

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

Angel Cruz,)	
)	
Plaintiff,)	
)	
v.)	No. 19 L 12304
)	
Steven Dominguez and Jennifer Toro,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Credibility is a question of fact for a jury. The plaintiff in this case testified that his foot caught on cement while walking down steps outside the defendants' house, but a prior medical record indicates the plaintiff missed the last step. The plaintiff's own inconsistent testimony raises a substantial question as to his credibility that a jury must decide; therefore, summary judgment is inappropriate.

Facts

On December 2, 2017, Angel Cruz went to the home of Steven Dominguez and Jennifer Toro located at 4825 West Wellington in Chicago. After staying at the defendants' home for several hours, Cruz left. He proceeded to walk down the same front steps to the house he had taken when he arrived hours earlier. Cruz fell down the steps and injured himself.

On November 6, 2019, Cruz filed a two-count complaint against Dominguez and Toro. Each count is a cause of action for negligence, one against each defendant. In each count, Cruz alleges the defendants owed him a duty to maintain their steps in a reasonably safe condition. He claims the defendants breached their duty by failing to: (1) install a handrail; (2) have a uniform

riser height and tread width; (3) illuminate the steps; (4) warn Cruz of the steps' dangerous condition; and (5) provide a safe means of egress.

The case proceeded to discovery. At his deposition, the following colloquy occurred between the defendants' attorney and Cruz:

Q. What was it that caused you to fall?

A. The top stairs. I came down, my foot got caught and fell down the stairs.

Q. So your foot got caught on the stair?

A. On the cement. You know as you're walking, foot just got caught and there I go.

Q. Do you remember telling the emergency room doctors at Community First Medical Center on December 4th, 2017 that you missed the last step of the stairway?

A. No.

On May 18, 2021, the defendants filed a summary judgment motion. The parties briefed the motion and attached various exhibits to their pleadings.

Analysis

The defendants filed for summary judgment, a motion authorized by the Code of Civil Procedure. 735 ILCS 5/2-1005. Summary judgment is proper "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 Ed. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002).

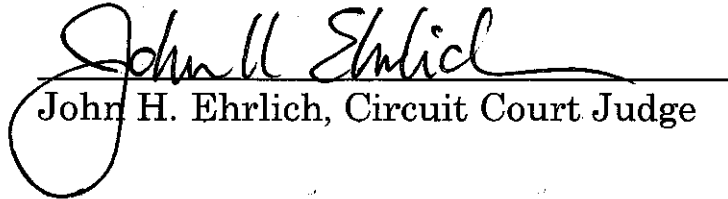
Cruz's deposition statement that his foot caught on the cement step directly contradicts the statement contained in the Community First Medical Center record. That inconsistency automatically raises a question of Cruz's credibility. As a general matter, it is a jury's function to weigh contradictory evidence and judge witness credibility. *Moore v. Anchor Org. for Health Maint.*, 284 Ill. App. 3d 874, 880 (1st Dist. 1996); *Lauman v. Vandalia Bus Lines*, 288 Ill. App. 3d 1063, 1072 (5th Dist. 1997) ("The credibility of the witnesses and the weight, if any, that should be accorded their testimony are always proper issues for the jury."). This jury function is particularly critical if the witness made a prior inconsistent statement. *Tarin v. Pellonari*, 253 Ill. App. 3d 542, 556 (1st Dist. 1993) ("An appropriate method of testing the credibility of a witness is to demonstrate that on a prior occasion the witness made statements inconsistent with his or her trial testimony."). A witness may be impeached if the prior statement is materially inconsistent with the witness's trial testimony. *Thompson v. Abbott Lab's*, 193 Ill. App. 3d 188, 205 (2d Dist. 1990). The Illinois pattern jury instructions reflect the need for a jury to weigh and judge credibility. Illinois Pattern Jury Instructions, Civil, 1.01(C)[5] ("You are the only judges of the credibility of the witnesses who testified. . . . In evaluating the credibility of a witness, you may consider . . . any previous inconsistent statement or act by the witness concerning an issue important to the case.").

The need for a jury to weigh and judge Cruz's credibility or lack of it necessarily defeats the defendants' summary judgment motion. That is not necessarily good news for Cruz. The vagueness with which he identifies an alleged defect—the cement—or a proximate cause of his fall—the lack of a handrail—merely amplify the questions as to his credibility. At this point, Cruz may have successfully defeated a summary judgment motion, but he will likely face a far greater challenge in convincing a jury of his version of events.

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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