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

Rosamaria Bruno,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20 L 5914
	)	
Portillo's Restaurant Group LLC, and Portillo's Hot Dogs, LLC.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

A property owner owes a duty of reasonable care to business invitees. The evidentiary record in this case includes testimony that the defendants knew a floor mat could, at times, constitute an unsafe condition for persons on the property. Since there remain questions of material fact, the defendants' summary judgment motion is denied.

Facts

On September 27, 2019, Rosamaria Bruno entered a Portillo's restaurant located in Vernon Hills for a business lunch. Bruno entered the restaurant through a revolving door. Inside and immediately adjacent to the revolving door was a floor mat. Bruno tripped on the mat, fell, and sustained injuries requiring surgical intervention.

On June 3, 2020, Bruno filed a single-count complaint against the defendants. Bruno alleges the defendants owed her a duty of ordinary care for her safety while at the restaurant. She claims the defendants breached their duty by failing to: (1) tape or secure the mat to the floor so it would not buckle or slide; (2) use a mat with a backing that would not slide or buckle on a tile floor; (3) warn of the mat's condition; (4) close off the area; (5) provide a safe means of entry to the premises; (6) inspect the mat; (7) remove the mat; and (8) train employees on a safe method of securing the mat to the floor.

The case proceeded to discovery. Christy Peterson, one of Bruno's co-workers attending the business lunch, entered the restaurant a few minutes before Bruno and Phil Pare, another co-worker. Peterson testified it was pouring rain at the time she arrived at Portillo's. Peterson explained that after she entered the restaurant, she shuffled her feet on the mat next to the

revolving door to dry her shoes. As a result, the mat bubbled up in front of her feet. Peterson kicked the mat with her foot to flatten out the mat.

Pare testified that he was walking immediately ahead of Bruno as the the two entered the restaurant. Pare saw that the rug was raised up along its rubber edges. Pare did not see Bruno fall since she was behind him, but he heard her fall. After the fall, Pare saw that the mat had buckled two to three inches. He did not know if Bruno or someone else created the buckle. Pare later saw a Portillo's employee straighten out the mat.

Bruno testified at her deposition that the mat was immediately adjacent to the revolving door. About one foot in from the door, the mat had buckled. She did not know who created the condition and she did not see it before her left foot caught on the buckle and she fell. Bruno estimated that she had been to that Portillo's restaurant 75 times and never tripped on a mat before or saw anyone else do so. Bruno admits that the video recordings in the record do not show the bump in the mat. Bruno also testified that, after she fell, she saw an employee flattening out the mat.

The parties deposed Paul Lomoc, the general manager of the Portillo's restaurant. Lomoc did not know who laid out the mat on September 27, 2019. He had previously seen a mat with one of the ends raised up from the floor. He testified that employees had the responsibility to fix the mat.

Denise Stemo, a Portillo's employee, was also deposed. Stemo testified that a couple of times in the past, someone would flip the corner of the mat or would slide their feet across the rug and make a bump. She indicated that she would flatten out the bump with her own foot, and if that did not work, she would call for a maintenance person to fix the mat.

On January 12, 2022, Portillo's Restaurant Group, LLC, and Portillo's Hot Dogs, LLC, (collectively "Portillo's") filed a summary judgment motion. The parties fully briefed the motion and each supplied various exhibits with their briefs.

Analysis

Portillo's 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 if 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 the 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.*

Portillo's presents three arguments in support of its motion. First, Portillo's posits that it had no actual or constructive notice of the buckled floor mat before Bruno's fall. In support of this argument, Portillo's relies heavily on the many depositions in the record. Second, Portillo's argues that it did not create the buckle in the floor mat. Portillo's correctly points out there is no testimony that any employee created the buckle in the mat and argues it is more likely that another patron, including Bruno, created the buckle while walking across the mat. Third, Portillo's argues there exists no duty to affix a floor mat to a floor. Portillo's points to the lack of any recognized duty of care—whether in a statute, code, rule, or regulation—imposing on property owners a duty to fasten a mat to the floor.

Before addressing Portillo's arguments, it is important to distinguish between causes of action for negligence and premises liability. To succeed in an action for negligence, a plaintiff must establish that: (1) the defendant owed the plaintiff a duty; (2) the defendant breached its duty; and (3) the breach proximately caused the plaintiff's injury. *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 22. In contrast, a premises liability cause of action requires proof of the three elements of ordinary negligence along with proof that: (1) there existed a condition on the property presenting 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). In this case, both parties treat the distinction between negligence and premises liability as unimportant since Bruno's complaint does not explicitly identify her cause of action under either legal theory. Regardless, either theory first requires a determination of whether Portillo owed Bruno a duty of care as a business invitee.

Illinois has long recognized that a possessor of land may be liable for harm to a person on the land because of a condition on the land. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 437-438 (2006) (citing Restatement (Second) of Torts §§ 343, 343A, 344 (1965)). In that regard, a threshold consideration is whether the defendant owed the plaintiff a duty of care. The existence of a duty involves public policy considerations relating to four factors: (1) the reasonable foreseeability of the injury; (2) the likelihood of the injury; (3) the magnitude of the burden of guarding against the injury; and (4) the consequences of placing that burden on the defendant. *Id.* at 436-37. Based on these factors, a court is to determine whether the parties had a relationship for which the law would impose a duty. *Id.* at 436.

In this case, it was reasonably foreseeable that an injury could occur from the floor mat. Stemo testified that she had previously seen the mat flip up or patrons would slide their feet across the rug and make it buckle. Similarly, Lomoc testified that he had previously seen a corner of the mat flipped over. Portillo's employees apparently foresaw the likelihood of an injury because Stemo testified she would flatten out the bump with her own foot but, if that did not work, she would call for a maintenance person to fix the mat. The magnitude of the burden of guarding against the injury is slight given that Portillo's could have replaced the mat or secured it in some fashion so that its corner would not flip over and or buckle when stepped on. Finally, placing the burden on Portillo's is proper considering it owns the property and is responsible for potentially unsafe conditions on its property.

Stemo and Lomoc's testimony also defeats Portillo's notice argument. While there is no admissible evidence that Portillo's knew of the buckle in the mat immediately before Bruno's trip and fall, it is plain Portillo's knew of other prior instances in which the mat had created an unsafe condition. The existence of constructive notice of the mat's allegedly defective condition leaves open the door for Bruno's other claims left unaddressed by Portillo's. For example, Portillo's does not address that, knowing there had been prior problems with the mat, Portillo's should have taken some remedial measure to tape down the mat, or provide a proper backing. Further, given Portillo's constructive notice, there is nothing in the record indicating that Portillo's provided any warnings to its customers or provided an alternate entry into the restaurant. Either of these claims is a potentially viable means of establishing Portillo's negligence. That Portillo's fails to address these claims means there exist questions of material fact as to the claims' viability.

Conclusion

For the reasons presented above, it is ordered that:

The defendants' summary judgment motion is denied.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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