 75, 230 S.W.2d 103 (1950), the court stated:

A contract by which one party delegates and the other assumes a duty in respect to safety to persons or property serves as a criterion and measure of the rights of the parties thereto as between themselves although such contract will not be permitted to avoid personal responsibility to third persons.

313 Ky. at 78.

Therefore, assuming Central Parking owed a duty to third persons using the parking garage and had liability in connection therewith, then it could not assign away that liability to the government corporation and absolve itself from all liability to third persons. In other words, even if Paragraph 7(D) has relevance to this situation, it would be effective only between Central Parking and the government corporation and would have no bearing on the liability of Central Parking to Bradford.

The remaining question is whether Central Parking, as manager of the parking garage, owed any duty to patrons using the parking garage and whether it violated that duty in this case, leading to Bradford's fall and injury. Citing Lanier v. Wal-Mart Stores, Inc., 99 S.W.3d 431 (Ky. 2003), Bradford argues

that Central Parking, as possessor of the property, owed legal duties to Bradford as an invitee. As stated in the Restatement (Second) of Torts § 343 (1965):

A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he:

- (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees; and
- (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it; and
- (c) fails to exercise reasonable care to protect them against the danger.

Thus, the question is whether the duty was owed to Bradford by Central Parking, as the manager, or only by the government corporation, as the owner.<sup>4</sup>

Although we could find no authority from this jurisdiction addressing the issue, general authority states:

A person put in control of premises or a part thereof by the owner is under the same duty as the owner to keep the premises under his control in safe condition. To similar effect, it has been said that one who does an act or carries on an activity on land on behalf of the possessor is subject to the same liability . . . for physical harm caused thereby to others on or outside of

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<sup>4</sup> This issue was not addressed by either party in their briefs.



the land as though he were the possessor of the land. In such cases, the decisive test of liability is control of the work, and not the actual transfer of possession by contract.

62 Am.Jur.2d Premises Liability § 10 (1990). Further, general authority states that:

An agent who has the complete and sole management, control, and supervision of his principal's premises and the repair and maintenance thereof is liable for injuries caused by the agent's failure to exercise ordinary care in keeping the premises free from defects or dangerous conditions. However, if an agent does not have complete control over the premises, and it is not sought to fasten on him the liability of an owner or possessor, the test of his liability is whether he has breached his legal duty or been negligent with respect to something over which he did not have control.

Id. Also, in Smith v. Henger, 226 S.W.2d 425 (Tex. 1950), the court stated:

The law places upon the owner occupant of land the duty to use reasonable care to make and keep the premises safe for the use of person invited to use the premises for business purposes . . . . When the owner puts some other person in control of the premises or a part of them, such person likewise has the duty to keep the premises under his control in safe condition . . . . Where the duty to keep premises in a safe condition is imposed on a person in control of them, this duty may include the duty to inspect the premises to discover dangerous conditions.

Id. at 431.

We conclude that Central Parking had such control and supervision over the premises as to have the legal duties of a possessor of property to invitees in the parking garage.<sup>5</sup> Such control was set out in the management agreement. Because genuine issues of material fact remain to be decided, an award of summary judgment in Central Parking's favor was not appropriate. These fact issues may include whether Central Parking violated any of its duties to invitees to the garage and whether the condition was open and obvious.

The judgment of the Fayette Circuit Court is reversed, and this case is remanded for further proceedings consistent herewith.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Julius Rather  
Lexington, Kentucky

BRIEF FOR APPELLEE, CENTRAL  
PARKING SYSTEMS:

R. Craig Reinhardt  
Katherine J. Hornback  
Lexington, Kentucky

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<sup>5</sup> This is not a case like Peterson v. Brune, 273 S.W.2d 278 (Mo. 1954), where the management company was only an agent to the extent of collecting rents and receiving complaints. Id. at 285.