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

Joseph Mangiamele,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 18 L 4883
	)	
Village of Arlington Heights,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

To succeed with a premises liability action against a local governmental entity, a plaintiff must establish that the entity had actual or constructive notice of the unsafe condition in sufficient time to have remedied it. A question of material fact exists as to whether the defendant had notice of the defect that caused the plaintiff's injury. For that reason, the defendant's summary judgment motion must be denied.

Facts

On August 29, 2014, Joseph Mangiamele left his Arlington Heights home to take a walk. He was walking on a public sidewalk at 1225 North Ridge – approximately three houses away from his own – when he stepped on a hump in the sidewalk. The hump caved in under the weight of his foot. Mangiamele fell and was injured.

Mangiamele filed a complaint consisting of a single negligence count against the Village of Arlington Heights. The complaint alleges that the hump presented an unreasonably dangerous condition that was not open and obvious. The complaint further alleges that the Village had actual or constructive notice of the dangerous condition and knew that

there existed a high probability that a person would suffer physical harm because of it. Based on those allegations, Mangiamele claimed that the Village: (1) permitted the sidewalk to remain in an unreasonably unsafe condition; (2) failed to repair the condition; (3) failed to maintain the sidewalk; (4) maintained the sidewalk in an unreasonably unsafe condition for an unreasonable length of time; (5) failed to warn of the condition; and (6) caused or created the condition.

Mangiamele testified at his deposition that two or three months before his injury, an unknown party had apparently attempted to repair an inequality between two sidewalk slabs at the location where he fell. The sidewalk patch was made of white concrete. Mangiamele knew of the repair, and on multiple occasions prior to his injury had walked on the same sidewalk without incident. Two weeks before his injury, Mangiamele had ridden his bicycle over the area without incident.

Mangiamele testified that, on the day of his injury, he was on the sidewalk when "the cement cracked or collapsed . . . just gave in while I was walking." He noted that there was nothing inherently dangerous or defective about the area. Mangiamele acknowledged that there was no way for him to discern at any time prior to his injury that the patch was going to collapse. He also had no information that anyone else would have been able to discern that the patch would collapse.

The Village presented for deposition its director of public works, Scott Shirley. He testified that the Village's department of public works street unit makes sidewalk repairs based on complaints received by the village. Those complaints are entered into a database that tracks the investigation, scheduling, work, and completion of any repairs. Shirley testified that he was unaware of any work done by the Village at or around the location where Mangiamele fell prior to the occurrence.

The Village produced two database reports from before Mangiamele's injury. The first is dated August 5, 2013, slightly

more than one year before Mangiamele's injury. This report indicates that "someone" did a poor patch job to the sidewalk and that the caller did not think the public works department had done the work. The report also states that the patch had broken up and was causing a tripping hazard. The report further indicates that the Village addressed the complaint and completed its work by August 8, 2013.

The second report is dated November 2, 2013, approximately three months after the first report and nine months before Mangiamele's injury. This report indicates that a homeowner complained about a tripping hazard on the sidewalk between 1225 and 1229 North Ridge, but does not otherwise describe the condition. The report further indicates that the Village timely responded to the complaint.

Analysis

The Village has filed a summary judgment motion. 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). 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.*

The Village's central argument is that it is immune from liability for Mangiamele's injury because the Village lacked actual or constructive notice of the sidewalk defect. The Local Governmental and Governmental Employees Tort Immunity Act codifies the common-law duty of public entities to maintain their property in a reasonably safe condition. *See Bruns v. City of Centralia*, 2014 IL 116998, ¶ 15. The statute also immunizes local public entities from liability under certain circumstances based on notice. *See id.* As enacted:

> (a) Except as otherwise provided in this Article, a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property in a manner in which and at such times as it was reasonably foreseeable that it would be used, and shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition.
> (b) A public entity does not have constructive notice of a condition of its property that is not reasonably safe within the meaning of Section 3-102(a) if it establishes either:
> (1) The existence of the condition and its character of

not being reasonably safe would not have been discovered by an inspection system that was reasonably adequate considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property; or
(2) The public entity maintained and operated such an inspection system with due care and did not discover the condition.

745 ILCS 10/3-102.

As to actual notice, Illinois case law takes two slightly different positions as to the legal effect of an unsafe condition created by a defendant-property owner, neither of which is favorable for that party. If the defendant created the premises condition, notice of the condition is either irrelevant and need not be proven, *see Caburnay v. Norwegian Amer. Hosp.*, 2011 IL App (1st) 101740, ¶ 45, or is presumed, *see Bernal v. City of Hoopeston*, 307 Ill. App. 3d 766, 772 (4th Dist. 1999) (quoting *Harding v. Highland Park*, 228 Ill. App. 3d 561, 571 (2d Dist. 1992)). The record in this case contains one database report indicating that the Village completed some sidewalk work at 1225 North Ridge on August 8, 2013. A second report indicates that only three months later there was a sidewalk tripping hazard between 1225 and 1229 North Ridge. The Village, once again, undertook some repair work at that location.

One of the records indicates that the caller did not believe the Village did a poor patch job to the sidewalk. That supposition may be true, but the inescapable fact is that twice before August 29, 2014 the Village conducted some sort of work at the location where Mangiamele fell. The issue is, therefore, not whether the

Village had actual or constructive notice that the patch would collapse under Mangiamele's foot, but whether the Village may have created or contributed to a condition that resulted in Mangimele's injury, regardless of the mechanism. Such a possibility is sufficient to raise a question of material fact as to actual notice that defeats the Village's argument in favor of summary judgment.

In contrast, constructive notice exists if a defective condition has existed for such a length of time or was so conspicuous that the defendant should have known of its existence through the exercise of reasonable care. *See Krivokuca v. City of Chicago*, 2017 IL App (1st) 152397, ¶ 50 (quoting *Burke v. Grillo*, 227 Ill. App. 3d 9, 18 (2d Dist. 1992)); *Siegel v. Village of Wilmette*, 324 Ill. App. 3d 903, 908 (1st Dist. 2001). Constructive notice is absent as a matter of law if there was no actual notice, the defect was small or not apparent, and the condition had not existed for a long period of time. *See Perfetti v. Marion County*, 2013 IL App (5th) 110489, ¶ 20 (no road defect apparent when inspected two days before accident); *Lewis v. Rutland Twnshp.*, 359 Ill. App. 3d 1076, 1080 (3d Dist. 2005) (dip in gravel road formed over weekend). Yet it is generally a jury question as to whether a defect existed for a sufficient period of time prior to a plaintiff's injury for the municipality to be deemed to have had constructive notice. *See Cook v. Village of Oak Park*, 2019 IL App (1st) 190010, ¶ 20 (citing *Baker v. City of Granite City*, 75 Ill. App. 3d 157, 161, (5th Dist. 1979)); *Nguyen v. Lam*, 2017 IL App (1st) 161272, ¶ 20.

An opinion that is highly instructive by way of contrast is *Krivokuca*. There, the plaintiff's vehicle struck a street pothole that caused a sinkhole to open up into which the plaintiff's entire car fell. *See* 2017 IL App (1st) 152397, ¶ 3. Krivokuca's complaint alleged that the City had failed to maintain the street and sewers that it knew or should have known posed a risk of injury. *Id.* ¶ 4. The court found that Krivokuca could not establish actual or constructive notice given that there was no evidence that the City knew in advance of a dangerous underground condition that could cause the sinkhole. *Id.* ¶ 52. Further, the admitted age of the

defective water main was not enough to establish constructive notice given that there was no evidence that it had deteriorated. *Id.* ¶¶ 56-57.

Those same database reports that permit an inference of actual notice also permit an inference of constructive notice. They indicate that the Village knew for at least one year prior to Mangiamele's injury that there existed a sidewalk condition at 1225 North Ridge significant enough that two persons registered complaints about it. That length of time is certainly enough to support an inference that the Village had constructive notice of the defect.

In sum, there exist questions of material fact both as to the Village's actual and constructive notice that make summary judgment inappropriate in this case.

Conclusion

For the reasons stated above, it is ordered that:

1. The Village's motion for summary judgment is denied; and
2. This matter will be heard for case management on a date to be scheduled by notification to the parties.

John H. Ehrlich

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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