

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

KIMBERLY M. VANDER WALL,

Plaintiff,

v.

MANGAN REALTY, INC., and
MANGAN MANAGEMENT, INC.,

Defendants.

No. 18 L 10021

MEMORANDUM OPINION AND ORDER

Summary judgment may not be granted if material facts are disputed or if material facts are undisputed but reasonable persons might draw different inferences. The evidence in this case, viewed in the light most favorable to the plaintiff, reasonably supports the conclusion that questions of material fact remain. The defendants' summary judgment motion must, therefore, be denied.

Facts

In 2016, Kimberly Vander Wall lived at 5505 West 129th Place, #202, in the Village of Crestwood. Mangan Realty, Inc. ("Mangan Realty") owned the building that Mangan Management, Inc. ("Mangan Management") operated, managed, and maintained. On December 27, 2016, Vander Wall left her second-floor apartment intending to take the back stairs to the first-floor laundry room. Vander Wall descended the stairs from the second floor, but fell before reaching the landing. Vander Wall struck and fractured her right shoulder.

On September 14, 2018, Vander Wall brought this action in negligence and premises liability against defendants Mangan Realty and Mangan Management. The case proceeded through written and oral discovery. The record indicates that Mangan Realty and Mangan

Management operate, for practical purposes, as one, with the same employees, same president, same office, and same phone number. Vander Wall testified in her deposition there was a landing midway down the flight of stairs between the first and second floors. Before she fell, she carried a pillow in her right hand and four quarters and a dryer sheet in her left hand. The light bulb above her apartment door was not lit, though it had been the day before. There was a light at the landing between the first and second floor and at the bottom of the flight of stairs.

On September 22, 2020, Mangan Realty and Mangan Management filed a summary judgment motion, arguing they were not liable because neither had constructive notice that the light bulb above Vander Wall's apartment door was not working. On October 29, 2020, Vander Wall responded, arguing that other factors, namely the color of the carpeting on the staircase and the condition of the handrail were other factors causing her fall and injury and, therefore, precluded granting the defendants' motion. The Mangan defendants filed a reply brief.

Analysis

The Code of Civil Procedure 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 Ed. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002). A defendant moving for summary judgment may disprove a plaintiff's case in one of two ways. First, the defendant may introduce affirmative evidence that, if uncontroverted, would entitle the defendant to judgment as a matter of law; this is the so-called "traditional test." *See Purtill v. Hess*, 111 Ill. 2d 229, 240-41 (1986). Second, the defendant may establish 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 that the plaintiff had extensive opportunities to establish his or her case but failed in any way to demonstrate that he or she could do so. *Colburn v. Mario Tricoci Hair Salons & Day Spas, Inc.*, 2012 IL App (2d) 110624, ¶ 33.

Regardless of the approach, 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. N. 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).

Mangan Realty and Mangan Management contend that Vander Wall has offered evidence that the burned-out light bulb was the sole proximate cause of her injury. Since Vander Wall has not established that either defendant knew of the burned-out light bulb through either actual or constructive notice, the defendants are not liable. The defendants also argue they are not liable because the burned-out light bulb was an open-and-obvious condition. They further argue that

Vander Wall's failure to use the handrail was the proximate cause of the injury.

Vander Wall's response points out her deposition testimony that the burned-out light bulb was not the sole proximate cause of her fall. She testified the defendants had actual and constructive notice of their building's dangerous conditions, including a "low, wobbly handrail," "poor and only partially functioning lighting," and "dark continuous water-fall carpeting" that masked the stairs' edge¹ and that the Mangan defendants had failed to correct those conditions. She also argues that, even if all of the dangerous conditions in the stairwell were open and obvious, the distraction and deliberate encounter exceptions apply and preclude summary judgment. Further, she posits that the inadequate lighting, the wobbly handrail, and the continuous dark carpet were each a proximate cause of her fall and resulting injuries.

There is, however, evidence in Vander Wall's deposition that is material to the cause of her injury. Specifically, Vander Wall testified that the handrail's wobbly condition and the color and continuous, or waterfall, carpet installation on the stairs contributed to her fall. Vander Wall also testified that the rear staircase was "the only staircase that provided access to the laundry room." In contrast, the Mangan defendants state that, "[w]hile the rear stairway was undeniably the more convenient route to the first floor laundry room it was not the only route available."² These contradictory statements constitute genuine issues of material fact, as the availability of another means of reaching the laundry room will undoubtedly affect the determination of liability and comparative negligence in this case. As even a single genuine issue of material fact is sufficient to preclude the granting of summary judgment, this court need examine no further.

¹ Vander Wall does not actually argue, despite the section's heading, the defendants had actual or constructive notice of any danger presented by the carpeting.

² None of the parties offers evidence in support of these assertions regarding the accessibility of the laundry room from the front staircase.

Conclusion

For the reasons given above, it is ordered that:

Mangan Realty, Inc. and Mangan Management, Inc.'s summary judgment motion is denied.



John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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