

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MIESHA WILDER,)
)
 Plaintiff,)
 v.)
)
 WHITE CASTLE SYSTEM, INC.,)
 and WESTEC INTERACTIVE)
 SECURITY, INC.,)
)
 Defendants.)
 _____)
)
 WHITE CASTLE SYSTEM, INC.,)
)
 Counter-Plaintiff,)
)
 v.)
)
 WESTEC INTERACTIVE SECURITY, INC.,)
)
 Counter-Defendant.)
 _____)
)
 WESTEC INTERACTIVE SECURITY, INC.,)
)
 Counter-Plaintiff,)
)
 v.)
)
 WHITE CASTLE SYSTEM, INC.,)
)
 Counter-Defendant.)

No.: 07-cv-4491
Judge William J. Hibbler

**MEMORANDUM OF LAW IN SUPPORT OF WESTEC INTERACTIVE SECURITY, INC.’S MOTION
FOR SUMMARY JUDGMENT**

Defendant, WESTEC INTERACTIVE SECURITY, INC., (hereafter, “WESTEC”) through it’s attorney,
LAW OFFICES OF LOWELL D. SNORF, III, pursuant to F.R.C.P. 56 and submits this Memorandum of Law in Support
of its Motion for Summary Judgment:

**I
INTRODUCTION**

This is a case involving the liability of an off-premises video surveillance monitoring security company to
a non-customer, MIESHA WILDER. WESTEC seeks summary judgment in its favor because WESTEC breached no

duty to MIESHA WILDER as WESTEC never received notification from anyone of the events preceding the shooting; further, WESTEC was not the proximate cause of the shooting of MIESHA WILDER.

II **STANDARDS FOR SUMMARY JUDGMENT**

Under Rule 56, the district court is directed to enter judgment where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c) *Celotex Co. v. Catrett*, 477 U.S. 317, 322 (1986). “Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’” *Id.* at 327.

“[T]he plain language of Rule 56(c) mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Id.* at 322. “When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts ... Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-587 (1986) (internal quotes omitted). All *reasonable* inferences are to be drawn in favor of the non-moving party, but only those inferences that are reasonably supportable by the facts. “When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 127 S.Ct. 1769, 1776 (2007). “The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986) (emphasis by court).

III **FACTUAL BACKGROUND**

On August 5, 2005 WESTEC was under contract with WHITE CASTLE to provide video monitoring services to WHITE CASTLE Store No.: 67 (SMOF ¶11). The scope of services were a) to respond to alarms when given by Store No.: 67, and b) perform three designated off-premises tours per day (SMOF ¶’S 12, 13). On August 5, 2005 WESTEC’S system was operational (SMOF ¶ 50). Plaintiff in her February 9, 2008 supplemental answers to WESTEC

interrogatories No.: 1 recognizes the contract between WESTEC and WHITE CASTLE (February 9, 2008 MIESHA WILDER'S supplemental answers to WESTEC'S interrogatories, Exhibit 'L').

On August 5, 2005 between 2:08 a.m. and 2:14 a.m. the plaintiff, MIESHA WILDER entered the WHITE CASTLE Store No.: 67 with her friend Crystal Robinson (SMOF ¶23). Shortly after entering the restaurant, an unknown individual insulted her friend 'Darius' (SMOF ¶24). The conversation lasted several minutes and MIESHA WILDER and Crystal Robinson claim they notified a WHITE CASTLE cashier of the disturbance, but the cashier did not respond (SMOF ¶26). The unknown individual left the WHITE CASTLE followed shortly by 'Darius' (SMOF ¶27). MIESHA WILDER and Crystal Robinson then followed 'Darius' outside (SMOF ¶32). Neither Crystal Robinson nor MIESHA WILDER said WHITE CASTLE notified WESTEC of the emergency or that WESTEC failed to respond (SMOF ¶S 46-49). A short time later, while outside of the WHITE CASTLE, MIESHA WILDER was shot by an unknown person (SMOF ¶35). WESTEC received no notification of the incident either at the time it occurred or subsequent thereto (SMOF ¶71).

IV

ARGUMENT

THE CONTRACT BETWEEN WESTEC AND WHITE CASTLE DETERMINES THE RESPONSIBILITIES OF WESTEC AT STORE NO.: 67

The 1998 CONTRACT FOR PURCHASE AND/OR LEASE OF SECURITY SERVICES AND PRODUCTS (hereafter 'CONTRACT') and Addendum 'A' determines what WESTEC'S obligations were on August 5, 2005 at Store No.: 67. *Pick Fisheries v. Burns Electronic Services, Inc.* 342 N.E.2d 105 (1st Dist., 1976); *Purolator Security Inc. v. Wells Fargo Alarm Services* 141 Ill.App.3d 1106, 491 N.E.2d 161 (1st Dist., 1986); *Chicago Steel Rule and Die Fabricators Company v. ADT Security Systems, Inc.* 327 Ill.App.3d 642, 763 N.E.2d 839 (1st Dist., 2002) and *Eichegreen v. Rollins, Inc.* 325 Ill.App.3d 517, 757 N.E.2d 952 (1st Dist., 2001).

The scope of the duty owed by WESTEC to MIESHA WILDER is also defined by the contractual undertaking between WHITE CASTLE and WESTEC *Mark Hill v. Chicago Housing Authority* 233 Ill.App.3d 923, 599 N.E.2d 1118 (1st Dist., 1992); *Cross v. Wells Fargo Alarm Services* 82 Ill.2d 313, 412 N.E.2d 472 (1980); *Eichegreen v. Rollins, Inc.* 325 Ill.App.3d 517, 757 N.E.2d 952 (1st Dist., 2001). WESTEC here owed MIESHA WILDER the duty of exercising reasonable care in the performance of its contractual obligations with WHITE CASTLE. *Mark Hill v. Chicago Housing Authority*, 233 Ill.App.3d 923, 599 N.E.2d 1118 (1st Dist., 1992). For example, in *Mark Hill v. Chicago*

Housing Authority, 233 Ill.App.3d 923, 599 N.E.2d 1118 (1st Dist., 1992) a housing project visitor brought a negligence action against the Chicago Housing Authority and Triad Security after the visitor was shot in the lobby of the housing project, 599 N.E.2d 1118. Plaintiff alleged Triad Security allowed persons to loiter in the hallways and failed to have security personnel patrol these areas; similarly, the plaintiff alleged the assault was the direct and proximate result of Triad's negligence. Triad filed a 735 ILCS 5/2-619 motion to dismiss asserting it had no duty to provide security guard at the premises at the time of the assault, *Id.* The trial granted Triad's motion to dismiss with the appellate court affirming, writing *the tort duty owed by a security company to the third person is measured by the terms of the contract obligations, Id. at 1127.*

Similarly, in *Eichergreen* the court stated:

An allegation of negligence based upon a contractual obligation, although sounding in tort rather than contract, is nonetheless defined by the contract. *Ferentchak v. Village of Frankfort*, 105 Ill.2d 474, 480-81, 86 Ill.Dec. 443, 475 N.E.2d 822, 825-26 (1985); *Melchers v. Total Electric Construction*, 311 Ill.App.3d 224, 228, 243 Ill.Dec. 512, 723 N.E.2d 815, 818 (1999). Thus, the scope of duty is determined by the terms of the contract. *Ferentchak*, 105 Ill.2d at 480-81, 86 Ill.Dec. 443, 475 N.E.2d at 826. A defendant's duties will not be expanded beyond the scope of duties required by the contract. *Ferentchak*, 105 Ill.2d at 480-81, 86 Ill.Dec. 443, 475 N.E.2d at 825-26; *Kotarba v. Jamrozik*, 283 Ill.App.3d 595, 598, 218 Ill.Dec. 659, 669 N.E.2d 1185, 1188 (1996); see also *Dyduch v. Crystal Green Corp.*, 221 Ill.App.3d 474, 478-79, 164 Ill.Dec. 94, 582 N.E.2d 302, 306 (1991) ("Where a defendant is charged with negligence because of his failure to perform an act allegedly required by contract, the question of whether the defendant actually had a duty to perform the act usually must be determined from the terms of the contract, and the defendant's duty will not be extended beyond the duties described by the contract."); *American States Insurance Co. v. A.J. Maggio Co.*, 229 Ill.App.3d 422, 426, 171 Ill.Dec. 263, 593 N.E.2d 1083, 1085-86 (1992) ("Where a defendant is charged with negligence because of his failure to perform an act allegedly required by contract, the question whether the defendant had a duty to perform the act is determined by the terms of the contract. [Citation.] The defendant's duties will not be expanded beyond the scope of the duties described in the contract.") 757 N.E.2d 952.

Again, WESTEC'S duties to WHITE CASTLE Store No.: 67 under the CONTRACT were (a) to respond to alarm signals received from Store No.: 67, and (b) to perform three video tours per day (SMOF ¶s 16, 17). WESTEC was not required to have security personnel at Store No.: 67 (SMOF ¶ 21).

At ¶ 2 of Count II MIESHA WILDER'S amended complaint, MIESHA WILDER alleges WESTEC had responsibility for the management, maintenance, supervision, control, security or operation of Store No.: 67. Again, WESTEC performed off-premises video monitoring from Irvine, California and there has never been any factual showing

that on August 5, 2005 WESTEC had any control of what WHITE CASTLE employees were doing at the time of the incident. The uncontroverted evidence shows monitoring equipment was sold by WESTEC to WHITE CASTLE, which worked on August 5, 2005 (SMOF ¶ 52, 53). WESTEC did not and was not required to have guards at Store No.: 67 (SMOF ¶ 21). WESTEC performed three tours per day which lasted 90 to 120 seconds (SMOF ¶ 6). These tours were performed as required during the hours of 12:00 a.m., 4:00 a.m. and 5:00 p.m., C.S.T. (SMOF ¶ 17).

At ¶s 8 and 9 of Count II of the amended complaint, plaintiff identifies an unidentified male at the WHITE CASTLE and that WESTEC should have known of the person and the person posed a risk (Exhibit 'J'). However, the uncontroverted evidence shows WESTEC did not receive notice from anyone about the intruder identified in ¶s 8 and 9, and WESTEC would not see the intruder during the hour of 2:00 a.m., C.S.T., unless it received notification from WHITE CASTLE of a risk.

Additionally, there are no material facts establishing the allegations of ¶ 12 (a-g) of plaintiff's amended complaint (SMOF ¶s 21, 50, 53, 55, 59 and 70). Nor are there any facts establishing any of the equipment sold to WHITE CASTLE was unsuitable or broken (SMOF ¶ 52 and 53). In fact, the equipment WESTEC monitored worked fine, and there has been no testimony there were any complaints the WESTEC system did not do what it was required to do (SMOF ¶ 50). WESTEC complied with written contract terms by providing a monitoring system which was operational on August 5, 2005 and worked as it was designed to work. There has not been any factual showing WESTEC did not carry out its contract as required.

V
ARGUMENT
WESTEC DID NOT BREACH ANY DUTY TO PLAINTIFF

Under Count II of the amended complaint, plaintiff sues WESTEC for negligence. To state a cause of action for negligence, plaintiff must establish WESTEC owed her a duty of care, that WESTEC breached its duty, and plaintiff's injuries were proximately caused by the breach. *Gylin v. College Craft Enterprises, Ltd.* 260 Ill.App.3d 707, 633 N.E.2d 111 (1st Dist., 1993); *Mann v. Producers Chemical Company*, 356 Ill.App.3d 967, 822 N.E.2d 883 (1st Dist., 2005). To survive summary judgment, plaintiff must establish factual basis to support each element of the cause of action, including proximate cause. *Gylin v. College Craft*, 260 Ill.App.3d 707, 633 N.E.2d 111 (1st Dist., 1993). There can be no liability for negligence against WESTEC where there has been no showing WESTEC breached any duty to plaintiff.

The plaintiff has no knowledge WESTEC did not perform the services required of it (SMOF ¶ 48). She did not notify WESTEC. The uncontroverted evidence from the fact witnesses is that WESTEC did not receive notice of the events preceding the emergency (SMOF ¶ 43). Additionally, there was no tour scheduled during the hour of 2:00 a.m. C.S.T. Plaintiff fails to make a sufficient showing that WESTEC did not exercise reasonable care in carrying out its contract with WHITE CASTLE.

WESTEC agreed to respond to emergencies given to WESTEC by WHITE CASTLE. No notice of emergency was ever given by WHITE CASTLE to WESTEC. For WESTEC to respond to an emergency, *i.e.*, voice down to personnel at Store No.: 67 or call the police, WHITE CASTLE needed to contact WESTEC (SMOF ¶ 8). This did not occur. Given the scope of services provided between WESTEC and WHITE CASTLE under the CONTRACT there is no factual basis to show WESTEC breached its duty to MIESHA WILDER (SMOF ¶s 52, 54).

VI
WESTEC WAS NOT THE PROXIMATE CAUSE OF MIESHA WILDER BEING SHOT

No facts have been established that WESTEC did or failed to do anything that was a proximate cause of the shooting of MIESHA WILDER.

No act or omission of WESTEC was the cause of injury to MIESHA WILDER (SMOF ¶ 54). WESTEC agreed to respond to alarms generated by WHITE CASTLE, but no one from WHITE CASTLE notified WESTEC (SMOF ¶s 51, 57). WESTEC agreed to, and did provide, three video tours per day (SMOF ¶ 16, 17). The tours were done during the hours of 12:00 a.m., 4:00 a.m. and 5:00 p.m., C.S.T. (SMOF ¶ 17). The shooting of MIESHA WILDER occurred during the hour of 2:00 a.m., which was not a tour time (SMOF ¶ 60). Plaintiff elected to follow her friends outside believably in an attempt to stop a fight from occurring (SMOF ¶ 32).

When, MIESHA WILDER and Crystal Robinson came into the restaurant between 2:08 a.m and 2:14 a.m., WHITE CASTLE'S manager on duty was Drew Dannis. Apparently, recognizing a disturbance, Drew Dannis elected to call 911, directly which resulted in the dispatch of the Dolton Police (SMOF ¶ 57). Mr. Dannis did not notify WESTEC, nor did any other person notify WESTEC of the events preceding the shooting (SMOF ¶s 50-55). Since WESTEC was not notified by WHITE CASTLE of the disturbance, nor was WESTEC conducting a video tour of the site, there was no way for WESTEC to respond to any emergency (SMOF ¶ 63). Citing *Lee v. Chicago Transit Authority* 152 Ill.2d 432, 605 N.E.2d 493 (Ill., 1992), the court in *Yates v. Shackelford* 336 Ill.App.3d 796, 784 N.E.2d 330 (1st Dist., 2002) defined proximate cause:

“The term ‘proximate cause’ describes two distinct requirements: cause in fact and legal cause. *Lee* [*v. Chicago Transit Authority*], 152 Ill.2d [432,] 455, 178 Ill.Dec. 699, 605 N.E.2d 493 [(1992)]. Cause in fact exists where there is a reasonable certainty that a defendant's acts caused the injury or damage. *Lee*, 152 Ill.2d at 455, 178 Ill.Dec. 699, 605 N.E.2d 493. A defendant's conduct is a cause in fact of the plaintiff's injury only if that conduct is a material element and a substantial factor in bringing about the injury. *Lee*, 152 Ill.2d at 455, 178 Ill.Dec. 699, 605 N.E.2d 493. A defendant's conduct is a material element and a substantial factor in bringing about an injury if, absent that conduct, the injury would not have occurred. *Lee*, 152 Ill.2d at 455, 178 Ill.Dec. 699, 605 N.E.2d 493. ‘Legal cause,’ by contrast, is essentially a question of foreseeability. *Lee*, 152 Ill.2d at 456, 178 Ill.Dec. 699, 605 N.E.2d 493. The relevant inquiry here is whether the injury is of a type that a reasonable person would see as a likely result of his or her conduct. *Lee*, 152 Ill.2d at 456, 178 Ill.Dec. 699, 605 N.E.2d 493.” *First Springfield*, 188 Ill.2d at 257-58, 242 Ill.Dec. 113, 720 N.E.2d 1068.

There is no fact evidence WESTEC had anything to do with this unfortunate shooting. Nothing that WESTEC did, or did not do, can be remotely considered as bringing about this shooting. In addition to establishing cause in fact, plaintiff must establish WESTEC’S action or inaction was the legal cause of this shooting. Here too, this additional burden cannot be met.

VII **CONCLUSION**

WESTEC performed the services required of it under its monitoring services agreement with WHITE CASTLE. WHITE CASTLE did not notify WESTEC of the events preceding to the 2:23 a.m. shooting of MIESHA WILDER. Since WESTEC was not notified, nor was WESTEC conducting one of its three contractual video tours, there was nothing for WESTEC to do to prevent the shooting. Accordingly, no facts have been established WESTEC was negligent.

WESTEC respectfully asks this court to grant WESTEC’S Motion for Summary Judgment on Count II of plaintiff’s amended complaint in favor of WESTEC and against plaintiff.

Respectfully Submitted,
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