

Affirmed in Part, Reversed and Remanded in Part, and Opinion filed April 19, 2001.



In The

Fourteenth Court of Appeals

NO. 14-99-00741-CV

MICHAEL CALLIS, Appellant

V.

CENTERAMERICA PROPERTY TRUST, L.P., ANGLETON PALM SHOPPING CENTER, MOORE REALTY PARTNERSHIP, L.P., HOUSTON HOLDINGS COMPANY, HHC HOLDINGS REIT, MICHAEL E. FOSTER, WILLIAM M. LEWIS, JR., SCOTT D. MACDONALD, and CHRISTOPHER J. NIEHAUS, Appellees

**On Appeal from the 239th District Court
Brazoria County, Texas
Trial Court Cause No. 3255*JG97**

OPINION

Appellant, Michael Callis, appeals from a summary judgment on a negligence claim entered in favor of appellees, CenterAmerica Property Trust, L.P., Angleton Palm Shopping Center, Moore Realty Partnership, L.P., Houston Holdings Company, and HHC Holdings REIT, (collectively "CenterAmerica"). We affirm in part and reverse and remand in part.

FACTUAL AND PROCEDURAL BACKGROUND

Callis owned 51% of a partnership, “Discount Furniture Center,” which he operated with his partner, Gene Halstead, in a shopping center building owned by CenterAmerica. Halstead began leasing the property from CenterAmerica in October 1995. The lease listed Halstead as the only tenant.¹

Callis and Halstead notified CenterAmerica on numerous occasions of a malfunctioning light fixture it allegedly installed on the leased premises. On several occasions, CenterAmerica sent a maintenance employee to repair the light, but the efforts failed. Callis and Halstead then notified CenterAmerica several times that the light remained in disrepair despite attempts to repair it. On December 23, 1995, the faulty light allegedly ignited a fire which destroyed most, if not all, of the partnership’s business inventory and equipment, owned, in part, by Callis.

Callis, individually and on behalf of the partnership, joined with Halstead in bringing suit against CenterAmerica for negligence, breach of contract, and violation of the Deceptive Trade Practices Act (“DTPA”). CenterAmerica filed a motion for summary judgment against Callis, addressing only the breach of contract and DTPA claims. However, the trial court granted summary judgment against Callis as to *all* claims. Callis then filed a motion for new trial, asserting that genuine issues of material fact exist as to Callis’ negligence and gross negligence claims, specifically whether Callis was an invitee and whether CenterAmerica breached the duty owed to an invitee. That motion was later overruled by operation of law. Callis now appeals the summary judgment as to his negligence claim.

ISSUES PRESENTED FOR REVIEW

In three points of error, Callis contends the trial court erred in granting CenterAmerica’s motion for summary judgment because genuine issues of material fact exist regarding whether CenterAmerica breached a duty to reasonably repair the light, thereby

¹ The lease also listed Halstead’s “trade name” as “Discount Furniture Center.”

causing damage to Callis' property. Callis also asserts the trial court erred in granting CenterAmerica's motion for summary judgment because that motion failed to address the negligence claim. Callis does not assign error to the trial court's summary judgment on the DTPA and breach of contract claims.

SUMMARY JUDGMENT STANDARD OF REVIEW

Under Texas Rule of Civil Procedure 166a(c), a defendant is entitled to summary judgment when it establishes, as a matter of law, that there is no genuine issue of material fact about one or more essential elements of the plaintiff's cause of action.² TEX. R. CIV. P. 166a(c); *Gibbs v. Gen. Motors Corp.*, 450 S.W.2d 827, 828 (Tex. 1970). Rule 166a(c) requires the movant to "expressly set out" the issues and "state the specific grounds" on which the movant seeks summary judgment. TEX. R. CIV. P. 166a(c). A trial court may not grant summary judgment as to a claim not addressed in the movant's motion for summary judgment. *Guest v. Cochran*, 993 S.W.2d 397, 405 (Tex. App.—Houston [14th Dist.] 1999, no pet.). A reviewing court cannot "read between the lines, infer or glean from the pleadings or the proof any grounds for granting the summary judgment other than those grounds expressly set forth before the trial court in the motion for summary judgment." *Great-Ness Prof'l Servs., Inc. v. First Nat'l Bank of Louisville*, 704 S.W.2d 916, 918 (Tex. App.—Houston [14th Dist.] 1986, no writ).

ANALYSIS

To prevail on a motion for summary judgment in a negligence case, a defendant must negate an essential element of the plaintiff's claim. *Am. Tobacco Co., Inc. v. Grinnell*, 951 S.W.2d 420, 425 (Tex. 1997). To conclusively negate an essential element, the motion must identify or address the cause of action and its elements. *Black v. Victoria Lloyds Ins. Co.*, 797

² CenterAmerica moved for a traditional summary judgment under Rule 166a(c), and did not file a no-evidence motion under 166a(i).

S.W.2d 20, 27 (Tex. 1990).

Callis' petition asserted negligence, breach of contract, and DTPA claims against CenterAmerica. CenterAmerica's motion for summary judgment clearly addressed the breach of contract and DTPA claims. However, it did not address Callis' negligence claim. In lieu of addressing the negligence claim, CenterAmerica appeared to merely recharacterize Callis' negligence claim as a claim for breach of contract that failed due to lack of privity with CenterAmerica. Because CenterAmerica did not address Callis' negligence claim in its motion for summary judgment, the trial court erred in granting summary judgment on that claim. *See Ken Petro. Corp. v. Questor Drilling Corp.*, 24 S.W.3d 344, 357 (Tex. 2000).

Because Callis only contests the granting of summary judgment as to the negligence claim, we affirm summary judgment as to the breach of contract and DTPA claims. We reverse the summary judgment as to Callis' negligence claim and remand this case to the trial court for further proceedings consistent with this opinion.

/s/ **Kem Thompson Frost**
Justice

Judgment rendered and Opinion filed April 19, 2001.

Panel consists of Justices Yates, Wittig, and Frost.

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