STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOR THE FIRST JUDICIAL CIRCUIT**
COUNTY OF ORANGEBURG	)	**CASE NO.: 2020-CP-38-00428**
LINDA HOOKER,	)	
	)	
Plaintiff,	)	**ORDER GRANTING SUMMARY JUDGMENT TO ALL DEFENDANTS AND ENDING THE CASE**
	)	
	)	
v.	)	
	)	
McDONALD'S CORPORATION, McDONALD'S REAL ESTATE COMPANY, JKS & K, INC., PAM HAMPTON, and PROLINE STRIPING SERVICE, INC.	)	
	)	
Defendants.	)	
	)	

A hearing on the Defendants' respective Motions for Summary Judgment was held on February 2, 2022, in the Orangeburg County Courthouse in the subject case. After due and careful consideration of the parties' arguments, memoranda and supporting materials, the Court will grant summary judgment in favor of all Defendants, thereby ending this case in full.

Procedural History

This is a premises liability case. On July 28, 2018, Linda Hooker ("Plaintiff") allegedly slipped and fell on a painted striped line in the crosswalk of a parking lot of a McDonald's restaurant business located at 8940 Old Number Six Highway in Orangeburg County, South Carolina.[1] Plaintiff initiated this lawsuit against McDonald's Corporation, McDonald's Real Estate Company, JKS & K, Inc., and Pam Hampton on March 30, 2020. On October 23, 2020, Plaintiff amended her Complaint and added Defendant Proline Striping Service, Inc. ("Proline").

[1] Linda Hooker passed away due to complications from cancer in November 2020. Her husband Ralph Hooker was appointed personal representative of her estate by the Calhoun County Probate Court on January 4, 2021. A Motion to Substitute the Estate as the proper party in interest was filed March 12, 2021.

The parties exchanged written discovery and completed the depositions of Plaintiff's husband Ralph Hooker; Plaintiff's daughter Michelle Foxworth; Defendant Pam Hampton; JKS & K, Inc. employee and shift manager at the time of the accident Sherrie Washington; Defendant Proline's corporate representative Jared Marr; and Plaintiff's retained expert, Bryan Durig.

Motions for summary judgement were filed by all Defendants: Defendant McDonald's Corporation on January 11, 2022; Defendant McDonald's Real Estate Company on January 11, 2022; Defendant JKS & K, Inc on January 13, 2022; Defendant Pam Hampton on January 14, 2022; and Defendant Proline Striping Services, Inc. on January 21, 2022. Supporting memoranda and opposition memoranda were filed thereafter.

The Court held a hearing on all pending motions for summary judgment on February 2, 2022. Plaintiff was represented by William H Yarborough, Jr. of Cavanaugh & Thickens, LLC; Defendant Proline Striping Services, Inc. was represented by Peden Brown McLeod, Jr. of McLeod Fraser & Cone, LLC; and the remaining four (4) Defendants were represented by Joseph D. Thompson, III of Hall Booth Smith, PC.

Factual Background[2]

On July 28, 2018, Plaintiff, her husband Ralph Hooker, and their daughter Michelle Foxworth, stopped at the McDonald's restaurant business in Santee to grab a bite to eat. Mr. Hooker was quite familiar with the restaurant and the parking lot having been there on many prior occasions. It was raining and the parking lot was wet when they pulled into the parking lot. It continued to rain as Plaintiff and her family used the crosswalk to access the restaurant. None of

[2] The various Defendants advanced multiple arguments and defenses in support of their respective summary judgment motions. The various arguments and defenses would entail a larger discussion of the facts, witnesses and evidence. However, the Court's decision here is based on a simple commonality of facts regarding the accident occurrence and the lack of evidence to assess liability against any Defendant.

the family members experienced any trouble with traction as they walked in the rain across the wet parking lot in the crosswalk toward the restaurant.

During the 30 minutes or so that Plaintiff and her family were in the restaurant, it continued to rain "hard." Once the rain stopped[3], the family members exited the restaurant and started back across the crosswalk. Neither Mr. Hooker nor Foxworth slipped or lost footing in the crosswalk. Notably, Plaintiff was the only one wearing flip-flop style shoes. Mr. Hooker and Foxworth made it to the other side of the crosswalk when they heard Plaintiff "holler" behind them. Neither Mr. Hooker nor Foxworth saw the initiation of the fall (*i.e.* what caused Plaintiff to fall). As a result, there are no witnesses who can offer direct testimony as to how or why Plaintiff went to the ground.[4]

Plaintiff argued that Linda Hooker slipped on a painted line and cited to her husband's deposition testimony for support. However, it is undisputed that Mr. Hooker did not see his wife fall to the ground. Importantly, Mr. Hooker conceded in his deposition that when he first asked his wife in the parking lot what had happened, she simply told him she "slipped." Sometime later in his deposition, Mr. Hooker related that his wife told him, sometime after the date of the accident, that she had slipped on a painted line.

Standard of Review

Rule 56, SCRCP, "mandates the entry of summary judgment, after adequate time for discovery . . . , against a party who fails to make a showing sufficient to establish the existence of

[3] While both Ralph Hooker and Michele Foxworth testified under oath that it had stopped raining when the accident occurred, body cam video from a responding officer to the accident scene clearly, and unequivocally, caught Foxworth say "it was raining" when specifically asked how the accident occurred. Later in the same video, Foxworth stated a second time that "it was still raining" when the accident occurred.

[4] While Plaintiff was alive at the time of the filing of the lawsuit and for seven or eight months thereafter, she did not write any statement, swear to any affidavit, or sit for a deposition to memorialize her testimony. Importantly, the body cam video of the responding officer also did not include any statements from Plaintiff as to how or why the accident occurred.

an element essential to the party's case, and on which that party will bear the burden of proof at trial." Baughman v. Am. Tel. & Tel. Co., 305 S.C. 101, 116, 410 S.E.2d 537, 545–46 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). "In such a situation, there can be no 'genuine issue of material fact,'" because "a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Id. (citing Celotex, 477 U.S. at 322–23.

The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman, 305 S.C. at 115, 410 S.E.2d at 545 (citing Celotex, 477 U.S. 317; Standard Fire Ins. Co. v. Marine Contracting & Towing Co., 301 S.C. 418, 392 S.E.2d 460 (1990)). "With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by showing—that is, point out to the trial court—that there is an absence of evidence to support the nonmoving party's case.'" Id. (quoting Celotex, 477 U.S. at 325). The movant "need not 'support its motion with affidavits or other similar materials negating the opponent's claim.'" Id. (quoting Celotex, 477 U.S. at 323).

Once the moving party carries this initial burden, it is incumbent on the party opposing summary judgment "to set forth specific facts showing there is a genuine issue for trial." Id. (citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586–87 (1986)). These specific facts must be proffered "by affidavit or other proof." Shupe v. Settle, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994) (citation omitted). Materials submitted to refute a motion for summary judgment must be "those which would be admissible in evidence." Hall v. Fedor, 349 S.C. 169, 174, 561 S.E.2d 654, 657 (Ct. App. 2002) (citing Baughman, 306 S.C. 101, 410 S.E.2d 537) (other citations omitted); see Rule 56(e), SCRCP. "Rule 56(e) specifically prohibits the nonmoving party from resting upon mere allegations or denials of its pleadings." Baughman, 305

S.C. at 115, 410 S.E.2d at 545 (citing SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990)); Rule 56(e), SCRCP. Furthermore, any "conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." Shupe, 315 S.C. at 516–17, 445 S.E.2d at 655 (citation omitted).

Argument

Simply stated, the Defendants are all entitled to summary judgment due to the absence of even a scintilla of competent evidence as to how or why Linda Hooker went to the ground on July 28, 2018.

This is a premises liability case. It is fundamental that an owner of land has a "general duty to warn others of latent hazardous conditions on his land" which "arises from the owner's superior knowledge of conditions on the premises within his control." Byerly v. Connor, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992). While a merchant is not an insurer of the safety of his customer, the merchant owes a duty to exercise ordinary care to keep the premises in a reasonably safe condition. Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001). As to an invitee like Plaintiff, the merchant "owes a duty of care to discover risks and to warn of or eliminate foreseeable unreasonable risks." Landry v. Hilton Head Plantation Prop. Owners Ass'n, Inc., 317 S.C. 200, 203, 452 S.E.2d 619, 621 (Ct. App. 1994).

To recover damages for injuries caused by a dangerous or defective condition on a merchant's premises, a plaintiff must show either (1) that the injury was caused by a specific act of the merchant which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it. Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001). At its core, a premises liability case requires proof of a dangerous or defective condition on the property.

The entirety of Plaintiff's case rests, in the first instance, on establishing some evidence or proof that Linda Hooker went to the ground as a result of some negligent act or omission on the part of any Defendant. While Plaintiff has argued that Linda Hooker slipped on a painted white line on the asphalt parking lot surface which was in an allegedly dangerous or defective condition, Plaintiff has not demonstrated even a scintilla of competent evidence that she, in fact, slipped on a painted white line.

A. The fact that Linda Hooker went to the ground in the crosswalk is not, in and of itself, evidence that she slipped on one of the painted lines in the crosswalk.

The simple fact that Plaintiff fell to the ground within the crosswalk is not evidence of any dangerous or defective condition or any negligence on the part of anyone. It is axiomatic that South Carolina does not recognize the doctrine of *res ipsa loquitur* and Plaintiff may not use the simple fact of the fall itself to establish actionable negligence of any Defendant here. Hunter v. Dixie Home Stores, 232 S.C. 139, 144, 101 S.E.2d 262, 265 (1957). Moreover, there is substantial evidence that others, including Plaintiff and her family members, experienced the wet painted lines in the crosswalk going into the restaurant in the rain without any difficulty and that both Mr. Hooker and Foxworth crossed over a second time upon departure, also without difficulty. Consequentially, the simple fact that Linda Hooker went to the ground in the crosswalk does not, in and of itself, constitute evidence of any dangerous or defective condition or any negligence on the part of any Defendant.

B. The only evidence that Linda Hooker slipped on a painted line is inadmissible hearsay.

Plaintiff argued that Linda Hooker slipped on a painted line and cited to her husband's deposition testimony for support. However, it is undisputed that Ralph Hooker did not see his wife

fall to the ground. Importantly, Ralph Hooker conceded that when he first asked his wife in the parking lot what had happened, she simply told him she "slipped."

> Q. What did she say – what did your wife say had happened?
> A. She slipped.

(R. Hooker Dep. 29:13-15). Plaintiff's Memorandum cites to a later section of the deposition transcript when Ralph Hooker explained what his wife told him sometime after the date of the accident. However, what Plaintiff allegedly told her husband about slipping on the painted lines will be inadmissible evidence at trial.

The Dead Man's Statute "prohibits any interested person from testifying concerning conversations or transactions with the decedent if the testimony could affect his or her interest." Hanahan v. Simpson, 326 S.C. 140, 151, 485 S.E.2d 903, 909 (1997); S.C. Code Ann § 19-11-20. "The rule is founded on the principle that it is against public policy to allow a witness thus interested to testify as to such matters when such testimony, if untrue, cannot be contradicted." Id. Here, Ralph Hooker is an heir/beneficiary of his wife's Estate and any recovery made in the case will directly inure to his financial benefit. The Dead Man's Statute is still viable to address this very issue – to prohibit a witness with a vested financial interest in the outcome of the litigation from offering testimony from the decedent that cannot be contradicted by Defendants. As a result, Ralph Hooker's testimony cannot be considered admissible evidence competent to overcome summary judgment. Hall v Fedor, 349 S.C. 169, 175, 561 S.E.2d 654, 657 ("Our appellate courts have interpreted Rule 56(e) to mean materials used to support or refute a motion of summary judgment must be those which would be admissible in evidence.").

Conclusion

How Linda Hooker went to the ground continues to be a question unanswered by any competent evidence in the record and, therefore, her fall cannot be attributed to these Defendants.

Based on the foregoing, all Defendants are entitled to entry of summary judgment and the dismissal of Plaintiff's lawsuit with prejudice.

AND IT IS SO ORDERED this _____ day of June, 2022.

_____
The Honorable Edgar W. Dickson
First Judicial Circuit

Orangeburg, South Carolina

Orangeburg Common Pleas

Case Caption: Linda Hooker VS Mcdonald'S Corporation , defendant, et al

Case Number: 2020CP3800428

Type: Order/Summary Judgment

So Ordered

s/ Edgar W. Dickson #2153