SUMMARY
June 18, 2025

2025COA59

No. 24CA1094, *Macomber v Nations Roof* — Landlords and Tenants — Colorado Premises Liability Act — Landowner

As a matter of first impression, a division of the court of appeals addresses whether the Premises Liability Act (PLA) contains a physical proximity requirement that limits "[l]andowner" status under section 13-21-115(7)(b), C.R.S. 2024, to the area on the property where the putative landowner is performing work and excludes a separate area on the property where the plaintiffs sustained injuries. Applying the statute's expansive definition of landowner, the division concludes that the PLA contains no such physical proximity requirement. Thus, roofing companies that placed a gas-powered generator on the roof of a retail store that emitted carbon monoxide into the store's interior through the HVAC system, causing alleged injuries to the store's employees, qualified

as landowners under the PLA, notwithstanding that the roofing companies limited their work to the store's roof.

COLORADO COURT OF APPEALS **2025COA59**

Court of Appeals No. 24CA1094
El Paso County District Court No. 23CV30664
Honorable David A. Gilbert, Judge

Redonna Macomber, Karina Kujawa, and Jana McCullough,

Plaintiffs-Appellants,

v.

Nations Roof, LLC, and Laguets Roofing, LLC,

Defendants-Appellees.

JUDGMENT AFFIRMED

Division VI
Opinion by JUDGE SULLIVAN
Tow and Yun, JJ., concur

Announced June 18, 2025

The Paul Wilkinson Law Firm LLC, Nelson Boyle, Denver, Colorado, for Plaintiffs-Appellants

Queener Law LLC, Jennifer O'Connell Moore, Denver, Colorado, Shakeshaft Law Firm/Kenneth J. Shakeshaft, P.C., Kenneth J. Shakeshaft, Colorado Springs, Colorado, for Plaintiffs-Appellants Redonna Macomber and Karina Kujawa

Clawson & Clawson, LLP, Michael Clawson, Colorado Springs, Colorado, for Plaintiff-Appellant Jana McCullough

Dinsmore & Shohl, LLP, Todd H. Fleckenstein, Michael A. Paul, Jeana M. Mason, Phoebe K. Schneider, Denver, Colorado, for Defendant-Appellee Nations Roof, LLC

SGR, LLC, Tiffany A. Norton, Courtney B. Kramer, Denver, Colorado, for Defendant-Appellee Laguets Roofing, LLC

¶ 1 In this personal injury dispute, three Walgreens employees sued for negligence after a gas generator used by a roofing crew emitted carbon monoxide into the store's HVAC system, causing them injuries. The district court concluded that the Premises Liability Act (PLA), § 13-21-115, C.R.S. 2024, provided plaintiffs' sole and exclusive remedy. It therefore granted summary judgment on plaintiffs' negligence claims to the two roofing companies, Nations Roof, LLC and Laguets Roofing, LLC (the roofers).

¶ 2 In asking us to reverse, plaintiffs assert that the roofers fell outside of the PLA's definition of "landowner" because they never entered or controlled the store's interior where plaintiffs sustained their injuries. We reject this argument because the PLA's broad definition of landowner doesn't contain a physical proximity requirement. Rather, it extends landowner status to anyone who is legally responsible for the condition of the property or for the activities conducted or circumstances existing on the property. Because the roofers qualified as landowners under this expansive definition, we conclude that the district court properly entered summary judgment in the roofers' favor.

¶ 3 Because we also disagree with plaintiffs' other contentions, we affirm the judgment.

I. Background

¶ 4 Plaintiffs, Redonna Macomber, Karina Kujawa, and Jana McCullough, worked at a Walgreens store in Colorado Springs. In 2021, Walgreens contracted with defendant Nations Roof to repair the roof of the store where plaintiffs worked. Nations Roof subcontracted with defendant Laguets Roofing to perform the roof repairs.

¶ 5 While performing the repairs, Laguets Roofing placed a portable gas generator on the store's roof. According to a Nations Roof incident report, the store manager, Macomber, called Nations Roof around midday to report the smell of adhesives inside the store. This prompted the roofing crew to shut down two HVAC units on the roof. About an hour later, Macomber called again to report the smell of exhaust. This time, the roofing crew moved the generator farther away from the HVAC units, shut down the remaining HVAC units on the roof, and eventually stopped using the generator altogether.

¶ 6 A short time later, employees inside the store experienced headaches, nausea, and vomiting. After Macomber called 911, the fire department responded and found elevated levels of carbon monoxide inside the store. At least five Walgreens employees sought medical attention for symptoms of carbon monoxide poisoning.

¶ 7 Plaintiffs' complaint asserted only common law negligence claims against the roofers. The roofers moved for summary judgment, arguing that they qualified as "[l]andowner[s]" under the PLA. § 13-21-115(7)(b). In the roofers' view, this meant that plaintiffs' sole and exclusive remedy fell under the PLA, not the common law. Plaintiffs disputed whether the roofers fell within the PLA's definition of landowner and urged the court to deny the roofers' motion. Plaintiffs also requested, in the alternative, that the court allow them to amend their complaint to add PLA claims if it determined that the PLA provided their exclusive remedy.

¶ 8 The district court agreed with the roofers and granted them summary judgment on plaintiffs' negligence claims. It concluded that the roofers fell within the PLA's definition of landowner because they were legally entitled to be on the property and were responsible

for the conditions, activities, and circumstances on the property. In the same order, the court also denied plaintiffs' request for leave to amend their complaint.

¶ 9 Plaintiffs now appeal, contending that the district court erred by (1) determining that the roofers qualified as landowners under the PLA and (2) denying their request to amend their complaint to add PLA claims. We address both contentions in turn.

II. Premises Liability Act

¶ 10 We turn first to plaintiffs' contention that the district court erred by determining that the roofers constituted "landowners" for purposes of the PLA. According to plaintiffs, the roofers bore no legal responsibility for the store's interior, rendering the PLA inapplicable.

A. Standard of Review

¶ 11 We review questions of statutory interpretation de novo. *Jordan v. Panorama Orthopedics & Spine Ctr., PC*, 2015 CO 24, ¶ 14. In interpreting a statute, our goal is to ascertain and effectuate the General Assembly's intent. *Larrieu v. Best Buy Stores, L.P.*, 2013 CO 38, ¶ 12. We apply the plain meaning of the statutory language, giving consistent effect to all parts of the statute

and construing each provision in harmony with the overall statutory design. *Id.*

¶ 12 We similarly review a district court's order granting summary judgment de novo. *Westin Operator, LLC v. Groh*, 2015 CO 25, ¶ 19. Summary judgment is appropriate only when no genuine issues of material fact are disputed, and the moving party is entitled to judgment as a matter of law. C.R.C.P. 56(c); *Quarky, LLC v. Gabrick*, 2024 COA 76, ¶ 10. Like the district court, we give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts and resolve all doubts against the moving party. *Lombard v. Colo. Outdoor Educ. Ctr., Inc.*, 187 P.3d 565, 570 (Colo. 2008).

B. Statutory Framework

¶ 13 The PLA defines the extent of a landowner's liability "[i]n any civil action brought against a landowner by a person who alleges injury occurring while on the real property of another and by reason of the condition of such property, or activities conducted or circumstances existing on such property." § 13-21-115(3). The General Assembly's "overriding" purpose in enacting the PLA was to clarify and narrow private landowners' liability to persons who enter

their land, depending on whether the entrant is a trespasser, licensee, or invitee. *Pierson v. Black Canyon Aggregates, Inc.*, 48 P.3d 1215, 1219 (Colo. 2002). When it applies, the PLA supplies the sole and exclusive remedy against a landowner for injuries occurring on their property. *Vigil v. Franklin*, 103 P.3d 322, 328-29 (Colo. 2004).

¶ 14 The PLA defines "[l]andowner" broadly as (1) "an authorized agent or a person in possession of real property" and (2) "a person legally responsible for the condition of real property or for the activities conducted or circumstances existing on real property." § 13-21-115(7)(b). This definition, which must be read in the disjunctive, creates two separate definitions of landowner. *See Pierson*, 48 P.3d at 1219; *accord Henderson v. Master Klean Janitorial, Inc.*, 70 P.3d 612, 614 (Colo. App. 2003). As a result, one can qualify as a landowner under the second definition without holding title to or even possessing the property. *See Burbach v. Canwest Invs., LLC*, 224 P.3d 437, 441 (Colo. App. 2009); *see also Henderson*, 70 P.3d at 615 (holding that a janitorial service qualified as a "landowner," despite not having possession). All

parties agree that this dispute involves only the second definition of landowner.

¶ 15 Importantly, the second landowner definition doesn't extend landowner status to all persons who could be held legally liable for the alleged tort; such a reading would be "circular and absurd." *Pierson*, 48 P.3d at 1220. Instead, the critical question under the second definition is whether the defendant is both legally authorized to be on the real property and legally responsible for the conditions, activities, or circumstances on the property. *Jordan*, ¶¶ 23, 32.

¶ 16 Based on the supreme court's most recent guidance on the PLA's second definition of landowner, a defendant may be "legally responsible" for the conditions, activities, or circumstances on the property if they have been assigned responsibility for the property (or a portion of it) through contract or other means, but they need not have actually *caused* the precise situation that injured the plaintiff to be considered a landowner. *Id.* at ¶¶ 25, 33, 35 (explaining that the *Pierson* court (1) held a gravel pit operator that "possibly created" the condition injuring the plaintiff was

nonetheless a landowner under the PLA and (2) remanded for further factfinding on causation).

C. Analysis

¶ 17 We agree with the district court that the roofers qualified as landowners under the PLA's second definition of landowner. *See* § 13-21-115(7)(b).

¶ 18 Turning first to whether the roofers were legally authorized to be on the real property, *see Jordan*, ¶¶ 23, 32, all agree that Nations Roof entered into a valid contract with Walgreens to perform work on the store's roof. The parties also agree that Nations Roof validly subcontracted with Laguets Roofing to install the roof improvements. These contracts established that the roofers were legally authorized to be on the property to perform the roofing work.

¶ 19 Plaintiffs point out that the roofers lacked a permit to conduct their roofing work at the time of the incident, stripping them of *legal* authority to conduct the roof repairs. But plaintiffs cite no authority in support of this argument, nor have we located any. Even without a permit, the roofers' contracts established that they held "*some* legally cognizable interest" in the property that was

distinguishable from the right of the public generally.[1] *Burbach*, 224 P.3d at 441 (emphasis added). As a result, the roofers were legally authorized to be on the property.

¶ 20 We next consider whether the roofers were legally responsible for the conditions, activities, or circumstances on the property that plaintiffs identified in their complaint. *See Jordan*, ¶¶ 23, 32. Plaintiffs' complaint alleged that the roofers placed the portable gas-powered generator on the store's roof next to an HVAC unit and that the generator emitted carbon monoxide into the store's interior, leading to plaintiffs' injuries. Nations Roof's contract with Walgreens said all acts and omissions of its subcontractors (like Laguets Roofing) shall be deemed the acts and omissions of Nations Roof. The contract also made Nations Roof "fully responsible" for the acts and omissions of its subcontractors "in connection" with

[1] To the extent plaintiffs contend that a dispute of material fact over the permit precluded summary judgment, we disagree. All parties acknowledge that the roofers lacked a permit for the roofing work when the incident occurred. Thus, while the parties dispute the "legal effect" of this uncontested fact, no dispute of material fact precluded summary judgment. *Mikes v. Burnett*, 2013 COA 97, ¶ 8.

the contract.[2] In turn, Laguets Roofing's subcontract said it assumed "all of the obligations" applicable to its roofing work that Nations Roof had agreed to in its contract with Walgreens.

¶ 21 Unlike *Jordan* where the lessee's lease assigned responsibility for maintaining the sidewalk to the landlord, *see id.* at ¶¶ 34-35, plaintiffs don't point us to similar language in the roofers' contracts that cabined their legal responsibility to those conditions, activities, and circumstances existing on the store's roof. Given this unrestricted contract language, we conclude the roofers were legally responsible for the conditions, activities, and circumstances on the property that plaintiffs alleged caused their injuries. *See Lucero v. Ulvestad*, 2015 COA 98, ¶ 14 ("A party's legal responsibility for the condition of a property may be determined by contract.").

¶ 22 Plaintiffs nonetheless assert that the roofers weren't conducting an activity *inside* the store where their injuries occurred; rather, they limited their activities to the store's roof. But

---

[2] A separate indemnification provision in the contract assigned Nations Roof liability for its own negligent acts and omissions. We don't rely on that provision in our analysis, however, because a defendant's mere promise to indemnify another for their liability doesn't transform them into a landowner. *See Jordan v. Panorama Orthopedics & Spine Ctr., PC*, 2015 CO 24, ¶ 36.

we see nothing in the statute that imposes a physical proximity requirement. A defendant can qualify as a landowner under the PLA merely by being legally responsible for the "condition" of the property or for the "circumstances existing" on the property that the entrant alleges resulted in injury. § 13-21-115(7)(b). The statute says nothing about those conditions or circumstances manifesting themselves in the same vicinity as the defendant's activities. Nor do we glean any legislative intent to displace the PLA when those conditions or circumstances travel beyond the immediate area on the property where the defendant performed activities. Because we may not add words to the statute, *Larrieu*, ¶ 19, we decline to interpret the PLA so that its coverage turns on the happenstance of how close or far the entrant was from the defendant's activities when they sustained injury. While the physical distance on the property between the defendant's activities and the location where the entrant sustained injury may well be relevant to causation, it doesn't impact the defendant's landowner status under the PLA.

¶ 23 Accordingly, we hold that the conditions, activities, and circumstances on real property that are alleged to have injured an entrant need not occur in close physical proximity to the

defendant's activities for the defendant to qualify as a landowner under the PLA. The district court therefore properly determined that the roofers fell within the PLA's second definition of landowner, entitling them to summary judgment on plaintiffs' common law negligence claims.

III. Motion to Amend

¶ 24 Plaintiffs next contend that, if the district court didn't err by determining that the roofers qualified as landowners, reversal is nonetheless required because the court abused its discretion by denying their request to amend their complaint to add claims under the PLA. We perceive no abuse of discretion.

A. Applicable Law and Standard of Review

¶ 25 Under C.R.C.P. 15(a), a party may amend their pleading after a responsive pleading has been filed only by leave of court or by written consent of the adverse party. The court must freely grant leave "when justice so requires." *Id.*; *see Eagle River Mobile Home Park, Ltd. v. Dist. Ct.*, 647 P.2d 660, 662 (Colo. 1982) ("The rule prescribes a liberal policy of amendment and encourages the courts to look favorably on requests to amend." (quoting *Varner v. Dist. Ct.*, 618 P.2d 1388, 1390 (Colo. 1980))).

¶ 26 The leniency contemplated by the rule isn't without limits, however, and leave isn't granted automatically. *Polk v. Denver Dist. Ct.*, 849 P.2d 23, 25 (Colo. 1993). The moving party carries the burden of showing lack of knowledge, mistake, inadvertence, or other reasons for having not pleaded the amended claim earlier. *Gaubatz v. Marquette Mins., Inc.*, 688 P.2d 1128, 1130 (Colo. App. 1984). A trial court may deny a motion to amend if it finds, for example, undue delay, bad faith, dilatory motive, repeated failures to cure deficiencies in the pleadings through prior amendments, undue prejudice to the opposing party, or futility of the proposed amendment. *Benton v. Adams*, 56 P.3d 81, 86 (Colo. 2002). Similarly, if substantial progress toward trial has already occurred, or if granting leave to amend would significantly delay the case's progress to trial, a trial court may deny a motion to amend that should have been brought earlier. *Id.* at 85. The trial court must consider the totality of the circumstances when assessing a motion to amend. *Polk*, 849 P.2d at 26.

¶ 27 We review a trial court's denial of a motion to amend pleadings for an abuse of discretion. *Riccatone v. Colo. Choice Health Plans*, 2013 COA 133, ¶ 47. A court abuses its discretion when it

misunderstands or misapplies the law or when its decision is manifestly arbitrary, unreasonable, or unfair. *Francis v. Aspen Mountain Condo. Ass'n*, 2017 COA 19, ¶ 25.

B. Additional Background

¶ 28 In June 2023, the roofers asserted in their answers to the complaint that the PLA provided plaintiffs' exclusive remedy. One of the roofers, Laguets Roofing, raised the exclusivity of the PLA again in the case management order (CMO), which the court entered in late September 2023. The CMO set a deadline of October 5, 2023, for amending or supplementing pleadings. Plaintiffs failed to amend their complaint by the deadline or to otherwise request an extension. The court scheduled a three-week jury trial to commence on August 19, 2024. The CMO set the cutoff for written discovery at twelve weeks before trial, while the cutoff for non-written discovery fell at seven weeks before trial.

¶ 29 As the case progressed solely on plaintiffs' negligence claims, the parties engaged in significant discovery and case management activities. At least two of the three plaintiffs propounded written interrogatories, requests for production of documents, and requests for admission; plaintiffs took C.R.C.P. 30(b)(6) depositions of

representatives of both Nations Roof and Laguets Roofing; and the court held at least one hearing to resolve a discovery dispute in February 2024. Although a transcript of the hearing doesn't appear in our record, a minute order shows that the court and parties discussed the PLA's applicability.

¶ 30 In late March, the roofers moved for summary judgment based on the PLA being plaintiffs' exclusive remedy. Plaintiffs opposed the motion by arguing that the roofers didn't qualify as landowners under the PLA. Plaintiffs also requested, in the alternative, that the court grant them leave to amend their complaint to add PLA claims if it determined that the PLA applied. Plaintiffs candidly added, however, that they had strategically elected to pursue their claims solely under a common law negligence theory.

¶ 31 The court granted the roofers summary judgment in early May, agreeing that the PLA provided plaintiffs' exclusive remedy. In the same order, the court also denied plaintiffs' request for leave to amend their complaint. While the court acknowledged the "harsh consequences" of its ruling, it nonetheless found that (1) allowing the amendment would unreasonably prejudice the roofers; (2) Colorado precedent was "clear and definitive" that plaintiffs'

claims should have been brought under the PLA, or at least pleaded in the alternative; and (3) plaintiffs hadn't offered a reasonable explanation for failing to seek an amendment earlier.

C. Analysis

¶ 32 For two reasons, we discern no abuse of discretion in the court's decision denying plaintiffs' belated request to amend their complaint.

¶ 33 First, plaintiffs made their decision to proceed on a negligence-only theory with eyes open. Well before the deadline for amending pleadings, plaintiffs knew of both (1) the factual bases for their claims and (2) the roofers' planned defense based on the PLA providing plaintiffs' exclusive remedy. Despite this knowledge, and despite plaintiffs' ability to plead PLA claims in the alternative, plaintiffs elected to stay the course and maintain a negligence-only complaint. *See Polk*, 849 P.2d at 26-27 (upholding decision denying a motion to amend based, in part, on the "past history of the case" and movant's prior knowledge of the "bases for his counterclaims"); *see also Jones v. United States*, No. 23-cv-03357, 2025 WL 974022, at *9 (D. Colo. Mar. 31, 2025) (plaintiffs "often" plead negligence claims and PLA claims "in the alternative").

¶ 34 Second, plaintiffs unduly delayed their request to amend the complaint. *See Benton*, 56 P.3d at 86. Specifically, plaintiffs waited over ten months after first receiving notice of the roofers' PLA defense and over six months after the deadline for amending pleadings had passed. *See Krupp v. Breckenridge Sanitation Dist.*, 1 P.3d 178, 185 (Colo. App. 1999) (affirming denial of a motion to amend where plaintiffs delayed more than nine months after receiving information giving rise to their amended claims), *aff'd*, 19 P.3d 687 (Colo. 2001). In the interim, the court and the parties had made substantial progress in the case: The parties had engaged in discovery for over six months, the roofers had filed a dispositive motion, and the cutoff date for written discovery was looming. *See Benton*, 56 P.3d at 85; *see also Akin v. Four Corners Encampment*, 179 P.3d 139, 146-47 (Colo. App. 2007) (upholding denial of a motion to amend because the parties had "vigorously litigated the case" in the interim, causing "respondents to incur significant expenses"). Under these circumstances, the court acted within its discretion by denying plaintiffs' late request to amend their complaint.

¶ 35 Plaintiffs dispute, however, whether the roofers would have suffered prejudice from their proposed amendment. According to plaintiffs, the roofers would have required minimal additional discovery, if any, because negligence claims and PLA claims are "quite similar," and the same facts in the original complaint also supported their new PLA claims. Had additional discovery been necessary, plaintiffs say, the roofers would have had "ample time" to prepare because trial was still over four months away.

¶ 36 Perhaps so. But these are close calls. While a negligence claim and a PLA claim are no doubt similar, they are by no means coterminous. *Cf. Stone v. Life Time Fitness, Inc.*, 2016 COA 189M, ¶ 11 ("[T]he PLA abrogates common law negligence claims against landowners."). And even if they overlapped significantly, the roofers had built their core defense around the PLA's exclusive remedy based on plaintiffs' firm decision to proceed on a negligence-only theory. Coupled with the quickly approaching deadline for written discovery and plaintiffs' early knowledge of the roofers' defense under the PLA, the court could have reasonably concluded that plaintiffs had failed to offer a reasonable excuse for their extensive delay. *See Polk*, 849 P.2d at 27.

¶ 37 Regardless, on a close call, we entrust the decision on a motion to amend to the trial court's sound discretion, even if we might have come out differently. *See E-470 Pub. Highway Auth. v. Revenig*, 140 P.3d 227, 230-31 (Colo. App. 2006) (Under the abuse of discretion standard, we ask "not whether we would have reached a different result but, rather, whether the trial court's decision fell within a range of reasonable options."). On this record, we conclude the court's decision fell within the wide range of reasonable options.

¶ 38 Because the above reasons alone show that the court acted within its discretion, we need not address plaintiffs' remaining assertions supporting reversal of the court's order.

¶ 39 Accordingly, the district court didn't abuse its discretion by denying plaintiffs' request for leave to amend their complaint.

IV. Appellate Attorney Fees and Costs

¶ 40 Nations Roof requests its appellate attorney fees under C.A.R. 38(b), contending that plaintiffs' appeal is frivolous as filed. We deny this request. Although plaintiffs haven't prevailed, we don't agree that they presented frivolous arguments. *See Mission Denver Co. v. Pierson*, 674 P.2d 363, 366 (Colo. 1984) (An appeal is

frivolous only if the proponent "can present no rational argument based on the evidence or law in support of a proponent's claim or defense, or the appeal is prosecuted for the sole purpose of harassment or delay.").

¶ 41 As the prevailing parties on appeal, however, the roofers are entitled to their appellate costs upon compliance with C.A.R. 39(c)(2).

V. Disposition

¶ 42 We affirm the judgment.

JUDGE TOW and JUDGE YUN concur.