

**DEFENDANT SECURITY COMPANY'S BRIEF IN SUPPORT OF
ITS MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendant Security Company and hereby files this Brief in Support of its Motion for Summary Judgment. Defendant shows herein that it is entitled to judgment as a matter of law and shows the Court as follows:

STATEMENT OF FACTS

On or about the morning of February 13, 1999, The Deceased was assaulted, robbed, severely kicked, and brutally beaten to death by Smith. The administrator of her estate sued the above named Defendants for her death (See Plaintiff's Complaint).

After the Deceased walked to her automobile in the parking lot of the hospital, Smith forced himself into her automobile. (See Plaintiff's Complaint). Smith proceeded to assault and kidnap her and drove her against her will to an isolated area of the county. (See Plaintiff's Complaint). Smith then further assaulted, robbed, severely kicked and beat the Deceased to death. (See Plaintiff's Complaint).

Smith has admitted that on or about February 13, 1999 he robbed, assaulted, and kidnapped the Deceased while she was attempting to enter her automobile in the parking lot of the hospital. (See Plaintiff's Complaint). He has also admitted that he forcibly drove her against her will to an isolated area where he further assaulted, robbed, severely kicked, and brutally beat her to death. (See Plaintiff's Complaint).

Additionally, at the time of the events which occurred in the parking lot, Defendant was the security service provider at the hospital, pursuant to a contract with the hospital. (See Affidavit filed in conjunction with Defendant's Motion for Summary Judgment). A true and correct copy of that contract is attached to the affidavit.

STANDARD OF REVIEW

To prevail on a Motion for Summary Judgment pursuant to O.C.G.A. '9-11-56(c), the moving party must demonstrate that there are no genuine issues of material fact, and the disputed facts, viewed in a light most favorable to the non-moving party, warrant judgment as a matter of law. If the record reveals there is no evidence sufficient to create a genuine issue as to any essential element of the plaintiff's claim, his claim tumbles like a house of cards. @ Lau's Corp. v. Haskins, 261 Ga. 491, 405 S.E.2d 474 (1991). Defendants have no burden on summary judgment beyond demonstrating a lack of genuine issue of fact on any essential element of plaintiffs' claims. Id. It is the duty of each party at summary judgment to present their case in full, or risk judgment going against them. Sharfuddin v. Drug Emporium, 230 Ga. App. 679, 681, 498 S.E.2d 748 (1998).

The record before the Court on Defendant's Motion for Summary Judgment is completely void of any evidence demonstrating a genuine issue of material fact as to Defendant's liability for the Plaintiffs' injuries. For the reasons below, Defendant is entitled to summary judgment as a matter of law under O.C.G.A.' 9-11-56.

ARGUMENT AND CITATION OF AUTHORITY

1. No Duty

Plaintiff cannot recover from Defendant as any duty owed by the security services company arose not by operation of law but by contract. @ Anderson v. Atlanta Committee for Olympic Games, Inc., 273 Ga. 113, 117 -118, 537 S.E.2d. 345, 349-350 (2000), citing Armor Elevator Co. v. Hinton, 213 Ga. App. 27, 443 S.E.2d 670 (1994). As recognized in Armor Elevator Co., 213 Ga. App. 27, 30, 443 S.E.2d 670 (1994):

A[i] in personal injury cases, an injured party may not recover as a third-party beneficiary for failure to perform a duty imposed by a contract unless it is apparent from the language of the agreement that the contract and parties intended to confer direct benefit upon the Plaintiff to protect him from physical injury... @ Id.

See also Donaldson v. Coca Cola Co., 164 Ga. App. 712, 298 S.E.2d 25 (1982) (Both parties to contract must intend for third person to be a beneficiary).

There is no evidence in the present case that the terms in Defendant's contract with the hospital intended to confer a benefit on invitees to the hospital's property or that under the terms thereof the security services company either owed or assumed any duty to protect or warn invitees. In fact, the contract specifically provides for no such benefit, as follows:

The services provided under this Agreement are solely for the benefit of Client and neither this Agreement nor any services rendered hereunder confer any rights on any other party as a third-party beneficiary or otherwise.

(Contract at &5(f)).

The only duty Defendant had under the contract was to the Client hospital. Therefore, Plaintiff cannot recover against Defendant as Defendant owed no duty to Plaintiff, as it was neither the owner nor occupier of the premises.

It is uncontroverted that [Defendant] was neither the owner nor the occupier of the property where [Plaintiff's decedent was] injured. Accordingly, [Defendant] is not directly liable to [Plaintiff] under any premises liability theory. . . It is axiomatic that an action for negligence cannot be maintained if the defendant did not owe the plaintiff a legal duty.

Anderson v. the Atlanta Committee for the Olympic Games, Inc., 237 Ga. 113, 117-118, 537 S.E.2d 345, 349-315 (2000).

2. No Breach of the Standard of Care

There is no evidence in the present case that Defendant committed any act or omission which fell below the applicable standard of care. Without such evidence, Plaintiff cannot recover as breach is an essential element of Plaintiff's claims. Lau's Corp. v. Haskins, 261 Ga. 491, 405 S.E.2d 474 (1991); Sharfuddin v. Drug Emporium, 230 Ga. App. 679, 498 S.E.2d 748 (1998).

3. No Proximate Cause

There is no evidence in the present case that Defendant committed any act or omission which proximately caused the abduction and murder of the Deceased. Therefore, Defendant is entitled to judgment as a matter of law as proximate cause is an essential element of Plaintiff's claims. Lau's Corp. v. Haskins, 261 Ga. 491, 405 S.E.2d 474 (1991); Sharfuddin v. Drug Emporium, 230 Ga. App. 679, 498 S.E.2d 748 (1998).

CONCLUSION

For the foregoing reasons, the Defendant is entitled to judgment as a matter of law.

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