MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Craig and Landreth, Inc.,
Appellant-Plaintiff,

v.

Greg Dunn, Duro-Last, Inc. and Gutters Stuff, LLC,
Appellees-Defendants.

November 29, 2023

Court of Appeals Case No. 22A-PL-2304

Appeal from the Clark Circuit Court

The Honorable William A. Dawkins, Magistrate

Trial Court Cause No. 10C02-1407-PL-94

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

[1] This case arises from the allegedly defective installation by Gutters Stuff, Inc. ("Gutters Stuff") and Greg Dunn ("Dunn") of a roofing system manufactured by Duro-Last, Inc. ("Duro-Last") at a building located in Clarksville, Indiana. Craig and Landreth, Inc. ("C & L") appeals from the trial court's order granting Duro-Last's motion for summary judgment and dismissing C & L's complaint against Duro-Last, Dunn, and Gutters Stuff (collectively, "Defendants"). The order also denied C & L's motion to amend its complaint to add new plaintiffs. C & L raises several issues for our review that we consolidate and restate as:

I. Whether the trial court abused its discretion when it denied C & L's motion to amend its complaint to add the real parties in interest; and

II. Whether the trial court erred in granting summary judgment and dismissing all counts against all parties because C & L does not own the property at issue.

[2] We affirm.[1]

[1] Defendants also raise an issue on cross-appeal, wherein they argue that the trial court abused its discretion when it failed to dismiss C & L's case as a sanction for the spoliation of evidence. Because we conclude that the trial court did not err in granting summary judgment in favor of Defendants, we do not reach this cross-appeal issue of whether the trial court abused its discretion in not dismissing as a sanction for spoliation of evidence.

Facts and Procedural History

[3] This case has been ongoing for almost ten years, and therefore, has a lengthy factual and procedural history. The litigation revolves around the installation of a Duro-Last Roofing System ("the Roofing System") on a commercial building located at 1590 Greentree Boulevard in Clarksville, Indiana ("the Building"). C & L is an incorporated entity that is in the business of selling automobiles and operated a commercial business at the Building until approximately 2008. The Building is not owned by C & L but is, instead, owned by Larry Craig ("Craig") and Jimmy Smith ("Smith")[2] in their individual capacities. Craig and Smith are the primary shareholders of C & L.

[4] On November 11, 2012, a contract was entered into between Dunn[3] and Gutters Stuff and C & L for the installation of the Roofing System manufactured by Duro-Last on the Building. The Roofing System was installed in July 2013 by Dunn and Gutters Stuff under Duro-Last's supervision. After installation, the Building experienced leaks, and C & L believed that

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[2] In its Appellant's brief, C & L states that the Building is owned by Larry Craig, Jimmy Smith, and Stephanie Smith, who is Jimmy Smith's wife, all in their individual capacities. However, in its motion to add parties in interest under Trial Rule 17(A), filed on February 16, 2022, C & L did not mention Stephanie Smith as a party in interest to add as a plaintiff. C & L did not mention her as a party until its April 13, 2022 motion for leave to file an amended complaint under Trial Rule 15. We also note that nothing in the designated evidence identifies that Stephanie Smith is an owner of the Building, and we, therefore, do not identify her as such in this opinion.

[3] Dunn was the owner and manager of Gutters Stuff and passed away during the course of the litigation.

Defendants' actions and inactions caused or contributed to cause failure to the Building's roof and subsequent damage to the integrity of the Building.

[5] On July 21, 2014, C & L, as the sole plaintiff, filed an eight-count complaint against Defendants, alleging that the Roofing System had leaked due to improper installation and caused damage to the Building. In its complaint, C & L identified itself as "an Indiana corporation with its principal place of business in the Town of Clarksville." Appellant's App. Vol. 3 p. 25. Count I of the complaint asserted breach of contract against Dunn and Gutters Stuff, alleging that they had breached their November 11, 2012 contract with C & L by failing "to properly install the [Roofing System]." *Id*. at 26, 28–29. In Count II, the complaint alleged breach of express warranty against Duro-Last, asserting that Duro-Last had breached its express warranty related to the Roofing System by refusing to replace the "inadequate roof with a properly installed Duro-Last roof." *Id*. at 29. In Count III, the complaint alleged breach of implied warranty against Duro-Last, asserting that the Roofing System failed to "pass without objection in the roofing trade[,] . . . is not fit for the ordinary purposes for which such roofs are manufactured[,] . . . [and] does not conform with the standards of the roofing trade." *Id*. at 29–30. Count IV asserted a claim of negligent installation against all Defendants, alleging that their "failure to exercise reasonable care in the installation of the roof . . . was an actual and proximate cause of damage to [the Building] and lost profits." *Id*. at 30. In Count V, C & L alleged that Duro-Last failed to exercise reasonable care in its training and supervision of its authorized dealer (Dunn and Gutters Stuff), despite being on

site during the Roofing System's installation, which resulted in "damage to [the Building] and lost profits." *Id*. at 30–31. Count VI was a strict products liability claim against Defendants and Count VII alleged fraud by Defendants.[4] Lastly, in Count VIII, C & L alleged that Duro-Last was vicariously liable for its agent's alleged negligent supervision and training of Dunn and Gutters Stuff.

[6] As to damages, the complaint alleged that C & L had "suffered extensive [p]roperty [d]amage to the [i]nterior of the [B]uilding" and, further, that replacement costs to replace the "deficient" roof with an adequate roof system are estimated to be $50,000.00. *Id*. at 33. C & L also asserted that it had lost profits due to not being able to resume car sales at the Building. The complaint requested damages "adequate to replace the roof, repair damage to the interior [of the Building,] . . . recover for lost profits, litigation costs, reasonable attorney fees, and interest." *Id*.

[7] On November 16, 2020, Duro-Last, joined by Dunn and Gutters Stuff, filed a motion for spoliation sanctions (up to and including dismissal of C & L's claims) because, although the parties were still engaged in litigation regarding the Roofing System and despite multiple requests that the roof be preserved, C & L tore the roof off and replaced it without allowing Defendants' expert to be present and to inspect the roof and underlying structure. On July 28, 2021, the

[4] On September 22, 2020, Duro-Last filed a motion seeking summary judgment on various grounds, and on July 28, 2021, the trial court issued an order granting partial summary judgment and dismissing Count VI, strict liability, and Count VII, fraud. Therefore, those counts are not at issue here.

trial court issued its order on spoliation sanctions, finding that "[C & L] had benefit of their expert being present for the roof tear off, and so [C & L], or their prior counsel, was surely aware of the importance of this event. The Defendants, either intentionally or negligently were excluded." Appellee's App. Vol. III p. 159. The trial court set the matter for further hearing on sanctions, noting that C & L had "clearly destroyed evidence vital to this litigation" and that dismissal of its claims was certainly within the trial court's discretion. *Id*. at 159–60.

[8] On October 26, 2021, after the hearing was held, the trial court issued its order on spoliation sanctions, declining to impose the sanction of dismissal and, instead, imposing lesser sanctions, including (1) allowing Defendants to argue that they were prejudiced by their exclusion from the tear-off process and that the destroyed evidence may have been favorable to Defendants; (2) prohibiting C & L from arguing that the exclusion of Defendants and their expert was justified; and (3) allowing Defendants to propose a jury instruction regarding the missing evidence/spoliation issue.

[9] On December 16, 2021, Duro-Last filed the motion for summary judgment at issue in this case, alleging Duro-Last was entitled to judgment on the remaining counts because the designated evidence established that C & L does not own the Building and, therefore, is not the proper real party in interest to assert the claims. Duro-Last also asserted that C & L's claim for lost profits must be dismissed because C & L had presented no evidence to substantiate the claim. Duro-Last alleged that C & L was not entitled to litigation costs and attorney

fees because there was not statutory or contractual provision authorizing such an award. Further, Duro-Last claimed that C & L's tort claims must be dismissed because they were barred by the economic loss rule. In support of its summary judgment motion, Duro-Last designated the following evidence: C & L's complaint; a signed contract between C & L and Dunn and Gutters Stuff dated December 7, 2012; excerpts from the deposition testimony of Dunn, Craig, and Smith; a licensing agreement between Duro-Last and Dunn and Gutters Stuff; the Duro-Last 15-Year No Dollar Limit Warranty; an April 25, 2014 letter from Duro-Last to C & L; and a report from Al F. Wolczyk, Jr., C & L's expert.

[10] The designated evidence demonstrated that C & L does not own the Building and was not leasing it at the time of the installation and subsequent leak. Instead, the Building is owned by C & L's shareholders, Smith and Craig in their individual capacities, and C & L's car dealership had vacated the Building prior to 2008. The designated evidence also shows that Duro-Last's warranty was made to the "owner" of the Building.

[11] C & L did not file a response to Duro-Last's December 16, 2021 summary judgment motion or request additional time to respond within the thirty-day timeframe of Indiana Trial Rule 56(C). It also did not timely file any designated evidence within the thirty-day time period. Rather, C & L filed its response to Duro-Last's motion for summary judgment and its designated evidence in support of the response on February 1, 2022.

[12] On February 16, 2022, C & L, for the first time, filed a motion to add Smith and Craig, "the recorded owners of the real property at issue," as parties in interest. Appellant's App. Vol. 3 pp. 68–69. In its memorandum in support of the motion, C & L claimed, by citing evidence outside the summary judgment record, that, although the Building was individually owned by Smith and Craig, C & L was engaged by Smith and Craig to operate the Building and is "responsible for all leasing operations, maintenance, and repairs." *Id*. at 72, 73. Therefore, C & L asserted it has an interest (for damages purposes) in this suit because it contracted with Defendants for the roof repairs and paid Defendants for the alleged defective roof repairs. On April 13, 2022, C & L filed a motion for leave to file an amended complaint under Indiana Trial Rule 15, to add the owners of the Building as plaintiffs and parties in interest. C & L also sought to amend Count I of its complaint to clarify that the breach of contract claim is also against Duro-Last.

[13] On March 15, 2022, a hearing on Duro-Last's summary judgment motion was held. At the hearing, the trial court questioned whether it could consider C & L's belated summary judgment response and designations. In the discussion of the matter, the trial court recognized that, before the expiration of the thirty-day response deadline, C & L's counsel had asked Duro-Last's attorney if he had any objection to an extension of the response time, and Duro-Last's attorney did not object. However, C & L's counsel did not file any motion for extension of time with the trial court, and instead, belatedly filed the responsive summary judgment materials. Additionally, during the hearing, Dunn and Gutters Stuff

orally moved to join Duro-Last's summary judgment motion under Indiana Trial Rule 56(B).[5]

[14] On March 18, 2022, C & L filed its own motion for partial summary judgment against Defendants on Count I (breach of contract), Count IV (negligent installation), and Count V (negligent training and supervision). On June 1, 2022, the trial court held a hearing on C & L's motion for partial summary judgment. On June 2, 2022, the trial court issued its "Findings of Fact and Conclusions of Law Granting Summary Judgment and Denying Motion to Amend Complaint," which granted summary judgment to Defendants, denied C & L's motions to amend its complaint to add parties and a new count, and denied as moot C & L's motion for partial summary judgment because the motion was predicated on the trial court's granting the motion to add new parties. On June 30, 2022, C & L filed a motion to correct error, which the trial court denied after conducting a hearing. This appeal then ensued.

Discussion and Decision

I. Timeframe for Filing Under Trial Rule 17(A)

[15] C & L argues that the trial court erred when it denied C & L's motion to add Craig and Smith as the real parties in interest. C & L asserts that even though it filed its motion to add parties greater than thirty days after Defendants' motion

[5] Indiana Trial Rule 56(B) provides in pertinent part, "When any party has moved for summary judgment, the court may grant summary judgment for any other party upon the issues raised by the motion although no motion for summary judgment is filed by such party."

for summary judgment, the filing was made in a "reasonable time" and was therefore timely.

[16] The trial court has broad discretion in granting or denying amendments to the pleadings. *Toon v. Gerth*, 735 N.E.2d 314, 317 (Ind. Ct. App. 2000) (citing *Mullen v. Cogdell*, 643 N.E.2d 390, 399 (Ind. Ct. App. 1994), *trans. denied*), *trans. denied*. An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts of a case. *Id*. (citing *Hudgins v. McAtee*, 596 N.E.2d 286, 289 (Ind. Ct. App. 1992)).

[17] The filing of Defendants' motion for summary judgment, and C & L's timeframe in which to respond to that motion or file designated evidence under Trial Rule 56(C), and the filing of C & L's motion to add parties are all interrelated and provide context to our review of the trial court's ruling. Here, Duro-Last filed its motion for summary judgment on December 16, 2021, in which it alleged that C & L did not own the Building and, therefore, was not the proper real party in interest to assert the claims against Defendants. C & L did not file a response to the motion for summary judgment or any motion to add parties within the thirty days required under Trial Rule 56(C). Instead, C & L belatedly filed its response to the summary judgment motion on February 1, 2022—forty-seven days after Duro-Last's motion, which was seventeen days after the deadline in which to file a response—and never requested leave from the trial court to file it belatedly. Then, on February 13, 2022, fifty-nine days after Defendants' motion for summary judgment, C & L filed its motion to add new parties, namely Craig and Smith. The trial court first determined that it

lacked discretion to consider C & L's belatedly filed response and designation of materials to Duro-Last's motion for summary judgment under Trial Rule 56(C). The trial court further found that it also could not consider the motion to add new parties because the motion was filed after the Trial Rule 56(C) thirty-day response deadline had passed.

[18] Although C & L does not challenge the trial court's determination that it could not consider the belated summary judgment response by C & L, we conclude that the trial court was correct. Trial Rule 56(C) provides that, "[a]n adverse party shall have thirty (30) days after service of the motion [for summary judgment] to serve a response and any opposing affidavits." When a nonmoving party fails to respond to a motion for summary judgment within thirty days by "either filing a response, requesting a continuance under Trial Rule 56(I), or filing an affidavit under Trial Rule 56(F), the trial court cannot consider summary judgment filings of that party subsequent to the [thirty]-day period." *Mitchell v. 10th & The Bypass, LLC*, 3 N.E.3d 967, 972 (Ind. 2014). Since C & L did not timely file a response to Duro-Last's summary judgment motion or any responsive designated materials, nor did it seek an extension of time, the trial court had no discretion to consider the untimely filed materials.

[19] As to C & L's motion to add new parties, the trial court denied it as untimely. In doing so, the trial court noted:

> There was ample opportunity to add the correct parties. It was revealed in 2017 at deposition that [C & L] did not own the subject building, yet [C & L] took no action. [C & L] had up to

> and including the time for responding to the Motion for Summary in which to seek leave to change the parties, yet [C & L] failed to do so. Now, this court is without discretion to allow modification to the summary judgment record.

Appellant's App. Vol. 2 p. 59. In denying C & L's motion to add parties as untimely, the trial court harmonized Trial Rule 17(A) with the time constraints of Trial Rule 56(C).

[20] Indiana Trial Rule 17(A) requires that every action be prosecuted in the name of the real party in interest. A real party in interest "is the person who is the true owner of the right sought to be enforced. He or she is the person who is entitled to the fruits of the action." *Turner v. Nationstar Mortg., LLC*, 45 N.E.3d 1257, 1262 (Ind. Ct. App. 2015) (citing *Hammes v. Brumley*, 659 N.E.2d 1021, 1029–30 (Ind. 1995) (citation omitted)). Trial Rule 17(A) further states in pertinent part:

> No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until *a reasonable time* after objection has been allowed for the real party in interest to ratify the action, or to be joined or substituted in the action.

(emphasis added). The trial court considered Defendants' motion for summary judgment as an objection to C & L's failure to bring its action in the name of the real parties in interest, thus triggering C & L's obligation to either join or substitute parties. As previously stated, under Trial Rule 56(C), there is a firm thirty-day deadline in which to file responsive materials. Therefore, the trial

court had to determine what constituted a reasonable time under these circumstances.

[21] Although Trial Rule 17(A) states that the addition of the real party in interest should be allowed for a reasonable time after an objection has been made, our Supreme Court has stated that "[w]here trial rules are in conflict we apply the principles of statutory construction under which 'the Rules of Trial Procedure are to be construed together and harmoniously if possible.'" *Mitchell*, 3 N.E.3d at 973 (quoting *In re Marriage of Carter–McMahon,* 815 N.E.2d 170, 175 (Ind. Ct. App. 2004)). Under the present case's procedural posture, Trial Rules 17(A) and 56(C) must be harmonized. Therefore, although Trial Rule 17(A) allows for a reasonable time in which to add a real party in interest, here, Duro-Last filed a motion for summary judgment alleging that C & L was not the real party in interest, and C & L had thirty days to respond to this motion, which could have included a request to add the real parties in interest. Instead, C & L filed untimely responsive materials and then later attempted to seek leave to add Craig and Smith as real parties in interest and to supplement the record with additional evidence in support of such motion. At that time, the summary judgment record could no longer be changed or supplemented to add evidence regarding the real parties in interest or C & L's operation of the Building. The trial court balanced the two trial rules and found that when an objection as to whether a party is the real party in interest is raised in a motion for summary judgment, the allowable time in which to respond and add the real party in interest is within the thirty days in which to respond to the summary judgment

motion. Such a time frame would have allowed C & L a reasonable amount of time in which to cure the defect as contemplated by Trial Rule 17(A), especially in light of the fact that it had been revealed in depositions taken in March 2017 that C & L was not the owner of the Building. To allow consideration of C & L's motion to add new parties and its supporting documents would have allowed C & L to resurrect its untimely response to Defendants' motion for summary judgment and render the clear bright-line timeframes under Trial Rule 56(C) meaningless.

[22] In *Mitchell*, our Supreme Court struck a similar balance when asked to harmonize Trial Rules 54(B) and 56(C). There, the Court addressed a trial court's consideration of new evidence tendered several months after a prior ruling granting partial summary judgment. It concluded this was reversible error and provided a guide to trial courts when interpreting seemingly conflicting trial rules, holding that:

> although a trial court may indeed make material modifications to a non-final summary judgment order [under Trial Rule 54(B)], it must do so based on the timely submitted materials already before the court when the order was initially entered. Stated somewhat differently the "subject to revision" language in Rule 54(B) permits a trial court to revise, modify, or vacate a non-final prior ruling; but where that non-final ruling was the grant or denial of a motion for summary judgment, the trial court may only consider the Rule 56 materials properly before it at the time the order was first entered. To hold otherwise would allow a party to avoid the strict timelines for designating evidence under Rule 56 . . . .

Mitchell, 3 N.E.3d at 972.

[23] Additionally, in *State ex rel. Hill v. Jones-Elliott*, 141 N.E.3d 1264, 1268 (Ind. Ct. App. 2020), the plaintiff attempted to cure her failure to timely designate evidence in response to a motion for summary judgment by filing a motion to withdraw certain admissions designated by the moving party. This court noted that "[a]n objection to the designated evidence is a response to the designated evidence" and concluded that allowing the untimely motion to withdraw admissions would enable litigants to circumvent Indiana's "firmly entrenched" Trial Rule 56 timeframes. *Id.* Following *Mitchell*, we held that an objection to designated evidence must be included in a timely response and is subject to the same time limitations as any other response to designated evidence under Trial Rule 56. *Id*. We concluded that the trial court erred as a matter of law when it permitted plaintiff to withdraw her admissions and alter the timely filed designated evidence. *Id*.

[24] Thus, under the procedural posture of this case, where Trial Rule 17(A) allowed for a reasonable time in which to add the real party in interest after an objection is filed, but the objection is raised in a motion for summary judgment, the trial court properly harmonized the two trial rules and concluded that the thirty-day responsive time frame under Trial Rule 56(C) was a reasonable time to allow for C & L to add the real parties in interest. If the trial court allowed for additional time in which C & L could amend its complaint and add the real parties in interest, this would be tantamount to allowing C & L the ability to alter the timely filed designated evidence and would allow it to circumvent the

firm timeframe in which to respond to a summary judgment motion under Trial Rule 56(C). We, therefore, conclude that the trial court did not abuse its discretion when it denied C & L's motion to add new parties as untimely.

II. Summary Judgment

[25] C & L argues that the trial court erred when it granted summary judgment in favor of Defendants on its breach of contract and breach of warranty claims because it was the real party in interest for these claims. "We review the trial court's summary judgment decision de novo." *Z.D. v. Cmty. Health Network, Inc.*, 217 N.E.3d 527, 531 (Ind. 2023). A party is entitled to summary judgment "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C). "A genuine issue of material fact exists when there is 'contrary evidence showing differing accounts of the truth,' or when 'conflicting reasonable inferences' may be drawn from the parties' consistent accounts and resolution of that conflict will affect the outcome of a claim." *Z.D.*, 217 N.E.3d at 532 (quoting *Wilkes v. Celadon Grp., Inc.*, 177 N.E.3d 786, 789 (Ind. 2021)). "In viewing the matter through the same lens as the trial court, we construe all designated evidence and reasonable inferences therefrom in favor of the non-moving party." *Ryan v. TCI Architects/Eng'rs/Contractors, Inc.*, 72 N.E.3d 908, 912 (Ind. 2017). The initial burden is on the moving party to demonstrate the absence of any genuine issue of fact as to a determinative issue, at which point the burden shifts to the non-movant to come forward with

contrary evidence showing an issue for the trier of fact. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014).

[26] "The party appealing the trial court's summary judgment determination bears the burden of persuading us the ruling was erroneous." *Id.* at 913. However, "we carefully scrutinize that determination to ensure that a party was not improperly prevented from having its day in court." *Owens Corning Fiberglass Corp. v. Cobb*, 754 N.E.2d 905, 908 (Ind. 2001).

[27] The trial court's order found that C & L is not the real party in interest because it does not own the Building on which the Roofing System was installed and that was allegedly damaged. The trial court acknowledged that C & L alleged that work on the Building and the installation of the Roofing System was performed negligently and in breach of contract and warranty and that C & L was harmed. However, the trial court found that, because it did not own the Building, C & L itself did not suffer any harm and was not the proper plaintiff.

[28] The Defendants' designated evidence established that C & L is not the owner of the Building and has never been the owner of the Building. Instead, the Building is owned by Craig and Smith in their individual capacities. The complaint was filed in July 2014, and at the time of that filing, C & L did not own the Building. Nor did it own the Building at the time that the Roofing System was installed on the Building or when the alleged damage to the Building occurred. In fact, C & L was not even occupying the Building or operating its business in the Building when the Roofing System was installed in

July 2013, having vacated the Building in 2008. The designated evidence contained excerpts of depositions of Smith and Craig, in which they both acknowledged that the Building was not owned by C & L but was, instead, owned by Craig and Smith in their individual capacities. The evidence showed that Craig and Smith are the shareholders in C & L, but shareholders are separate and distinct from their corporations. *Brant v. Krilich*, 835 N.E.2d 582, 590 (Ind. Ct. App. 2005) ("A corporation is a legal entity separate and distinct from its shareholders and officers."). Additionally, the designated evidence showed that the warranty issued by Duro-Last granted a warranty to the "*owner* . . . of a building containing a Duro-Last Roofing System . . . installed by an authorized dealer/contractor." Appellant's App. Vol. 3 p. 52 (emphasis added). Therefore, the warranty was issued to the owners of the Building and not to C & L.

[29] Trial Rule 17(A) requires that every action be prosecuted in the name of the real party in interest. *Turner*, 45 N.E.3d at 1262. Our Supreme Court has explained that a real party in interest "is the person who is the true owner of the right sought to be enforced. He or she is the person who is entitled to the fruits of the action." *Hammes,* 659 N.E.2d at 1029–30. "When property is injured by the negligence of another, the owner of that property is the one who should bring suit." *Patterson v. Seavoy*, 822 N.E.2d 206, 210 (Ind. Ct. App. 2005).

[30] Here, the breach of the contract and warranty claims, as well as the negligent installation, negligent training and supervision, and vicarious liability claims, were based on alleged negligent actions by Defendants. In other words, the

Building would not have suffered the alleged damages without the alleged negligence of Defendants. The complaint stated that, as to the breach of contract allegations, "Defendants Gutters Stuff and Dunn failed to properly install the [Roofing System]." Appellant's App. Vol. 2 p. 67. Because all of C & L's claims of injury were based upon the alleged negligence of Defendants, the owners of the property at issue, the Building, were the ones who should have brought suit against Defendants. *Patterson*, 822 N.E.2d at 210. Based on the evidence designated by Defendants, there was no factual dispute that C & L does not own the Building and was not occupying the Building at the time of the installation of the Roofing System or anytime thereafter, and was, therefore, not the proper party to bring suit against Defendants.

[31] Thus, the designated evidence submitted by Defendants established that C & L was not the owner of the Building, and because the claims were based on negligence, the suit had to be brought by the owner of the Building. The burden then shifted to C & L to present evidence disputing this and demonstrating an issue of fact for the trial court. However, C & L failed to file a timely response to Defendants' motion for summary judgment or any designated evidence to dispute Defendants' evidence. The moving party bears the initial burden of demonstrating the absence of any genuine issue of fact as to a determinative issue, and then the burden shifts to the non-moving party to come forward with contrary evidence showing a genuine issue of material fact for the trial court. *Ali v. Alliance Home Health Care, LLC*, 53 N.E.3d 420, 427 (Ind. Ct. App. 2016) (citing *Williams v. Tharp,* 914 N.E.2d 756, 761 (Ind. 2009)). The nonmoving

party cannot rest upon the allegations or denials in the pleadings. *Id*. Because the designated evidence showed that there was no genuine issue of material fact as to who owned the Building and who was eligible to bring the claims at issue, Defendants were entitled to judgment as a matter of law. The trial court did not err when it granted summary judgment in favor of Defendants.

Conclusion

[32] We, thus, conclude that the trial court did not abuse its discretion when it denied C & L's motion to add new parties under Trial Rule 17(A). We also conclude that the trial court did not err in granting summary judgment in favor of Defendants because C & L was not the real party in interest and could not bring its claims against Defendants.

[33] Affirmed.

Altice, C.J., and May, J., concur.