# CAPTION: MANTER V. ATRIA NORTGATE PARK, LLC

**04-12-24**

APPEAL NO.: C-230478

TRIAL NO.: A-2104337

KEY WORDS: SUMMARY JUDGMENT — R.C. CHAPTER 3721 — NEGLIGENCE — CONTRACTS — TORTS — INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

SUMMARY:

 Where plaintiff raised factual disputes which were not relevant to resolving his claims, these were not material issues of fact under Civ.R. 56.

 Where defendant assisted living facility presented no evidence to support its position that it was licensed under R.C. 5119.34 and 5123.19, the trial court erred as a matter of law in finding it was were licensed under these statutory sections.

 Because plaintiff identified a source of duty independent of his contract with defendant, the trial court erred in concluding plaintiff’s negligence claim failed.

 Because a breach of contract by defendant did not create a tort claim, the trial court did not err in concluding plaintiff needed to identify a source of duty independent of his contract with defendant.

 Because genuine issues of material fact existed given discrepancies as to the kind of care plaintiff needed and actually received, the trial court erred in granting summary judgment in favor of defendant as to plaintiff’s breach of contract claim.

 Where defendant’s conduct did not rise to the level of extreme and outrageous conduct required to sustain an intentional infliction of emotional distress claim, the trial court did not err in granting summary judgment in favor of defendant on that claim.

JUDGMENT: AFFIRMED in part and reversed IN PART, and cause remanded

JUDGES: OPINION by KINSLEY, J.; ZAYAS, P.J., and WINKLER, J., CONCUR.