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

Apostol Ivanov,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 19 L 3558
	)	
The University of Chicago,	)	
	)	
Defendant.	)	
The University of Chicago,	)	
	)	
Third-party Plaintiff,	)	
	)	
v.	)	
	)	
Azure Realm Decorating, Ltd.,	)	
	)	
Third-party Defendant.	)	

MEMORANDUM OPINION AND ORDER

Summary judgment is appropriate only if there exists no question of material fact and the moving party is deserving of summary judgment as a matter of law. The plaintiff here has failed to establish evidence as to what proximately caused his fall as well as the defendant's notice of the allegedly dangerous condition. For these reasons, the defendant's summary judgment motion must be granted.

Facts

On April 4, 2017, Azure Realm Decorating Ltd., employed Apostol Ivanov as a painter. On that date, Ivanov was working in the lobby of a residential building owned by the University of Chicago (UofC) located at 6022 South Drexel Avenue. Ivanov had positioned his ladder against a wall and had been working for approximately five minutes when he fell off the ladder and sustained injuries.

On April 3, 2019, Ivanov filed a complaint against the UofC with a single negligence cause of action. Ivanov alleges the UofC owed him a duty of care for his safety. He claims the UofC breached its duty by negligently: (1) maintaining and controlling the lobby; (2) failing to provide adequate warning of slipping hazards; and (3) applying excessive cleaning solution or floor polish such that the floor became unreasonably slippery.

The case proceeded to discovery. In his deposition, Ivanov testified he did not have any problems seeing the floor and that it was not wet or dusty. Ivanov explained he did not notice anything on the floor as he positioned the ladder's two legs on the floor and leaned the ladder against the wall. Ivanov testified he did not know what caused him to fall. He explained, however, that the mosaic floor was "so shiny" and that: "The way they do the cleaning, they also use those machines to polish, and it is way too polished, and that makes it very slippery."

Zlatko Simic was also deposed. Simic owns Azure Realm Decorating and employed Ivanov. Simic testified his employees learn to use ladders through on-the-job training. Simic explained he does not inspect the ladders before their use, but if he determined a ladder was unsafe he would not use it. Simic indicated he would have inspected the building at 6022 South Drexel to see what needed to be done before beginning any work. Simic testified he never noticed the lobby floor as being too clean or slippery. On April 4, 2017, Simic did not notice any dangerous floor conditions and said that, if he had, he would have fixed the issue or reported it to someone.

Nail Sharkov was also deposed. Sharkov is also an Azure Realm Decorating employee and was present at 6022 South Drexel the day of Ivanov's accident. Sharkov testified he had walked across the lobby many times but did not describe the floor as slippery. On April 4, 2017, Sharkov did not notice any abnormal floor conditions. Sharkov was working about 20 feet away from Ivanov when Sharkov heard Ivanov fall. Sharkov explained he did not see Ivanov fall but saw his ladder on a drop cloth over the floor prior to the fall.

Two long-term University of Chicago janitorial workers were deposed. Zoran Ivezic, the head janitor for the UofC, testified the lobby of 6022 South Drexel was last polished two years ago with a non-slip polish. Ivezic also explained the lobby would not have been cleaned until after Azure Realm Decorating completed its work. Darcel Brosgadle corroborated this statement and testified she last cleaned the lobby three days prior to Ivanov's accident. Both testified the floors were cleaned with water and soap or Pine Sol. Neither person was aware of any dangerous conditions on the lobby floor. Additionally, neither person found the lobby to be slippery.

On October 27, 2021, the UofC filed a summary judgment motion. The parties fully briefed the motion.

Analysis

The UofC 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 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.* On the other hand, if no genuine issue of material fact exists, a court has no discretion and must grant summary judgment as a matter of law. *See First State Ins. Co. v. Montgomery Ward & Co.*, 267 Ill. App. 3d 851, 854-55 (1st Dist. 1994).

The UofC's *Celotex*-style motion asserts Ivanov lacks sufficient evidence to establish proximate cause. To prevail on a negligence cause of action, a plaintiff must prove the defendant owed the plaintiff a duty, the defendant breached that duty, and the defendant's breach proximately caused the plaintiff's injury. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 430 (2006). A proximate cause is one that produces an injury through a natural and continuous sequence of events unbroken by any effective intervening cause. *Crumpton v. Walgreen Co.*, 375 Ill. App. 3d 73, 79 (1st Dist. 2007). There are two requirements for a showing of proximate cause: cause in fact and legal cause. *Id.* Cause in fact requires 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. *Krywin v. Chicago Transit Auth.*, 238 Ill. 2d 215, 226 (2010). Legal cause is established if an injury was foreseeable as the type of harm a reasonable person would expect to see as a likely result of his or her conduct. *Crumpton*, 375 Ill. App. 3d at 79. At the same time, "[l]iability cannot be predicated upon surmise or conjecture as to the cause of the injury; proximate cause can only be established when there is a reasonable certainty that defendant's acts caused the injury." *Kimbrough v. Jewel Cos.*, 92 Ill. App. 3d 813, 817 (1sst Dist. 1981).

Ivanov testified the floor was slippery because of the way it had been cleaned or polished. Ivanov's repeated references to polish appear to be his primary explanation for the allegedly slippery condition of the floor. Ivanov acknowledged, however, the floor was not wet the day of his accident. Additionally, Ivezic and Brosgadle testified the floor would not have been cleaned prior to Ivanov's shift.

The mere waxing or oiling of a floor is not negligence *per se*. *Lucker v. Arlington Park Race Track Corp.*, 142 Ill. App. 3d 872, 874 (1st Dist. 1986). To demonstrate negligence, the evidence must show the waxing or oiling was not properly performed. *Id.* *Lucker* is highly instructive and, importantly, has not been overruled, let alone criticized or distinguished. In *Lucker*, the court found "testimony that a floor is slick, slippery or polished is insufficient to establish negligence because it does not give the trier of fact a basis for balancing the defendant's conduct against the requisite standard of care." *Id.* Courts have held the descriptors "slippery," "slick," or "polished" are subjective verbal characterizations and do not allow a jury to weigh fairly and intelligently the owner's conduct in caring for floors and its causal relationship to a plaintiff's injury. *Id.* (citing *Dixon v. Hart*, 344 Ill. App. 432, 438 (1951)). Under *Lucker*, negligence cannot be established through evidence that a floor is well polished; rather, there must be some negligent conduct by the defendant. *Lucker*, 142 Ill. App. 3d. at 875 (citing *Schmidt v. Cenacle Convent*, 86 Ill. App. 2d 150, 155-56 (2d Dist. 1967)). Examples of such positive acts include using an excessive amount of wax, applying it unevenly, treating a part of a floor with wax but leaving another part untreated, and polishing (or painting) a floor where people would unexpectedly step on the freshly treated surface. *Schmidt*, 86 Ill. App. 2d at 155 (citing *Dixon v. Hart*, 344 Ill. App. 432, 435 (4th Dist. 1951)).

In this case, Ivanov has failed to present any evidence the UofC undertook any of the acts enumerated in *Schmidt* or placed a foreign substance on the floor. Despite Ivanov's contentions to the contrary, that the UofC created a condition by waxing, polishing, or cleaning the floor is not evidence of positive, actionable negligent conduct. As explained in *Lucker*, *Dixon*, and *Schmidt*, the defendants in those cases created conditions based on paint, gloss, polish, and wax. Illinois law,

however, requires evidence of additional conduct to establish negligence. Ivanov has, therefore, failed to establish proximate cause.

The UofC next argues it is entitled to summary judgment because there is no evidence the UofC had actual or constructive notice of the alleged condition that caused Ivanov's fall. In Illinois, the scope of premises liability is determined by applying Restatement (Second) of Torts section 343, which the Illinois Supreme Court has adopted into common law. *Genaust v. Illinois Power Co.*, 62 Ill. 2d 456, 468 (1976); see Restatement (Second) of Torts § 343 (1965). Section 343 states:

> A possessor of land is subject to liability for physical harm caused to invitees by a condition on the land if, but only if, he:
> (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
> (c) fails to exercise reasonable care to protect them against the danger.

Restatement (Second) of Torts § 343.

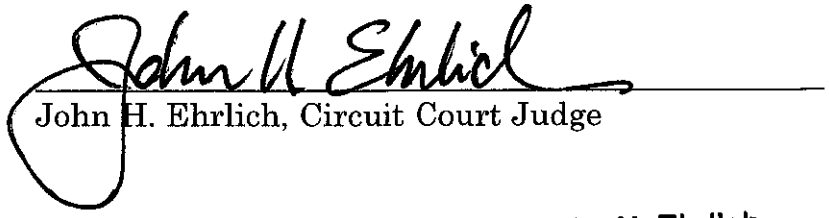
Under section 343, a possessor of land "owes its invitees a common law duty of reasonable care to maintain its premises in a reasonably safe condition. . . ." *Clifford v. Wharton Bus. Grp., L.L.C.*, 353 Ill. App. 3d 34, 42 (1st Dist. 2004) (citation omitted). Actual or constructive knowledge of a dangerous condition is a precondition to direct liability. *Diaz v. Legat Architects, Inc.*, 397 Ill. App. 3d 13, 35 (1st Dist. 2009). A business owner is presumed to have constructive notice of all conditions discoverable through a reasonable premises inspection. *Heider v. DJG Pizza, Inc.*, 2019 IL App (1st) 181173, ¶ 34 (citing *Lombardo v. Reliance Elevator Co.*, 315 Ill. App. 3d 111, 120 (1st Dist. 2000)). No legal duty arises, however, "unless the harm is reasonably foreseeable." *Clifford*, 353 Ill. App. 3d at 42.

Ivanov is correct that he need not establish the UofC's actual or constructive knowledge of a condition if the UofC placed a foreign substance on the floor. *Thompson v. Economy Super Marts, Inc.*, 221 Ill. App. 3d 263, 265, (3d Dist. 1991). As established above, however, the existence of a polished floor does not alone constitute negligence. As a factual matter, Ivezic and Brosgadle testified the floor had not been cleaned or polished recently before Ivanov's injury. Further, Ivezic and Brosgadle did not receive reports of a dangerous condition or find the floor slippery when they examined it. Ivanov has, therefore, failed to establish actual or constructive notice.

Conclusion

For the reasons presented above, it is ordered that:

The defendant's summary judgment motion is granted.



John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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