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

ROBERT STAGER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	09 L 7323
	)	
DOMINICK'S FINER FOODS and FRANKS CREATIVE LANDSCAPING,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

I. FACTUAL BACKGROUND

The Plaintiff filed a complaint against the Defendants seeking damages for injuries he sustained when he fell outside a Dominick's Store in Park Ridge, Illinois, on February 6, 2009. It is alleged that he fell on an unnatural accumulation of ice. It is further alleged that the ice came from water running from the roof or awning and re-freezing on the ground.

Each Defendant has filed a separate Motion for Summary Judgment, but both similarly point out that the Plaintiff cannot identify where he fell or what caused him to fall. Thus, both Defendants argue that the Plaintiff cannot prove proximate cause. In addition, they both contend that there is no evidence of an unnatural accumulation. While the Plaintiff contends that the ice was caused by dripping from the roof or awning and a lack of down spouts, there is no evidence to support that claim. Defendant Franks adds that even if such a defect in the roof and/or down spout causing ice could be shown, it did not do any work on the roof or down spout. Thus, Franks maintains that it could not have breached any duty.

In response, the Plaintiff contends that there is evidence of an unnatural accumulation from the roof/awning forming ice at a location on the sidewalk. Further, he maintains that he did identify the cause of his fall as ice and the location as on the sidewalk. Thus, he argues that he can show proximate cause. In addition, the Plaintiff contends that Dominick's is guilty of spoliation as they failed to preserve a video of the area and also failed to produce a copy of its contract with Frank's in violation of discovery rules. The Plaintiff also contends that Frank's owed a duty to salt and/or remove ice on the sidewalk and failed to do so here.

In its reply, Dominick's points out that a copy of the contract was never requested pursuant to discovery by the Plaintiff, but that, nevertheless, the Plaintiff did receive such a copy. Further, Dominick's contends that a spoliation claim has not even been alleged, nor can one be under the circumstances here.

The Court has read the motions, responses and replies, as well as, all of the supporting materials tendered therewith.

II. COURT'S DISCUSSION AND RULING

While the Plaintiff did state that ice was the cause of his fall, he testified that he did not see ice in the area where he fell, the entire area looked cleared of ice and snow, and he only assumed that he fell on black ice. He further stated that he fell on the sidewalk outside of the store, but he could not identify where on the sidewalk he fell. He also made no mention of the awning or roof or water dripping therefrom. While Thomas Gawne, who saw the Plaintiff after his fall and recognized him from church, testified that he saw water dripping from the awning, he did not see the Plaintiff fall, does not know where he fell, and

has no idea if the Plaintiff fell anywhere near that area. Further, Mr. Gawne testified that he only saw icicles an the awning and wetness on the sidewalk underneath on the day of the accident after he went back to the store to take pictures. He has never seen a recurrence of that situation since then. Michael DeBrocke, a close friend of the Plaintiff, testified that he saw water flowing from the canopy/awning when he went to the store that evening to take pictures on behalf of the Plaintiff. However, he also did not know the exact location of the Plaintiff's fall. In light of all of this evidence, it is clear that the Plaintiff cannot prove how or where he fell. Even if it could be assumed that he fell on ice, neither the Plaintiff nor anyone else can identify where he fell and thus, proximate cause cannot be shown. Further, assuming that the Plaintiff did fall on ice, there is no evidence to show that the ice accumulated unnaturally or that it resulted from any improper plowing or salting. While Gawne and DeBrocke testified that there was some accumulation or water or ice under the awning and/or roof, the Plaintiff did not mention this. Further, as the location of the Plaintiff's fall is not known and cannot be shown to be under that awning area, even if there was an unnatural accumulation of ice resulting from the awning dripping, it would be irrelevant. In addition, the Plaintiff's argument regarding Dominick's discovery violations and spoliation are irrelevant to the issues at hand. In any event, the Plaintiff has failed to show any egregious discovery violations and there is no spoliation claim at issue in this lawsuit. Accordingly, summary judgment in favor of the Defendants is appropriate.

Based on the foregoing, Defendants' Motions for Summary Judgment are granted.

ENTER

ENTER: AUG 23 2010

KATHY M. FLANAGAN #267

Judge Kathy M. Flanagan