IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Richard Bradford,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20 L 2124
	)	
Nationstar Mortgage, LLC, Bank of America Mortgage Securities, Inc., Wells Fargo Bank NA, and Timothy Baumruck,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Landowners owe a duty of reasonable care to prevent unnatural accumulations of water, ice, and snow on their property. The record does not support the existence of an unnatural accumulation of water on outside stairs, but there remains a question of material fact as to whether the wood used for the stairs created an unreasonably unsafe condition apart from an unnatural accumulation. As a result, the defendant's summary judgment motion must be denied.

Facts

On February 20, 2018, Richard Bradford, a United States Postal Service employee, was delivering mail on his route in Wilmette. After delivering mail to Timothy Baumruck's residence at 2111 Birchwood Avenue, Bradford walked down the exterior wooden stairs in front of the house. Bradford slipped on the stairs, fell, and sustained injuries.

On June 15, 2020, Bradford filed a four-count complaint against Nationstar Mortgage, LLC, Bank of America Mortgage Securities, Inc., Wells Fargo Bank NA, and Timothy Baumruck. All defendants except Baumruck have been previously dismissed. Bradford alleges that Baumruck owed him a duty of care for his safety while on Baumruck's property. Bradford claims Baumruck breached his duty by negligently failing to: (1) provide a safe means of entering and exiting the property; (2) inspect the premises; (3) maintain the premises in a reasonably safe condition; and (4) properly warn persons, including Baumruck, of slick, slippery, or uneven areas.

The case proceeded to discovery. Bradford explained that on the day of the incident it had been raining and was actively raining when he fell. He admitted that he had noticed the rain on the stairs when he walked up them to deliver the mail. Bradford explained that the set of stairs "had a light green color to it. It just looked slimy. It felt slimy and slippery." Bradford testified that he had delivered mail to Baumruck's residence before, but had not noticed the light green, slimy substance prior to that day.

Bradford testified the "slippery stairs; wet, slippery stairs" caused him to fall, but he could not state the condition was anything more than rain on the wooden stairs. He testified that he had "some concerns about the stairs because there was some concrete damage underneath the first stair and the stair seemed to be not sufficiently level." Bradford clarified, however, that he did not believe the concrete damage contributed to his fall.

On January 3, 2022, Baumruck filed his summary judgment motion. Before responding to the motion, Bradford deposed Danny Hernandez. Hernandez was the handyman for Phoenix Salon, a business Baumruck owned. Hernandez testified that before February 2018 the front porch stairs at Baumruck's house were rotting. Baumruck asked Hernandez to replace the stairs, which he did with treated "green wood." Hernandez testified the "green wood" had already been treated and did not need to be stained or sealed. After Hernandez's deposition, the parties completed briefing the summary judgment motion.

Analysis

Baumruck brings his summary judgment motion pursuant to the Code of Civil Procedure. The code authorizes the issuance of summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show 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." 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Educ. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002). A defendant moving for summary judgment may disprove a plaintiff's case showing the plaintiff lacks sufficient evidence to establish an element essential to a cause of action; this is the so-called "*Celotex* test." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), *followed Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6. A court should grant summary judgment on a *Celotex*-style motion only when the record indicates the plaintiff had extensive opportunities to establish his or her case but failed in any way to demonstrate he or she could do so. *Colburn v. Mario Tricoci Hair Salons & Day Spas, Inc.*, 2012 IL App (2d) 110624, ¶ 33.

If a defendant presents facts that, if not contradicted, are sufficient to support summary judgment as a matter of law, the nonmoving party cannot rest on the complaint and other pleadings to create a genuine issue of material fact. *See Harrison v. Hardin Cnty. Cmty. Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 470 (2001). Rather, a plaintiff creates a genuine issue of material fact only by presenting enough evidence to support each essential element of a cause of action that would arguably entitle the plaintiff to judgment. *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 85 (1st Dist. 2004). To determine whether a genuine issue as to any material fact exists, a court is to construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *See Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The inferences drawn in favor of the nonmovant must, however, be supported by the evidence. *Destiny Health, Inc. v. Connecticut Gen'l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20. A triable issue precluding summary judgment exists if the material facts are disputed, or if the material facts are undisputed but a reasonable person might draw different inferences from the undisputed facts. *Id.*

Bradford's cause of action is grounded in negligence. Bradford alleges that Baumruck negligently maintained his premises, which created a safety hazard and proximately caused his injuries. Baumruck acknowledges that Bradford's complaint sounds in negligence; however, Baumruck's arguments are based largely on a premises liability theory. Baumruck is correct that property owners, whether sued for negligence or premises liability, owe a duty to those lawfully on the property. *Smart v. City of Chicago*, 2013 IL App (1st) 120901, ¶ 48. There is, however, an important distinction between an ordinary negligence claim and a premises liability claim.

Ordinary negligence requires proof of: (1) the existence of a duty, (2) a breach of that duty, and (3) an injury proximately caused by the breach. *Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1063 (1st Dist. 2001) (citing *Miller v. National Ass'n of Realtors*, 271 Ill. App. 3d 653, 656 (1st Dist. 1994)). Whether a duty exists is a legal question of law for the court to decide, whereas the question of "whether a defendant breached the duty and whether that breach was the proximate cause of the plaintiff's injuries are factual matters for the jury to decide, provided there is a genuine issue of material fact regarding those issues." *Greenhill v. REIT Mgmt.& Research, LLC*, 2019 IL App (1st) 181164, ¶ 47. A claim for premises liability, on the other hand, requires proof of the three elements of ordinary negligence along with proof that: (1) there was a condition on the property that presented an unreasonable risk of harm; (2) the defendant knew or reasonably should have known of the condition and the risk; and (3) the defendant could reasonably

have expected people on the property would not realize, would not discover, or would fail to protect themselves from the danger. *Hope v. Hope*, 398 Ill. App. 3d 216, 219 (4th Dist. 2010).

A plaintiff is generally entitled "to elect the legal theory upon which to proceed." *Smart*, 2013 IL App (1st) 120901, ¶ 45. If a plaintiff is injured on another's property, "a plaintiff may elect to pursue a negligence claim, a premises liability claim, or both." *Id.* ¶ 54. This is because "'plaintiffs are masters of their complaint and are entitled to proceed under whichever theory they decide, so long as the evidence supports such a theory.'" *Id.* (quoting *Reed v. Wal-Mart Stores*, 298 Ill. App. 3d 712, 717 (4th Dist. 1998)). Given that Bradford's complaint sounds solely in negligence, this court will not consider Baumruck's premises liability arguments.

Baumruck's *Celotex*-style motion asserts that Bradford cannot meet his burden of proof because the evidence establishes the cause of his fall was a natural accumulation of water. Under the natural accumulation doctrine, a landowner or possessor of real property has no duty to remove natural accumulations of ice, snow, or water from the property. *Krywin v. Chicago Transit Auth.*, 238 Ill. 2d 215, 227 (2010). There is also no duty to warn of such conditions. *Reed v. Galaxy Holdings, Inc.*, 394 Ill. App. 3d 39, 43 (1st Dist. 2009). A plaintiff in a slip-and-fall case involving snow, ice, and water must, therefore, show that the accumulation of snow and ice was unnatural and that the property owner had actual or constructive notice of the condition. *See Hornacek v. 5th Ave. Prop. Mgmt.*, 2011 IL App (1st) 103502, ¶ 29. Liability for a fall due to an unnatural accumulation of ice may be based on a defective condition or negligent maintenance of the premises. *Murphy-Hylton*, 2016 IL 120394, ¶ 21. Regarding notice, Illinois courts have held that if a defendant creates the dangerous condition at issue, the defendant's notice of the condition is irrelevant. *Bernal v. City of Hoopeston*, 307 Ill. App. 3d 766, 772 (4th Dist. 1999) ("when an affirmative act of a [defendant] causes a dangerous condition, no actual or constructive notice of said condition is required"). All the plaintiff must prove is that the defendant negligently created the dangerous condition on its premises. *Reed*, 298 Ill. App. 3d at 715.

In this case, there is no evidence in the record that a defect in the stairs created an unnatural accumulation of water. Putting that issue aside, Bradford claims that Baumruck failed to provide a safe means of entering and exiting the property, failed to maintain the stairs in a reasonably safe condition, and failed to warn Baumruck of slick or slippery areas on the stairs. In support of these claims, Bradford relies on Hernandez's testimony. Hernandez testified that before 2018, he replaced the original steps at 2111 Birchwood Avenue with ones made of "green wood." Hernandez stated that

the green wood had already been treated and did not need to be stained or sealed. He did not say, however, that green wood does not create a slick or slippery surface when wet. In other words, there did not need to be an unnatural accumulation of water to create an unreasonably unsafe condition; the green wood, itself, may have created an unsafe condition apart from the fact that it did not need staining or sealing.

Bradford finds support for his argument in *Bailey v. Graham Enterprises*, 2019 IL App (1st) 181316. In *Bailey*, the court disregarded the natural accumulation rule as an "analytic sidetrack" and focused its inquiry on whether a handicap symbol painted on a parking lot had become unreasonably slippery when wet, regardless of whether the slippery condition resulted from a natural or unnatural source. *Id.* ¶ 28. Rather, the issue was, according to the court, whether the sign's original slip-resistant composition had deteriorated and became unreasonably slippery when wet. *Id.* ¶ 30. The court concluded that was a question for the jury. *Id.*

Bailey is persuasive here. The issue here is not whether the stairs were defective and created an unnatural accumulation of water. Rather, the issue is whether the green wood used for the stairs created a slippery condition that proximately caused Bradford's slip and fall. As in *Bailey*, this court must strictly construe the record against Baumruck and liberally in Bradford's favor. *Id.* ¶ 30. Summary judgment is, therefore, inappropriate in this case.

Conclusion

For the reasons presented above, it is ordered that:

The defendant's summary judgment motion is denied.

Judge John H. Ehrlich
JUL 11 2022
Circuit Court 2075

John H. Ehrlich, Circuit Court Judge