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

George Broustis, independent administrator of the estate of Bertha Broustis, deceased,	)	
Plaintiff,	)	
v.	)	No. 20 L 6905
Mykonos Restaurant, Inc.,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Summary judgment is appropriate only if there exist no questions of material fact and the moving party is deserving of judgment as a matter of law. In this case, there remain questions of material fact as to the nature and condition of an entry threshold that allegedly caused the plaintiff to trip and fall. For that reason, the defendant's summary judgment motion must be denied.

Facts

For 34 years, Peter and Bertha Broustis went to Mykonos Restaurant in Niles two to three times each week. On October 8, 2018, Bertha and her family went to the restaurant and arrived between 4:00 and 5:00 p.m. Bertha and her family entered the restaurant by a double-door entrance that Bertha had previously used numerous times. While walking through the entrance, Bertha's right foot allegedly tripped on the door's metal threshold. Bertha fell and landed on her back and head. On October 27, 2018, Bertha died from her injuries.

On November 29, 2021, George Broustis, as the independent administrator of Bertha's estate, filed a two-count complaint against Mykonos. Count one is pleaded under the Wrongful Death Act, 740 ILCS 180/0.01 – 2.2, and alleges that the entry's threshold was higher than the pavement immediately outside the entrance and, thereby, created a tripping hazard. The complaint alleges that Mykonos owed Bertha a duty of care for her safety and that Mykonos breached its duty by failing, among other things, to: (1) repair the uneven entrance that constituted a tripping hazard; (2) warn of the uneven condition; and (3) comply with standards and regulations requiring entrances to be substantially even with surrounding

pavement. Count two is pleaded similarly, but is brought under the Survival Act, 755 ILCS 5/27-6.

The case proceeded to discovery. Peter testified at his deposition that he does not know what caused Bertha to trip and that he was 10-20 feet away from Bertha when she tripped and fell. The parties also deposed Taylor Jones, Bertha's granddaughter, and Travis Krause, Taylor's boyfriend. Both Taylor and Travis had previously been to the restaurant a number of times. According to Taylor, Travis opened the entry door and Taylor stepped over the threshold first. Then, as Bertha was walking in, her foot caught on the threshold. Bertha's shoe came off as a result of catching the threshold. Bertha then twisted her ankle and fell backward, landing on her back and head. Bertha lost consciousness for about a minute after she hit her head. Travis testified similarly, and indicated that Bertha's right foot caught on the threshold. He further testified that the threshold was sticking up at least one inch from the pavement outside the threshold.

In October 2019, Mykonos laid new tile on top of the tile in the restaurant's interior vestibule and removed and replaced the metal threshold. This work changed the height differential between the threshold and the outside pavement. George provided various photographs of the entrance both before and after the re-tiling. According to Mykonos, the photographs of the threshold before the re-tiling do not depict a height differential between the outside pavement and the threshold. Mykonos admits, however, that photographs of the threshold after the re-tiling show a slight height differential between the threshold and the outside pavement, but are not representative of the conditions at the time Bertha fell.

George retained David Schroeder, a licensed architect, to inspect the restaurant entrance. Schroeder went to the scene on September 23, 2021. In his affidavits, Schroeder estimated that the threshold was at least one to one-and-one-quarter inches higher than the outside sidewalk. He also indicated that the outside pavement next to the threshold was deteriorating and in poor condition and contributed to the height disparity between the outside pavement and the threshold. According to Schroeder, any height differential greater than one-half inch requires a ramp, and the failure to provide one violates various building standards.

The parties fully briefed the motions and each provided various exhibits as part of their submissions, including numerous photographs.

Analysis

Mykonos brings its 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 by showing that 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. A plaintiff creates a genuine issue of material fact 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). 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.*

Mykonos argues that there exists no evidence supporting the essential tort element of proximate cause. Proximate cause contains two elements: (1) cause in fact; and (2) legal cause. *Krywin v. Chicago Transit Auth.*, 238 Ill. 2d 215, 225-26 (2010). Cause in fact requires that the defendant's conduct be a material and substantial factor in bringing about the plaintiff's injury, or that, in the absence of the defendant's conduct, the injury would not have occurred. *Id.* at 226. When considering cause in fact, courts generally employ either the traditional "but for" test or the "substantial factor" test. *See Nolan v. Weil-McLain*, 233 Ill. 2d 416, 431 (2009). Under the "but for" test, "'a defendant's conduct is not the cause of an event if the event would have occurred without it.'" *Id.* (quoting *Thacker v. UNR Industries, Inc.*, 151 Ill. 2d 343, 354 (1992)). Under the "substantial factor" test, "the defendant's conduct is said to be a cause of an event if it was a material element and a substantial factor in bringing the event about." *Id.* (internal quotation marks

omitted.) As to the second element, legal cause is present if the injury is of the type that a reasonable person would see as a likely result of the defendant's conduct. *First Springfield Bk. & Trust v. Galman*, 188 Ill. 2d 252, 257-58 (1999); *Simmons v. Garces*, 198 Ill. 2d 541, 558 (2002); *Abrams v. City of Chicago*, 211 Ill. 2d 251, 258 (2004). In other words, legal cause involves an assessment of foreseeability. *Lee v. Chicago Transit Auth.*, 152 Ill. 2d 432, 456 (1992). Courts ask whether the injury is the type that a reasonable person would see as a "likely result" of his or her conduct, or whether the injury is so "highly extraordinary" that imposing liability is not justified. *Id.*; *see also City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 395 (2004) (legal cause "is established only if the defendant's conduct is so closely tied to the plaintiff's injury that he should be held legally responsible for it" (internal quotation marks omitted)).

As to cause in fact, there exists eyewitness testimony that the metal threshold was raised more than one inch above the outside pavement. Further, Schroeder's affidavit provides an estimate that the threshold was raised one to one-and-a-quarter inches higher then the outside pavement. According to Taylor and Travis, they saw Bertha's shoe catch on the threshold, causing her shoe to fall off and to her fall. Those facts are sufficient to establish both the "but for" test and the "substantial factor" test. As to legal cause, it is patently foreseeable that a person could trip over a door threshold that is raised above surrounding pavement. That conclusion does not change simply because, as in this case, Bertha had used that entrance on many occasions prior to October 8, 2018.

In sum, there is sufficient evidence in the record establishing various questions of material fact as to the height of the threshold in comparison to the pavement immediately outside the entry doors to Mykonos as well the condition of the pavement.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendant's summary judgment motion is denied;
2. This matter shall be heard for case management on December 14, 2022 by Zoom in courtroom 2209.

Judge John H. Ehrlich

OCT 19 2022

Circuit Court 2075

John H. Ehrlich, Circuit Court Judge