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

Jane Raede and David Raede, Plaintiffs, v. Arlington Heights, LLC, and F&F Realty Partners, LLC, Defendants. Hilton Worldwide Holdings, Inc., Respondent in Discovery.	)	No. 19 L 10629

MEMORANDUM OPINION AND ORDER

Summary judgment is authorized only if there exists no question of material fact and the moving party deserves summary judgment as a matter of law. In this case, there exist fundamental questions of material fact as to how long the allegedly dangerous condition existed. Given the conflicting evidentiary record, the defendants' summary judgment motion must be denied.

Facts

On February 1, 2019, Jane Raede was leaving the Double Tree by Hilton Hotel Chicago—Arlington Heights when she tripped over a floor mat near the hotel entrance. Jane's left knee and face hit the floor and she sustained injuries. On September 26, 2019, Jane and David Raede sued F&F Realty Partners, LLC, owner of Arlington Heights, LLC, which does business as the Double Tree.

On October 4, 2021, the Raedes filed their third amended complaint. Count one is pleaded as premises liability against Arlington Heights, LLC. (Count two was previously dismissed.) Counts three and four are pleaded as negligence against F&F Realty, and Arlington Heights, LLC, respectively. Count five is pleaded as David's loss of consortium. The Raedes allege that the defendants owed Jane a duty of care as an invitee on the property. They claim Arlington Heights, LLC, as the building owner breached its duty and created a hazard by failing to: (1) warn Jane of a dangerous condition by providing signs or roping off the area; (2) secure the mat; and (3) maintain the mat so the border would not curl. Regarding counts three and four, the Raedes claim F&F Realty Partners, LLC, and Arlington Heights negligently: (1) placed the mat at or near the exit; (2) placed the mat without

adequate staff instructions or training to maintain the mat; and (3) failed to inspect and identify the curled mat.

The case proceeded to discovery. In her deposition, Jane testified she was walking towards the hotel's front exit when her left foot hit a bump in the floor mat. Jane admitted she never looked at the mat, but straight ahead, which is her standard practice when walking. Jane did not know how long the bump had been in the mat before she fell or what had created the bump.

Charles Valenti, the Double Tree's general manager testified he had worked at the hotel for ten years and the mat had never been identified as a tripping hazard during that time. He explained the hotel placed the mat on the floor to address winter accumulations of snow and salt. Valenti acknowledged that risk management training covers tripping hazards as well as regular safety checklists as to each aspect of the hotel. According to Valenti, a public area attendant vacuums the lobby daily, and if any mat were displaced or flipped over, hotel employees had been trained to fix the problem. Additionally, if there were any problems with the mat, employees were to report the problem to him. Valenti testified he had not received reports of any problems with the floor mat in the month prior to Jane's fall. After viewing pictures of the scene, however, Valenti acknowledged a "bubble" or "bump" existed at the mat's edge. Valenti agreed the mat in that condition was a tripping hazard.

The parties also deposed Ali Albaldawi, the front desk supervisor. Albaldawi was present the evening of Jane's accident, but he never saw any problems with the mat, including a bump or curve at the mat's edge. Albaldawi stated had he noticed a problem with the mat, he would have corrected or removed it.

The Raedes retained William Zoetvelt, a flooring expert, who opined that damage to the mat had caused its edge to curl. He asserted that a curl is a known tripping hazard. Zoetvelt opined the mat's edges should have been secured to the floor to be in compliance with various standards of the National Floor Safety Institute and the failure to do so violated custom and practice for flooring standards.

Based on this record, on November 4, 2021, the defendants filed their summary judgment motion. The parties fully briefed the motion.

Analysis

The defendants bring their 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 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 defendants argue that they are entitled to summary judgment because they owed Jane no duty under negligence or premise liability claims. Duty is a question of law to be decided by the court. *See Bruns v. City of Centralia*, 2014 IL 116998, ¶ 13. To determine if a duty exists, a court is to analyze whether a relationship existed between the plaintiff and the defendant for which the law would impose a duty on the defendant for the plaintiff's benefit. *See Doe-3 v. McLean Cty. Unit Dist. No. 5 Bd. of Directors*, 2012 IL 112479, ¶ 22, *quoting Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 436 (2002). The "relationship" is "a shorthand description for the analysis of four factors: (1) the reasonable foreseeability of the injury, (2) the likelihood of injury, (3) the magnitude of the burden of guarding against the injury, and (4) the consequences of placing that

burden on the defendant." *Id., citing Simpkins v. CSX Transp., Inc.*, 2012 IL 110662, ¶ 18. A court's analysis of the duty element focuses on the policy considerations inherent in these four factors and the weight accorded to each based on the case's particular circumstances. *Id.*

The Illinois Supreme Court has repeatedly and consistently pointed out "it is 'axiomatic' that every person owes to all others a duty to exercise ordinary care to guard against injury which naturally flows as a reasonably probable and foreseeable consequence of his act.'" *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 291-92 (2007) (quoting and citing cases). As the court explained elsewhere,

> every person owes a duty of ordinary care to all others to guard against injuries which naturally flow as a reasonably probable and foreseeable consequence of an act, and such a duty does not depend upon contract, privity of interest or the proximity of relationship, but extends to remote and unknown persons.' Thus, if a course of action creates a foreseeable risk of injury, the individual engaged in that course of action has a duty to protect others from such injury. This does not establish a 'duty to the world at large,' but rather this duty is limited by the considerations [of the four factors] discussed above. An independent 'direct relationship' between parties may help to establish the foreseeability of the injury to that plaintiff . . . but is not an additional requirement to establishing a duty in this context.

Simpkins, 2012 IL 110662, ¶ 19 (citations omitted).

Although the defendants argue they owed Jane no duty given the existing facts, they failed to apply them to the required duty elements. On the other hand, Jane contends the defendants owed her a duty of ordinary care to comply with flooring standards and to avoid creating a tripping hazard by failing to secure the mat. Jane argues further the mat did not comply with the customs and standards for flooring that represent the standard of ordinary care.

It is certainly reasonably foreseeable given the photograph of the mat that a customer could trip over the curl, particularly in an area of heavy foot traffic. Indeed, both Valenti and Zoetvelt opined that a curl or bump in the mat represented a hazard. Further, given that persons generally do not watch their feet while walking, there is also a substantial likelihood a customer could trip over the curl and sustain injuries. The burden on the hotel in this instance is minimal as it would merely require replacing the mat or taping down its edges. To accept defendants' argument to the contrary would undermine the overriding duty owed by all persons to guard against injuries arising from foreseeable consequences. *Forsythe*, 224 Ill. 2d at 291-92.

The Raedes also base their duty analysis on their flooring expert's assessments. Zoetvelt opined that the mat had been damaged, which created the curl. Notably, the defendants did not retain an expert to provide an opinion as to the mat's condition. Rather, the defendants argue a lack of proximate cause—the mat was not damaged and the curl, bump, or bubble resulted from a customer dragging luggage through the doors and across the mat. This fundamental conflict in testimony as to the mat's condition raises a question of witness credibility. It is not this court's role to judge the evidence when credibility is at issue because credibility is strictly a question for a jury to decide. *Maple v. Gustafson*, 151 Ill. 2d 445, 452-53 (1992) ("it is the province of the jury to . . . pass upon the credibility of the witnesses, and to decide what weight should be given to the witnesses' testimony").

The defendants next argue they owed Jane no duty because pursuant to Restatement (Second) of Torts section 343, she failed to demonstrate the defendants knew or should have known of the alleged dangerous condition. In Illinois, the scope of premises liability is determined by the 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. 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 has constructive notice of all conditions discoverable by a reasonable inspection of the premises. *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). Yet no legal duty arises "unless the harm is reasonably foreseeable." *Clifford*, 353 Ill. App. 3d at 42.

The defendants are adamant there was no actual notice of the mat's curl before Jane's accident. Indeed, Valenti testified if there had been an issue with the

mat, hotel employees were trained to report the issue to him. Further, Valenti testified that he had not received any reports that day or in the prior month to Jane's fall concerning the mat.

The defendants' position as to the lack of actual notice may be correct. There are, however, questions of material fact as to the defendants' constructive notice. Pictures of the mat show a bump or curl on its edge. Thus, the question remains as to how long the defect had been present. Albaldawi testified he had been at the front desk for several hours and had not been informed of the condition. Albaldawi also testified, however, he could not see the mat from his position at the front desk and he was very busy that day managing the desk alone.

The defendants also argue the curl could have been created by a customer pulling luggage through the front door. That may be true, but, once again, it does not explain how long the condition had existed before Jane tripped and fell. Indeed, the defendants agree there is no evidence of what caused the curl, yet they ask this court to assume the cause occurred only shortly before the accident. In support, the defendants rely on the video footage of Jane's accident. The problems with that reliance are twofold. First, the video shows only three seconds leading up to Jane's trip and fall. Second, the defendants failed to preserve footage for a longer period before Jane's accident. As a result, there is no evidence in the record as to what caused the curl or how long it had been there. Given the lack of evidence and the legal principle that all inferences must be drawn favoring the non-movant, this court cannot find the curl had been present for only a short time. *Destiny Health*, 2015 IL App (1st) 142530, ¶ 20.

The requisites for a premises liability cause of action are also present here. First, it is arguable that had the defendants exercised reasonable care they would have discovered the mat's curl before Jane's accident. Second, the defendants' testimony reflects their expectation that customers would not guard against dangers in the lobby. Third, it is arguable the defendants failed to exercise reasonable care to protect customers by failing to discover a condition present in an area with heavy foot traffic.

Finally, the defendants argue they were not negligent in placing a mat on the floor to assist customers in navigating entry and exit of the hotel. On this point, the defendants assert liability for alleged negligence in the use of floor mats arises only when the landowner places a defective mat or installs one negligently. *Caburnay v. Norwegian Am. Hosp.*, 2011 IL App (1st) 101740, *47. Contrary to the defendants' assertions, the Raedes presented evidence through Zoetvelt's declarations that the mat was damaged, defective, worn out, and poorly maintained. The defendants are, therefore, incorrect because the record reflects sufficient facts to support a claim for premises liability.

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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