

Judgment rendered Sept. 30, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 56,854-CW
No. 56,855-CW
No. 56,856-CW
(Consolidated Cases)

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

No. 56,854

GEORGE REAGAN HARDAWAY, NEELY HARDAWAY, CASSIE HARDAWAY, AND RAYLA HARDAWAY MCKISSACK	Plaintiffs-Respondents
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Versus

AEROPRES CORPORATION	Defendant-Respondent
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* * * * *
consolidated with
* * * * *

No. 56,855-CW

JUANITRIK JONES AS THE ADMINISTRATOR OF THE ESTATE OF HER MINOR CHILD, KASON HAWK; TAMEKIA ALLUMS AS THE ADMINISTRATOR OF THE ESTATE OF HER MINOR CHILD, MAKEL HAWK; AND CHASITY HAWK AS THE ADMINISTRATOR OF THE ESTATE OF HER MINOR CHILD, TATYANA HAWK ALL ON HER BEHALF OF THE DECEASED, CHANCEY HAWK	Plaintiffs-Respondents
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Versus

AEROPRES CORPORATION	Defendant-Respondent
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* * * * *

consolidated with

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No. 56,856-CW

DANIEL PAYNE

Plaintiff-Respondent

Versus

AEROPRES CORPORATION

Defendant-Respondent

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Appealed from the
Twenty-Sixth Judicial District Court for the
Parish of Webster, Louisiana
Trial Court Nos. 80,686; 80,687; 80,688

Honorable Frank H. Thaxton, III, Judge *Ad Hoc*

* * * * *

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* * * * *

Before ROBINSON, MARCOTTE, and ELLENDER, JJ.

MARCOTTE, J.

These consolidated civil writs arise from the 26th Judicial District Court, Parish of Webster, the Honorable Frank Thaxton, III presiding, *ad hoc*. Defendant XTO Energy, Inc. (“XTO”) seeks review of the trial court’s denial of its motion for summary judgment, filed on October 31, 2025. The matter was granted to docket for arguments and briefing in accordance with La. C.C.P. art. 966(H). For the following reasons, we grant the writ, reverse the trial court’s denial of XTO’s motion for summary judgment, and dismiss plaintiffs’ remaining claims with prejudice.

FACTS AND PROCEDURAL HISTORY

This litigation arises from a flash fire and explosion that occurred at a propane bulk storage and transportation facility (the “Facility”) owned by XTO, leased and operated by Aeropres Corporation (“Aeropres”), and located at 164 Marathon Tank Road in Cotton Valley, Louisiana. On May 9, 2022, Aeropres employees George Hardaway (“Hardaway”), Chancey Hawk (“Hawk”), and Daniel Payne (“Payne”) were transferring liquid propane from a storage tank into an Aeropres tanker truck when they heard a hissing sound and realized that a hose was leaking propane. The connection failed and the hose came loose, spewing over 200 pounds of liquid propane into the air. The propane instantly vaporized and ignited, resulting in an explosion that severely burned Hardaway, Hawk, and Payne, who were operating the hoses. On June 30, 2022, Hawk died from his injuries.

The day after the explosion, the facility was inspected by representatives from the Occupational Safety and Health Administration (“OSHA”), and Aeropres received a citation listing two violations and two proposed financial penalties. OSHA found that Aeropres failed to ensure

that all pressure hoses, couplings, and fittings were inspected at intervals appropriate to the service and that any hose showing material deteriorations, signs of leakage, or weakness in its carcass or at the couplings was withdrawn from service and repaired or discarded. 29 C.F.R. 1910.106(f)(4)(vii).

OSHA also found that a 20-foot “Smart Hose,” with a cracked fitting, was not withdrawn from service and discarded before use. Additionally, while 29 CFR 1910.106(f)(6) mandates that Category 1 or 2 flammable liquids or Category 3 flammable liquids with a flash point below 100 degrees Fahrenheit shall not be handled, drawn, or dispensed where flammable vapors may reach a source of ignition, OSHA found that Aeropres did not ensure that adequate precautions were taken to protect employees from the ignition of flammable vapors during the transferring of liquid propane from a storage tank into a tank truck, exposing the employees to fire and explosion hazards. XTO was not cited.

XTO leased the Facility to Aeropres under a “Facilities Agreement.” The agreement provided a term, which commenced on November 1, 2017, and ended on March 31, 2021. So, the Facilities Agreement terminated before the accident, and there is nothing in the record to show whether the agreement was renewed.

On May 2, 2023: 1) Hardaway, his wife, and his two daughters (the “Hardaways”), filed a petition for damages against Aeropres; 2) the administrators for the estates of Hawk’s three minor children (the “Hawks”) filed a petition for wrongful death and survival action against Aeropres;¹ and

¹ One of Hawk’s children reached the age of majority during litigation, and he was substituted as plaintiff.

3) Payne filed a petition for damages against Aeropres. The plaintiffs pled intentional tort. In June 2023, the three cases were consolidated by the trial court.

Plaintiffs filed supplemental and amending petitions adding XTO as a defendant. The petitions stated that XTO was the owner of the Facility and Aeropres' landlord, and that it supplied the liquid propane involved in the explosion to Aeropres through a pipeline it controlled and owned. Plaintiffs identified the cause of the flash fire, stating that a male coupling and hose assembly connected to the back of an Aeropres tanker failed. Plaintiffs claimed that:

1. XTO was negligent and at fault for leasing and profiting from a defective and inherently dangerous facility.
2. The defects in the Facility subjected XTO to strict liability under Louisiana law.
3. XTO was negligent in failing to inspect the facility to discover inherent defects and in failing to comply with applicable safety codes, including the National Fire Protection Association Code ("NFPA"), the Code of Federal Regulations, the International Fire Code, and the Louisiana Administrative Code.
4. XTO never brought the Facility into compliance with the required safety regulations, surveyed the Facility to determine whether its design was suitable for the use which occurred on May 9, 2022, and never informed Aeropres of the safety deficiencies in the building as constructed.
5. XTO failed to provide a safe workplace for its employees and contractors at the Facility.
6. The explosion and fire were preventable but for the intentional actions of Aeropres and its landlord XTO. Their actions and inactions created a work environment in which such an event was substantially certain to occur.

XTO answered the petitions and denied all claims.

XTO filed a “Motion for Partial Summary Judgment [(‘MPSJ’)] on Profitability.” XTO said that it was responding to plaintiffs’ allegations that said, “XTO is a sophisticated user of liquid propane, was fully aware of the applicable federal and state requirements and was negligent and at fault for leasing and profiting from a defective and inherently dangerous facility.” XTO sought to have those allegations dismissed. It said that XTO could not be held liable because it made a profit from a lease, which was not a recognized basis for imposing a legal duty or theory of liability in Louisiana law. XTO argued that it did not owe a duty to plaintiffs, who were third parties, because it profited from its lease with Aeropres. XTO asked that plaintiffs’ profitability claims be dismissed.

Plaintiffs opposed the MPSJ on profitability stating that they did not assert a “standalone cause of action for ‘profitability,’” but that their claims arose from La. C.C. arts. 2317.1 and 2322. They said that XTO’s financial arrangement was relevant to show ongoing notice, knowledge, and control, core elements of their negligence and premises liability claims against XTO. Plaintiffs said that XTO’s monthly revenue was tied to the volume of propane transferred through the Facility’s weather shed/loading rack where the fire and explosion occurred, and each payment served as a recurring, documented reminder of the hazardous operations occurring in that structure.

XTO also filed a “Motion for Partial Summary Judgment: Workplace Safety.” It said that it had no duty to plaintiffs to provide a safe workplace and that they could not show that it assumed any such duty. Plaintiffs were Aeropres’ employees and XTO leased land to Aeropres for its operations, making it Aeropres’ landlord. XTO argued that plaintiffs lumped it in with

Aeropres in making their claims. XTO stated that none of its employees were involved in the incident, which involved only Aeropres' employees and equipment, including the tanker truck. XTO said that the duty to provide a safe workplace rested with the employer, Aeropres.

Plaintiffs opposed XTO's MPSJ on workplace safety arguing that genuine issues of material facts existed including that XTO owned the Facility, Aeropres leased the Facility from XTO under the Facilities Agreement, XTO retained inspection rights and exercised control over the premises, the shed was defectively designed and constructed, violating NFPA 58 and other safety codes, and that propane vapors were known hazards and XTO's inspections and industry expertise gave it knowledge of the risks.² Plaintiffs pointed to deposition testimony in which an Aeropres employee stated that it needed permission from XTO to remove whole structures at the Facility.

On November 7, 2025, the trial court denied the MPSJs on profitability and workplace safety.

On October 31, 2025, XTO filed a motion for summary judgment ("MSJ") incorporating its prior MPSJs.³ XTO asked that all of plaintiffs' claims against it be dismissed with prejudice. XTO said that to pursue a negligence claim against it under La. C.C. arts. 2317.1 or 2322, they had to

² NFPA 58 is the Liquefied Petroleum Gas Code and is incorporated in the Code of Federal Regulations by reference.

³ XTO also re-urged in its MSJ its previously filed MPSJs, which included its MPSJs on profitability and workplace safety, but also those on strict liability and intentional tort, which were denied as well. XTO seeks review of the denial of its MPSJs on strict liability and intentional tort; those two writs were granted to docket and were considered separately in Docket Nos. 56,894-6 and 56,897-9. This court granted those writs, reversed the trial court, entered summary judgment in XTO's favor, and dismissed plaintiffs' strict liability and intentional tort claims. The only remaining claims against XTO are those that are the subject of this writ application.

prove: 1) that XTO owned the Facility, which it acknowledged it did; 2) that XTO knew, or in the exercise of reasonable care, should have known that the shed was unreasonably dangerous; 3) that if XTO had performed an inspection of the Facility, it would have discovered the defective shed; 4) that the absence of the weather shed would have prevented the May 9, 2022, fire; and 5) that the shed caused or contributed to the fire.

XTO said that it purchased the Facility from Marathon Oil in the 1990s; Aeropres was the tenant and operator of the loading rack at the Facility at that time, and XTO continued the lease agreement between Aeropres and Marathon. Aeropres used its own employees, equipment, and trucks, and it handled the capital improvements made to the loading rack. Marathon constructed the loading rack. XTO said that plaintiffs identified the cause of the accident in their petitions as “the male coupling and hose assembly connected to the back of an Aeropres tanker failed.” XTO attached the deposition testimony of Payne and Hardaway, which confirmed that the fire started when a hose attached to an Aeropres truck leaked.

XTO argued that it owed no legal duty to plaintiffs, and even if they could show that the existence of the shed worsened their injuries, their claim would still fail because they had no evidence to create a genuine issue of material fact to show that the shed was unreasonably dangerous, that XTO had knowledge of the ruin, vice, or defect that caused the damage, or that XTO, in the exercise of reasonable care, should have known of the defect in the shed. XTO contended that it had no duty to perform a hazard assessment.

XTO pointed out that the opinions of plaintiffs’ experts concluded that the shed was unreasonably dangerous but did not cite any specific

regulations that were violated, apart from one expert who said that the loading rack/shed failed to meet NFPA 58 standards. XTO said that NFPA 58 contained hundreds of regulations, and plaintiffs' expert did not identify the specific regulation within the code that the shed violated. XTO stated that none of plaintiffs' experts addressed the fact that the weather shelter/loading rack complied with NFPA 58 § A.6.7.1.1 because it was "designed to be open to the atmosphere for a minimum of 50% of its perimeter," as the regulation required.

XTO stated that OSHA inspected the Aeropres facilities in 2014 and again immediately after the May 9, 2022, accident and did not cite the weather shelter as a hazard either time. Aeropres performed a hazard inspection in 2019 and did not identify the shed as a hazard or unreasonably dangerous.

XTO stated that plaintiffs did not allege that it assumed a duty to plaintiffs. While the Facilities Agreement between XTO and Aeropres provided XTO with the right to inspect the Facility, it argued that did not create a duty to inspect the premises. XTO stated that the Facilities Agreement also made Aeropres responsible for all safety obligations, including OSHA compliance, and, because of that, NFPA 58 applied only to Aeropres. XTO stated that NFPA 58 §§ 6.7.1.1 and 6.7.1.2 allowed the transfer of liquids into containers mounted on vehicles to take place outside under weather shelters specifically designed for that purpose. XTO stated that NFPA 58 allowed the transfer of liquid into containers under roofs where 50 percent or less of the shelter was enclosed.

XTO said that the shed was built in 1959 and that there had not been any prior complaints or incidents about the shed until the May 9, 2022,

accident. It argued that buildings that predate the promulgation of building codes are not required to comply with new codes, and buildings do not become unreasonably dangerous because safety codes are upgraded. XTO contended that the duty of a landlord extended only to apparent defects, which the weather shelter was not. XTO stated that it did not have actual or constructive knowledge of the shed being defective or dangerous. It argued that plaintiffs' contention that it failed to comply with federal and state requirements was unfounded because the regulations only applied to Aeropres.

XTO argued that plaintiffs could not prove that the Facility posed an unreasonable risk of harm to a prudent person using ordinary care under the circumstances. XTO contended that the May 9, 2022, accident occurred because the people responsible for handling the propane did not act reasonably, which cannot be blamed on the shed. XTO stated that plaintiffs could not prove that it should have known the shed was unreasonably dangerous because no regulatory authority found that the shed violated any standards. XTO said that plaintiffs could not prove under La. C.C. art. 2322 that the damage suffered could have been prevented by the exercise of reasonable care or that it caused the accident.

XTO's expert stated that it was not unusual for released flammable gas to ignite, and that the cause was generally associated with the loss of containment rather than a source of ignition, but that the fire could not occur without the release of fuel. He opined that the presence of the shed in no way caused or contributed to the failure of the hose connection and the release of propane. He further stated that the short delay from release of the fuel to ignition did not allow time for the propane vapor to dissipate or for

the employees to evacuate; thus, the employees would have suffered injuries even if the enclosure was not present.

In his opinion, the shed was not a safety hazard and was not unreasonably dangerous. He opined that the shed had less than 50 percent of the perimeter enclosed and did not violate NFPA 58's requirement that the transfer of liquid into containers on vehicles was allowed under a weather shelter if done in an open area under roofs where 50 percent or more of the perimeter was not enclosed. Since Aeropres was the Class I permit holder under the Louisiana Liquefied Petroleum Gas Commission, he opined that Aeropres was the party responsible for compliance with all safety regulations and laws.

Plaintiffs opposed XTO's MSJ in a document styled "Plaintiffs' Opposition to XTO's Motion for Summary Judgment Regarding No Duty Owed." Plaintiffs contended that duty flowed from ownership and that XTO, as the owner of the Facility, had a duty to keep its premises in a reasonably safe condition, discover any unreasonably dangerous condition, and correct it or warn others of it. XTO stated that the Facilities Agreement said that XTO retained inspection right, capital improvement authority, and control over structural modifications. Plaintiffs argued that XTO's duty was nondelegable; the duty arose from ownership and could not be contracted away.

Plaintiffs said that the loading rack/shed was a defective building, and they provided reports from experts in: 1) safety and risk management; 2) fire and explosion origin and cause investigations, scene analysis, and reconstruction; 3) mechanical engineering, aerospace engineering, and fire and explosion investigations; and 4) a pipeline safety expert, who found that

the shed allowed for the accumulation of gases, trapped the heat and flames, and prevented necessary ventilation, resulting in more severe injuries. They determined that the shed was inherently dangerous and was a contributing factor that increased the risk of a flash fire. One expert, Ben Gibson, concluded that the shed's design violated NFPA 58, but he did not cite a specific provision from NFPA 58 that was violated. Plaintiffs stated that there remained a genuine issue of material fact about whether the shed was unreasonably dangerous because plaintiffs' experts and XTO's experts did not agree.

Plaintiffs claimed that XTO's shed configuration and modification were disputed facts. Plaintiffs claimed that the shed was allegedly modified from 10 bays to 6 bays, and its current dimensions could not have covered 10 bays, so the structure could not have existed in the 1950s. They argued that such a change would have required significant alterations to the shed, which were not cosmetic repairs and would have affected ventilation, spacing, and the dispersion of propane vapors. Plaintiffs provided the deposition testimony of former Aeropres employee, Dotra Alexander, who said that the shed as it existed at the time of the incident was different from when she worked there. She said the back wall previously did not extend to the ground and left a gap for ventilation, but the wall on May 9, 2022, was fully enclosed.

Plaintiffs said those structural changes eliminated any claim of grandfathering the shed in because it was built before modern safety regulations were implemented. They contended that questions of construction history, alterations, and compliance were genuine questions of material fact that should be for the jury. Plaintiffs pointed out testimony

from two former Aeropres employees who said they believed the shed was dangerous, but neither stated that they reported that to Aeropres or XTO. Plaintiffs said that after the accident the shed was removed from the Facility, and that the removal supports the facts that XTO had knowledge, control, and the ability to correct the defective shed.

Plaintiffs contended that the shed created an unreasonable risk of harm. They stated that the utility of the shed and the magnitude of the harm it presented are questions of fact best left to the jury. The shed's design trapped vapors and intensified heat, creating a foreseeable hazard. The parties' experts disagreed about whether the shed increased the size and duration of the fire, which is a triable fact. Plaintiffs argued that the cost of modifying the rack or eliminating it, the credibility of the witnesses, and whether the shed presented an unreasonable risk of harm are questions for the jury to answer.

Plaintiffs contended that OSHA's jurisdiction did not extend to XTO, as it was not the injured workers' employer. They also pointed out that the Fire Marshal did not inspect the shed, so any lack of citation from that authority did not constitute a lack of negligence. Plaintiffs stated that compliance with regulations did not preclude liability. Plaintiffs asked that XTO's MSJ be denied.

On November 21, 2025, the trial court heard oral arguments on the motion regarding premises liability and then rendered an oral ruling denying the motion, finding that genuine issues of material fact precluded summary judgment. The written ruling denying the motion was signed the next day. XTO seeks supervisory review of the denial of its motions for partial

summary judgment on profitability and workplace safety and of its motion for summary judgment. This court granted XTO's writ to docket.

DISCUSSION

XTO's one assignment of error asserts that the trial court erred in denying its MSJ. XTO asserts that plaintiffs cannot show that the shed had an apparent defect or that XTO had actual or constructive knowledge of the defect.

Summary Judgment

The law favors summary judgment to secure the just, speedy, and inexpensive determination of an action. La. C.C.P. art. 966. The purpose of the motion for summary judgment is to weed out those cases where it is obvious that the evidence, even if accepted as true, is insufficient to establish an essential element of a party's case. *Green v. E. Carroll Par. Sch. Dist./Bd.*, 56,011 (La. App. 2 Cir. 12/18/24), 402 So. 3d 702, *writ denied*, 25-00153 (La. 4/15/25), 406 So. 3d 426. Therefore, irrespective of the legislature's mandate that summary judgments are now favored, the trial court cannot make credibility determinations when considering such motions. *Id.*

Summary judgment is appropriate and shall be granted after an opportunity for adequate discovery was made and the motion, memorandum, and supporting documents establish that there is no genuine issue of material fact that remains in dispute and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966. The mover bears the initial burden of proof to establish the absence of factual support for one of more elements essential to the adverse party's claim, action, or defense. Once the mover meets this burden, the burden then shifts to the adverse party to establish that

summary judgment is precluded because evidence exists to support all elements at trial or to show that genuine issues of material fact remain in dispute. La. C.C.P. art. 966.

When the summary judgment motion is supported, the adverse party may not rest on the mere allegations or denials of his pleadings but must, by affidavits or otherwise, state specific facts establishing a genuine issue for trial. La. C.C.P. art. 967(B); *Corbajal v. Chris Owens French Quarter Parade, LLC*, 24-00191 (La. 5/21/24), 385 So. 3d 236. Failure of the nonmoving party to produce evidence of a material factual dispute mandates the granting of the motion. *Id.*

An issue is genuine if reasonable persons could disagree. If on the state of the evidence, reasonable persons could reach only one conclusion, there is no need for a trial on that issue. *Jones v. Estate of Santiago*, 03-1424 (La. 4/14/04), 870 So. 2d 1002. A fact is considered material if its existence or nonexistence may be essential to a plaintiff's cause of action under the applicable theory of recovery. *Campbell v. Orient-Express Hotels La., Inc.*, 24-00840 (La. 3/21/25), 403 So. 3d 573. Summary judgment motions are reviewed *de novo*, using the same criteria used by the trial court to determine whether there are genuine issues of material fact that preclude summary judgment and whether the mover is entitled to judgment as a matter of law. *Id.*

Negligence and Premises Liability under La. C.C. arts. 2317.1 and 2322

Louisiana Civil Code Article 2317.1 states:

The owner or custodian of a thing is answerable for damage occasioned by its ruin, vice, or defect, only upon a showing that he knew or, in the exercise of reasonable care, should have known of the ruin, vice, or defect which caused the damage, that the damage could have been prevented by the exercise of

reasonable care, and that he failed to exercise such reasonable care. Nothing in this Article shall preclude the court from the application of the doctrine of res ipsa loquitur in an appropriate case.

Louisiana Civil Code Article 2322 states :

The owner of a building is answerable for the damage occasioned by its ruin, when this is caused by neglect to repair it, or when it is the result of a vice or defect in its original construction. However, he is answerable for damages only upon a showing that he knew or, in the exercise of reasonable care, should have known of the vice or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care. Nothing in this Article shall preclude the court from the application of the doctrine of res ipsa loquitur in an appropriate case.

To recover damages caused by a defective thing, the plaintiff must be able to prove that 1) the thing was in the defendant's custody, 2) the thing contained a defect which presented an unreasonable risk of harm to others, 3) the defective thing caused the damage, and finally that 4) the defendant knew or should have known of the defect. *Wheat v. State Farm Fire & Cas. Co.*, 55,712 (La. App. 2 Cir. 7/17/24), 399 So. 3d 509, writ denied, 24-01012 (La. 11/14/24), 395 So. 3d 1186. The mere fact that an accident occurred because of some vice or defect does not elevate the condition of the thing to that of an unreasonably dangerous defect. *Id.*

A "defect" in a thing, for which one having custody of the thing may be liable for the damages caused, is a condition or imperfection that poses an unreasonable risk of injury to persons exercising ordinary care and prudence. *Id.* To determine whether liability exists under art. 2317.1, courts use a duty-risk analysis, under which a plaintiff must prove five separate elements: 1) the defendant had a duty to conform his conduct to a specific standard (the duty element), 2) the defendant's conduct failed to conform to the

appropriate standard (the breach element), 3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element), 4) the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of duty element), and 5) proof of actual damages (the damages element). *Id.*; *Farrell v. Circle K Stores, Inc.*, 22-00849 (La. 3/17/23), 359 So. 3d 467. Failure to prove any one of these elements by a preponderance of the evidence is fatal to the plaintiff's claim. *Id.*

Whether there was a breach of the duty owed is a question of fact or a mixed question of law and fact. *Id.* Louisiana courts apply the risk/utility balancing test to make this determination, wherein the Supreme Court synthesized the risk/utility balancing test to a consideration of four pertinent factors: 1) the utility of the complained-of condition; 2) the likelihood and magnitude of harm, including the obviousness and apparentness of the condition; 3) the cost of preventing the harm; and 4) the nature of the plaintiff's activities in terms of social utility or whether the activities were dangerous by nature. *Id.*

The owner or custodian must discover any unreasonably dangerous condition on the premises, and either correct the condition or warn potential victims of its existence. *Farrell v. Circle K Stores, Inc.*, *supra*. In determining whether a defect or unreasonable risk of harm is present, the court must find the defect to be of such a nature as to constitute a dangerous condition which would reasonably be expected to cause injury to a prudent person using ordinary care under the circumstances. *Gauthier v. Foster Homes, LLC*, 53,143 (La. App. 2 Cir. 11/20/19), 284 So. 3d 1206. It is the court's obligation to decide which risks are unreasonable, based upon the

facts and circumstances of each case. *Watts v. Scottsdale Ins. Co.*, 45,397 (La. App. 2 Cir. 6/30/10), 43 So. 3d 266. The general rule is that the owner or custodian of property has a duty to keep the premises in a reasonably safe condition. *Lambert v. Zurich Am. Ins. Co.*, 55,064 (La. App. 2 Cir. 6/28/23), 366 So. 3d 1285.

Under the Facilities Agreement, XTO retained the right to enter intermittently for maintenance inspections of the pipeline, it made payments expected under the agreement, and it received monthly reports about the products received at the Facility. However, that evidence does not establish that XTO had custody, care, and control of the Facility as its landlord. The record provides no evidence showing that XTO exercised daily or monthly control of Aeropres' operations or had the right to direct Aeropres' operations. XTO's access was limited in time, scope, and execution, to the maintenance of the pipelines that connected the Facility to its fractionator plant two miles away. There is nothing in the record to suggest that XTO's control of the Facility was expanded beyond what was stated in the Facilities Agreement even after that agreement expired, or in the testimony of Mark Clements, XTO's employee who stated that it maintained access to the Facility for the purposes of inspecting the pipeline.

Plaintiffs failed to meet their burden to show that they could establish at trial that XTO had an obligation, based on ownership and/or custody, care, and control of the Facility, to inspect the premises for defects, modify and remove any defects, and to ensure compliance with all safety codes and regulations. The Facility was within the control of Aeropres, and the record shows that the burden of maintaining the premises, complying with any

safety regulations, and ensuring that there was no unreasonable risk of harm fell to Aeropres. Plaintiffs have provided no evidence to the contrary.

Plaintiffs' case also hinges on the apparentness of the shed's defect, but they have not offered evidence showing that the defect was apparent or that XTO had actual or constructive knowledge of the defect. Plaintiffs argue that XTO violated NFPA 58, and they provided one expert who concluded such. However, the expert did not cite a specific provision of NFPA 58, which constitutes the entirety of the Liquefied Petroleum Gas Code, and includes hundreds of regulations.

The following are the two sections of NFPA 58 which are applicable here: 1) § 6.7.1.2, which provides that "the transfer of liquid into containers mounted on vehicles...shall be permitted to take place under a weather shelter or canopy"; and 2) the Annex to NFPA 58 § 6.7.1.1, which states, "It is the intent to allow transfer of liquid into containers in open areas under canopies of roofs where 50 percent or more of the perimeter is not enclosed."

The shed's design complied with existing regulations. There were no prior incidents involving the shed at the Facility. And, what this court finds most telling, OSHA inspected the Facility shortly after the accident and cited Aeropres for violations related to the hoses and couplings they used; OSHA made no mention of the shed or XTO. The record is devoid of any citations or violations from OSHA or any other regulatory authority related to the shed. There is no genuine issue of material fact about whether XTO had actual or constructive knowledge of any inherent defect in the shed. No one reported to XTO that the shed was defective or presented an unreasonable risk of harm.

Plaintiffs argue that constructive knowledge imposes a reasonable duty to discover apparent defects in things under defendant's garde. However, plaintiffs have provided no proof that the alleged defect would have been apparent upon reasonable inspection. OSHA's pre-accident and post-accident inspections did not determine that there was an unreasonably dangerous defect in the shed. As stated, the shed was compliant with existing regulations regarding such structures. No one complained about the shed during the time that XTO was the owner of the Facility. It is difficult for this court to determine how XTO was supposed to know of the shed's dangerous defect given those facts. Plaintiffs are unable to defeat summary judgment on the record provided to the court.

Plaintiffs' profitability argument also fails because there is no legal duty owed because a corporation makes money. Plaintiffs' safe workplace argument also collapses because, as plaintiffs stated, OSHA imposes duties on employers and not premises owners. Only an employer owes a duty to provide a safe workplace, and XTO was not the injured workers' employer. *See Bujol v. Entergy Servs., Inc.*, 03-0492 (La. 5/25/04), 922 So. 2d 1113. XTO's MPSJs on workplace safety and profitability should have been granted by the trial court. However, because XTO incorporated those MPSJs in their MSJ, and this court is reversing the trial court's ruling and granting summary judgment in XTO's favor, those rulings are now moot.

CONCLUSION

For the foregoing reasons, the November 21, 2025, judgment of the trial court denying summary judgment is reversed, and judgment is entered granting summary judgment in favor of XTO Energy, Inc. on its motion for

summary judgment filed on October 31, 2025. Plaintiffs' claims against it are dismissed with prejudice. Costs of the appeal are assessed to plaintiffs.

REVERSED; CLAIMS DISMISSED WITH PREJUDICE.