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

Vivian Johnson,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 21 L 841
	)	
Gottlieb Memorial Hospital, an Illinois not-for-profit corporation,	)	
	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Summary judgment is appropriate if the moving party's right to relief is free and clear from doubt. In this case, the evidence reveals questions of material fact as to whether the defendant's failure to equip its automatic doors with warning signs proximately caused the plaintiff's injuries. Given this unresolved question, the defendant's motion for summary judgment must be denied.

Facts

On January 25, 2016, Vivian Johnson visited her daughter in the intensive care unit ("ICU") of Gottlieb Memorial Hospital ("Gottlieb"). The second-floor ICU was being renovated; consequently, the ICU operated temporarily on the sixth floor. When Johnson left the ICU, she encountered automatic swinging doors operated by a push plate located on the wall. The two doors swung in different directions, permitting entry and exit out of separate doors. There was no notice or warning on the doors indicating that each door was dedicated solely for either entry or exit. The doors were also not equipped with sensors. The doors were open as Johnson approached. As she passed through the doors, however, they began to close. One of the doors struck Johnson, and she fell and fractured her hip.

On May 13, 2016, Johnson filed her original action. Johnson later voluntarily dismissed her case and on November 11, 2021, refiled it. The complaint presents one count of negligence against Gottlieb. Johnson alleges Gottlieb owed her a duty to exercise ordinary care. She claims the hospital breached its duty by failing to: (1) supply her with a safe and suitable entrance and exit to the ICU; (2) equip the automatic swinging doors with sensors to detect a person in the zone of the door; (3) equip the doors with

warnings that the doors may suddenly close; (4) maintain the doors so they would not close on a person in the zone of the door; and (5) train employees pushing carts or equipment to maneuver closest to the wall when walking through the doors.

The case proceeded to discovery. In her deposition, Johnson testified that she had visited Gottlieb before, but had never been to the sixth floor. She admitted, however, that she had previously encountered at Gottlieb automatic doors like the ones on the sixth floor. Johnson explained she was wearing black slip-on shoes that had traction on the bottom and were not affected by the weather the day she fell.

Johnson believed the automatic doors were the only way to access the ICU. She went through the same doors to see her daughter, but did not recall anything specific about them other than that they were automatic. Johnson did not have to use the push plate when she got to the doors because they were open. Johnson acknowledged she did not pay attention to the doors and, therefore, did not understand that they swung in different directions. Johnson explained that as she was leaving she saw both the doors were open and not moving. She did not see the doors start to close as she approached. One of the doors hit Johnson on the head and knocked her down. She does not recall seeing any warnings or labels warning of an "Automatic Door."

A security video captured part the incident. The footage shows both doors are open and then begin to swing close as Johnson's legs come into view. Johnson can be seen walking through the door and when it strikes her. The footage also shows Johnson falling to the floor. It should be noted that the video is limited in what it shows because the camera is focused on the elevator doors. This incident occurred on the periphery of the camera's view.

Johnson disclosed Joseph Leane, a mechanical engineering expert. Leane testified that Gottlieb violated the Village of Maywood's municipal code by failing to display decals such as "Caution Automatic Door" and "Activate Switch to Operate" on the front of the doors.

On November 1, 2021, Gottlieb filed a summary judgment motion. The parties fully briefed the motion.

Analysis

Gottlieb 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).

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).

At the outset, it is noted that Johnson's complaint is based on a negligence cause of action. She alleges Gottlieb's failure to post warning decals on the automatic swinging doors proximately caused her injuries. In contrast, Gottlieb's arguments are based largely on premises liability. Gottlieb is correct that property owners owe a duty of care to those lawfully on their property regardless of whether the cause of action is for negligence or premises liability. *Smart v. City of Chicago*, 2013 IL App (1st) 120901, ¶ 48. There is, however, a distinction between an ordinary negligence claim and a premises liability claim.

Ordinary negligence requires proof of: (1) a duty; (2) a breach of that duty; and (3) an injury proximately caused by the breach. *Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1063 (1st Dist. 2001) (citing *Miller v. National Ass'n of Realtors*, 271 Ill. App. 3d 653, 656 (1st Dist. 1994)). Violation of a statute or code designed to protect human life is *prima facie* evidence of negligence. *Kalata v. Anheuser-Busch Companies Inc.*, 144 Ill. 2d 425, 434 (1991). "A party injured by such a violation may recover only by showing that the violation proximately caused his injury[,] and the statute or ordinance was intended to protect a class of persons to which he belongs from the kind of injury that he suffered." *Id.* "The violation does not constitute negligence *per se*, however, and therefore the defendant may prevail by showing that he acted reasonably under the circumstances." *Id.*

On the other hand, a claim for premises liability requires proof of the same three elements of ordinary negligence plus 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 its 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). A plain reading of Johnson's complaint indicates she does not impute any knowledge of the risk to Gottlieb.

Gottlieb's argument that Johnson is actually pleading a premises liability case is not well founded. Under Illinois law, a plaintiff is "entitled to elect the legal theory upon which to proceed." *Smart*, 2013 IL App (1st) 120901, ¶ 45. If a plaintiff is injured on a landowner's property, the plaintiff "may elect to pursue a negligence claim, a premises liability claim, or both." *Id.* ¶ 54. The reason is that "'plaintiffs are masters of their complaint and are entitled to proceed under whichever theory they decide, so long as the evidence supports such a theory.'" *Id.* (quoting *Reed v. Wal-Mart Stores*, 298 Ill. App. 3d 712, 717 (4th Dist. 1998)). Since Johnson' complaint sounds only in negligence, this court will not consider any premises liability arguments.

Gottlieb's central argument is that Johnson's own testimony refutes her *prima facie* case that the failure to have decals on the door caused her injury. Gottlieb attempts to refute proximate cause by asserting that Johnson knew the doors to the ICU were automatic; therefore, a decal warning of an automatic door would not have prevented her injury. A proximate cause is one that produces an injury through a natural and continuous sequence of events unbroken by any effective intervening cause. *Mengelson v. Ingalls Health Ventures*, 323 Ill. App. 3d 69, 75 (1st Dist. 2001). Proximate cause is comprised of two parts: cause in fact and legal cause. *Crumpton v. Walgreen Co.*, 375 Ill. App. 3d 73, 79 (1st Dist. 2007). 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 that a reasonable person would expect to see as a likely result of his or her conduct. *Crumpton*, 375 Ill. App. 3d at 79.

Although Johnson used the doors to enter the ICU, she testified that she did not remember anything specific about the way the doors worked at the time. She further testified that she was unaware the doors swung in different directions or that one door was an entrance only while the other was an exit only. Johnson explained that the doors were open when she approached and that they were not moving. As she passed through the doors,

however, the door hit her, and she fell. Gottlieb's argument that Johnson would not have changed her behavior had signs been present may be true or not true. That is ultimately a question of material fact and is, therefore, a question for the jury.

In its reply brief, Gottlieb argued for the first time that it owed Johnson no duty to place decals on the doors. This court notes that, generally, arguments raised for the first time in a reply brief are discouraged and are not considered. *Mancini Law Grp., P.C. v. Schaumburg Police Dep't*, 2019 Ill. Cir. LEXIS 190, *28 (citing Ill. S. Ct. R. 341(h)(7)). That general rule applies here since Johnson was unable to respond to Gottlieb's duty argument.

Finally, Johnson's expert, Leane, asserts that Gottlieb violated Maywood's municipal code by failing to provide a warning about the automatic doors. Gottlieb correctly points out that the hospital is located in the Village of Melrose Park, not Maywood. Given this factual discrepancy, this court did not consider Leane's opinion based on a mistaken 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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