30-185

NOTICE
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SECOND DIVISION
June 29, 2007

No. 1-06-2138

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KILISSA GREER, Plaintiff-Appellant, v. WILLIAM LEMONS and LEM'S BAR-B-Q RESTAURANT, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 04 L 1053 Honorable Donald J. Suriano, Judge Presiding.

O R D E R

Plaintiff Kilissa Greer appeals from an order granting summary judgment in favor of defendant William Lemons, owner and operator of Lem's Bar-B-Q (Lem's), on her claims of negligence. On appeal, plaintiff contends that the trial court erred because defendant owed her a duty to provide a safe means of ingress and egress, and that she raised a genuine issue of material fact that defendant had knowledge of a dangerous condition on his premises. We affirm.

Plaintiff filed the instant action, alleging that she sustained injuries when she slipped and fell on the front step of Lem's where snow and ice had accumulated on February 1, 2002. In her fourth amended complaint, plaintiff alleged two counts of

negligence. Count I named William Lemons, individually, as defendant, and alleged that he (1) failed to remove snow and ice from his premises; (2) failed to provide a safe means of ingress and egress to his business invitees; (3) maintained his step in an unsafe condition; (4) failed to remedy a known dangerous condition; and (5) failed to warn patrons of the slippery condition of his stair. In count II, plaintiff made substantially similar allegations against defendant Lem's Bar-B-Q Restaurant a/k/a Lemon's Inc. Only count I is at issue in this appeal.

According to plaintiff's deposition testimony, she arrived at Lem's with her brother, Kirk Greer, a little before 10 p.m. on February 1, 2002. On her way to the restaurant, plaintiff noticed about three to four inches of snow on the ground from the previous day's precipitation. In order to enter Lem's, plaintiff had to walk on a concrete step, which was approximately three inches in height, two feet in length, and two feet in width. This step was covered with about one to two inches of snow. It did not appear that any snow removal had taken place but, rather, the snow "looked disturbed," meaning "[i]t had been packed down" from people walking on it. Plaintiff entered the restaurant without slipping or falling. As she exited Lem's, plaintiff slipped on the snow that covered the concrete step and fell. Plaintiff did not see any ice on the snow, but she believed that

ice was present because she slipped. Moreover, plaintiff stated that she did not have any knowledge that the stair was in a defective or broken condition. As a result of the fall, plaintiff fractured her left ankle and underwent surgery.

In his discovery deposition, Kirk Greer, plaintiff's brother, testified that he noticed approximately four to six inches of snow on the ground on his way to Lem's on February 1, 2002. Kirk was inside when plaintiff slipped and fell, but was able to see her fall through the window. Kirk observed that the step leading into Lem's was 90% covered with snow and 45% covered with ice. Kirk had difficulty walking into the restaurant because of the "ice footprints" on the concrete step, but he did not slip or fall. He could see that ice covered the "lip, middle section" of the stair because it looked wet and shined in the light. Kirk did not see any evidence of snow or ice removal.

In his deposition testimony, defendant testified that he was the owner of the property and the proprietor of Lem's on February 1, 2002. Defendant admitted that it was custom and practice for the employees of Lem's to shovel snow on the sidewalk and on the streets any time it snowed. On the date of plaintiff's injury, defendant entered the restaurant through the front door at 2 p.m., worked for four hours, then exited through the same door around 6 p.m. The restaurant had a front door and a back door, but the back door was generally designated for trash removal and

deliveries. Defendant did not recall that he or any of his employees underwent to remove snow from the front of Lem's on February 1, January 31, or January 30, 2002.

Defendant William Lemons individually and d/b/a Lem's Bar-B-Q Restaurant filed a motion for summary judgment as to count I based on the natural accumulation doctrine. The trial court granted defendant's motion and added that "there [was] no just reason for delaying either enforcement or appeal pursuant to 304(a)[.]" 210 Ill. 2d R. 304(a). Plaintiff has appealed.

An order granting summary judgment is appropriate where there is no genuine issue of material fact and where the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2004); Virginia Sur. Co., Inc. v. Northern Ins. Co. of New York, 224 Ill. 2d 550, 556 (2007). Whether a genuine issue of material fact exists is determined by reviewing the pleadings, depositions, admissions, exhibits, and affidavits in the record, and construing the evidence strictly against the moving party and liberally in favor of the non-moving party. Adams v. Northern Illinois Gas Co., 211 Ill. 2d 32, 43 (2004). Summary judgment is improper if a genuine issue of material fact exists. In re Estate of Hoover, 155 Ill. 2d 402, 411 (1993). Triable issues of fact occur where the material facts are in dispute, or where the material facts are undisputed, but a reasonable person might draw inferences from the undisputed

facts. Evans v. Lima Lima Flight Team, Inc., No. 1-05-3423, slip op. at 7 (April 24, 2007). We review appeals from summary judgment orders *de novo*. Adams, 211 Ill. 2d at 43.

Plaintiff first contends that defendant had a duty to provide a reasonably safe means of ingress and egress to Lem's, and that duty was not abrogated by the natural accumulation of snow and ice.

As a general rule, a landowner has no duty to remove natural accumulations of snow or ice from its premises. Tzakis v. Dominick's Finer Foods, Inc., 356 Ill. App. 3d 740, 746 (2005). However, a landowner may be subject to liability where injuries occur from the artificial or unnatural accumulation of snow or ice or an accumulation aggravated by the owner. Branson v. R & L Investment, Inc., 196 Ill. App. 3d 1088, 1091 (1990). Thus, in order to survive summary judgment, the plaintiff must sufficiently show that the accumulation of snow, ice, or water was somehow caused by the landowner. Tzakis, 356 Ill. App. 3d at 746.

Plaintiff mistakenly relies on Bloom v. Bistro Restaurant Ltd. Partnership, 304 Ill. App. 3d 707 (1999), McLean v. Rockford Country Club, 352 Ill. App. 3d 229 (2004), and Johnson v. Abbot Laboratories, Inc., 238 Ill. App. 3d 898 (1992) to support her contention that defendant's duty to provide a safe means of ingress and egress was not abrogated by the natural accumulation

rule. First, the court in McLean explained that "[a] careful reading of Bloom reveals that the majority applied the natural accumulation doctrine only when considering the liability of the building owner," and "considered the restaurant's liability according to the common-law rule that a business owes a duty to its invitees to provide a reasonably safe means of ingress and egress." McLean, 352 Ill. App. 3d at 236. Second, the court in Johnson applied the aforementioned common-law rule where the defendant was a business and not an individual landowner. Johnson, 238 Ill. App. 3d at 905. Here, because the trial court granted summary judgment only as to William Lemons, individually, we will follow the holding in Bloom as interpreted by McLean and apply the natural accumulation doctrine when considering defendant's liability.

In this case, plaintiff has failed to provide sufficient evidence that there was an unnatural accumulation of snow and ice. Instead, plaintiff simply alleges in her fourth amended complaint that there was an accumulation of snow and ice on the front step of Lem's. Plaintiff's deposition testimony is similarly insufficient because plaintiff merely alleges that the snow looked disturbed from people walking on it. Further, plaintiff admitted that she saw no evidence of snow removal and stated that the step did not appear to be defective. Kirk's deposition also lacks the requisite proof where he testified that

he saw ice on the "lip, middle section" of the stair, but later admitted that he saw no sign of salting or shoveling in the area. In addition, defendant stated in his deposition that he could not recall whether he or his employees undertook to shovel or remove the snow that fell on January 31, 2002. Accordingly, plaintiff has not presented any evidence to show that the accumulation was unnatural or aggravated by defendant and, thus, plaintiff has failed to establish that defendant had a duty to remove the snow or ice from his front step.

Nevertheless, plaintiff contends that defendant owed her a duty because he had actual or constructive knowledge of a dangerous condition on his premises. Plaintiff may survive summary judgment where she affirmatively shows that defendant had actual or constructive knowledge of a dangerous condition. See Bloom, 304 Ill. App. 3d at 711-12.

Here, plaintiff argues that defendant had actual knowledge that his step was slippery and dangerous because he entered the restaurant on February 1, around 2 p.m. and exited around 6 p.m., using the same entryway where plaintiff slipped and fell. We find that this evidence, alone, is insufficient to create a triable issue of fact that defendant had actual knowledge that his step was dangerous, especially considering plaintiff's injury occurred approximately four hours after defendant exited Lem's.

In the alternative, plaintiff asserts that defendant had constructive knowledge of the dangerous condition because the snow fell more than 24 hours before plaintiff's injury. In support of this argument, plaintiff inaccurately quotes Trevino v. Flash Cab Co., 272 Ill. App. 3d 1022 (1995), stating that "the hazards presented [by natural accumulations of snow, ice, and water] have always been acknowledged[.]" We note that had plaintiff represented the entirety of the quoted sentence, she would also have included, "but, the imposition of an obligation to remedy those conditions would be so unreasonable and impractical as to negate the legal imposition to do so." Trevino, 272 Ill. App. 3d at 1029-30. Plaintiff also improperly relies on Saviola v. Sears Roebuck & Co., 88 Ill. App. 2d 13 (1967) and Canales v. Dominick's Finer Foods, Inc., 92 Ill. App. 3d 773 (1981) for the proposition that the appearance of a dangerous condition can provide evidence of constructive notice. Saviola and Canales are distinguishable because those cases dealt with foreign substances on the ground and not the natural accumulation of snow, ice, or water. In this case, we find that the mere existence of snow outside of Lem's was insufficient to raise a genuine issue of material fact that defendant had constructive knowledge that his stair was in a dangerous condition.

In sum, it was necessary for plaintiff's cause to present some evidence that the accumulation of ice or snow at Lem's was unnatural or aggravated by defendant. Plaintiff failed to provide such evidence. It was also essential for plaintiff to allege facts sufficient to show that defendant had actual or constructive knowledge that the step was in a dangerous condition. Plaintiff has failed to meet this burden. Accordingly, we conclude that because there were no triable issues of fact and defendant was entitled to judgment as a matter of law, the entry of summary judgment in favor of defendant Lemons was proper.

For the foregoing reasons, we affirm the judgment of trial court.

Affirmed.

SOUTH, J., with WOLFSON, P.J., and HOFFMAN, J., concurring.