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

Lauren Griffin,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 19 L 8837
	)	
Chicago Transit Authority, a municipal corporation,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

A failure to inquire as to each of a plaintiff's claims leaves an evidentiary gap sufficient to create a question of material fact to defeat summary judgment. Here, the defendant failed to ask the plaintiff during her deposition how an uneven stairway riser proximately caused her injury. Absent any testimony on that subject, the defendant's summary judgment motion must be denied.

Facts

On the afternoon of August 11, 2018, Lauren Griffin walked up a stairway at the Chicago Transit Authority's Morse Street station. The stairway is inside the station and is covered from the outside. As Griffin walked between the ninth and tenth stairs, her right foot slipped or tripped on the stairs. Griffin fell and suffered injuries.

On March 20, 2020, Griffin filed a second amended complaint. The complaint raises a single count of negligence against the CTA. Griffin alleges the CTA owed her a duty of reasonable care in its maintenance and repair of the Morse Street station stairway. Griffin claims the CTA breached its duty to her by, among other things, failing to: (1) manage and maintain the stairs by allowing them to deteriorate, crumble, and crack; (2) maintain the stairs by permitting them to be at various heights; (3) inspect; and (4) warn of the dangerous condition of the stairs.

The case proceeded to discovery. In her deposition, Griffin testified that the ball of her right foot landed partially on the tenth stair from the bottom. Her foot slipped off the tenth step and landed on the ninth step. Griffin said that the stair tread was made of a slick, terra-cotta-like substance. As Griffin explained:

Q. Do you know what caused your foot to slip?
A. It happened very quickly. I took that step with my right foot, and my foot slipped off the top of that stair, which is a slick type of terra cotta. It's not that rough material but it's slick. And then my foot slipped off and hit – it's hard to define this term, but the upper panel of that 10th stair that connects the 10th and the ninth stair. Does that make sense? The rise between the 10th and the ninth step. My foot hit that, and I landed on the ninth step with my ankle.

* * *

Q. Is it fair to say that the edge of that step or the lip of that step is comprised of the same material as the flat surface, that being the terra cotta tile-appearing material?
A. Yes.
Q. And the edge or lip of the step, is that a fair approximation of where your foot slipped on that 10th step?
A. Yes. That's how I would describe it.

On January 28, 2022, the CTA filed a summary judgment motion. The parties fully briefed the motion and provided various exhibits.

Analysis

The CTA 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. 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.*

The central dispute in this case concerns the scope and meaning of Griffin's deposition testimony. It is evident the CTA concludes from Griffin's testimony that there was no slippery condition on the stairs as a matter of fact and law that caused her slip and fall. In support of its argument, the CTA relies on *Kotarba v. Jamrozik*, 283 Ill. App. 3d 595 (1st Dist. 1996), and *Lucker v. Arlington Park Race Track Corp.*, 142 Ill. App. 3d 872 (1st Dist. 1986). In those cases, the courts found the plaintiffs' descriptions of slippery surfaces to be subjective, conclusory, and imprecise and, therefore, insufficient to withstand summary judgment. *Kotarba*, 283 Ill. App. 3d at 598; *Lucker*, 142 Ill. App. 3d at 874. The CTA argues the same holds true here.

The CTA's argument is defeated, however, by the lack of a complete factual record arising from Griffin's deposition testimony. After hearing Griffin's description of how the trip and fall occurred, the CTA apparently thought it had a winning argument based on *Kotarba* and *Lucker*. The result was that the CTA made no inquiry at all as to the alternative claims contained in Griffin's complaint. One claim in particular stands out in this regard—Griffin's claim that the CTA failed to maintain the stairs by allowing them to remain at various heights.

Griffin cannot be blamed at the summary judgment stage for the CTA's failure to inquire as to all of the claims in Griffin's complaint. It is unknown how Griffin would have responded to deposition questions about the uneven stairs, but her answers would have likely been similar to the averments she

made in the affidavit attached to her response brief. And since the CTA made no inquiry as to the uneven stairs, Griffin's affidavit does not contradict her earlier testimony and becomes part of the evidentiary record for summary judgment. *Cf. Tom Olekser's Exciting World of Fashion v. Dun & Bradstreet*, 71 Ill. App. 3d 562, 569 (1st Dist. 1979) ("Illinois law is clear that a party may not seek to create a question of material fact by introducing an affidavit that contradicts prior sworn deposition testimony.") In contrast, Griffin's expert testimony is unnecessary at this point given that she has supplied sufficient facts to create a question of material fact.

Conclusion

For the reasons presented above, it is ordered that:

The defendant's summary judgment motion is denied.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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