STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2021-CP-40-02555

Koffi Thomas,

Thomas,

v.

The TJX Companies, Inc. d/b/a TJ Maxx #399,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter came before the Court on October 19, 2022, on Defendant The TJX Companies, Inc. d/b/a TJ Maxx #399's (hereinafter "TJ Maxx") Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Plaintiff, Koffi Thomas (hereinafter "Thomas"), was represented by Paige B. George, Esquire and TJ Maxx was represented by Ronald B. Diegel, Esquire. Both parties submitted memoranda. Also submitted was the entire deposition transcript of the Plaintiff as well as the TJ Maxx store's Health and Safety Guidelines. The hearing was conducted virtually by the Court Webex system and store video of the incident in question was also presented and viewed by the Court. Based upon the pleadings, memoranda, evidence presented at the hearing, as well as the arguments of counsel, the Court grants TJ Maxx's Motion for Summary Judgment.

FACTUAL BACKGROUND

This is a personal injury case in which Thomas fell from a bench located outside the dressing room area of a TJ Maxx store on November 29, 2018. While looking at her smartphone, Thomas attempted to sit down on a bench located in the waiting area outside the dressing rooms. As Thomas maneuvered down towards the bench, she misjudged the location of the bench under her and sat down on the edge of the bench and partially off the bench resulting in a loss of balance

and a fall to the floor in the direction of the unsupported area of her body. TJ Maxx employees helped Thomas off the floor, and she successfully sat on the bench immediately after her fall. Shortly thereafter, Thomas and her shopping companion made their way to the front of the store, and Thomas reported the incident to a store employee.

Thomas filed her Summons and Complaint with the Court of Common Pleas in Richland County on May 27, 2021, alleging TJ Maxx was negligent in several ways relating to conditions inside the store. Specifically, Thomas alleged, and provided deposition testimony specifying her allegations, that the bench slid from beneath her as she attempted to sit on it and TJ Maxx created a hazardous condition upon the premises by not securing or properly placing the bench. As indicated above, video surveillance footage was produced during discovery which captured the incident and the events immediately before and after, and that video footage was carefully reviewed by the Court. Further, TJ Maxx produced its Heath and Safety Guidelines, which provide that management and store employees are responsible for: conducting safety inspections, reporting unsafe conditions, and identifying and fixing unsafe conditions.

STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Holmes v. E. Cooper Cmty. Hosp., Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2014); Rule 56(c), SCRCP. "In determining whether a genuine question of fact exists, the court must view all inferences which can be reasonably drawn from the evidence in the light most favorable to the nonmoving party." *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for

summary judgment." *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801, 802 (2009). However, the party opposing summary judgment cannot rest on mere allegations or denials contained in the pleadings but rather must come forward with specific facts showing there is a genuine issue for trial. *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (S.C. App. 2008). When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted. *Id.* at 197, 659 S.E.2d at 202.

DISCUSSION

After hearing oral arguments, reviewing the pleadings, memoranda, submissions, and deposition transcript of the Plaintiff, and viewing the video footage of the incident, and considering the evidence presented in a light most favorable to Thomas, TJ Maxx's Motion for Summary Judgment is granted because there exists no genuine issue as to any material fact regarding Thomas' claims against TJ Maxx.

I. Thomas has failed to show a genuine issue of material fact establishing liability of TJ Maxx as the Court finds there is no evidence that the bench itself or its placement was a dangerous condition or hazard created by TJ Maxx.

"A merchant is not an insurer of the safety of his customer but owes only the duty of exercising ordinary care to keep the premises in reasonably safe condition." *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001). To recover damages caused by a dangerous or defective condition on a storekeeper's premises, the plaintiff must show either: (1) that the injury was caused by a specific act of the respondent which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it. *Anderson v. Racetrac Petroleum Inc.*, 296 S.C. 204, 205, 371 S.E.2d 530, 531 (1988). When a plaintiff alleges a business owner created the condition at issue, the key inquiry is whether the plaintiff can present sufficient evidence to create an issue of fact as to whether the condition

was hazardous, and such evidence must show that the business owner was negligent. *Assa'ad-Faltas v. Wal-Mart Stores East, L.P.*, C/A No.: 03:18-3563-TLW-SVH, 2021 WL 2228464, *3 (D.S.C. Jan. 11, 2021) (citing *Shain v. Leiserv, Inc.*, 328 S.C. 574, 576, 493 S.E.2d 111, 112 (Ct. App. 1997)).

During her deposition testimony, Thomas specified and narrowed her allegations of negligence against TJ Maxx, claiming that it failed to secure the bench to prevent it from sliding:

Q: **All right. We'll get to that in a moment. But let's just talk about the day of the incident, November the 29th, 2018. Can you tell me in your own words sort of the story of how you got to the store, who you were with, you know, what your day was looking like?**

A: **... So me and her went to the dressing room. She went inside of the dressing room. I stayed out because I didn't want to, you know, I wasn't buying anything and I wasn't, you know, trying on anything. So I sat outside where they had a chair that was sitting outside of the dressing room. I sat in that chair -- when I got ready to -- well, when I was going to sit in the chair and went to the side of the chair, the chair slipped from up under me.**

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As I got ready to sit down in the chair, the chair slipped up under from up under me.

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Q: **Do you think the chair that you went to sit in, did it slide to the left or did it slide to the right?**

A: **To the right.**

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Q: **So tell me, in your own words, Ms. Thomas, what you think the store did wrong to cause or contribute to the accident?**

A: **The chair wasn't secure at all.**

(Dep. Thomas pp. 19-20, p. 21, & p. 38). There is no suggestion or argument that the bench itself was defective or dangerous in any way. Indeed, immediately following the incident the Plaintiff sat down successfully on the bench and it supported her without issue. Moreover, a close viewing of the video of the incident shows that the bench is an open and obvious condition which was visible and apparent to the Plaintiff as she entered the dressing room area, as she stood next to it and as she subsequently attempted to sit upon the bench. As noted, a merchant is not the insurer of customers in a store. *See Larimore v. Carolina Power & Light*, 340 S.C. 438, 531 S.E.2d 535 (Ct. App. 2000) (holding landowners owe duty to warn only of latent dangers of which owner is aware); *Callender v. Charleston Doughnut Corp.*, 305 S.C. 123, 406 S.E.2d 361 (1991) (holding duty to warn does not extend to open and obvious conditions unless owner has reason to anticipate specific harm); *Shelton v. LS & L, Inc.*, 374 S.C. 294, 648 S.E.2d 307 (Ct. App. 2007) (stating mere existence of open and obvious condition, without more, does not trigger the "reasonably anticipated harm" exception). In this case, the Plaintiff was in the best position to ascertain the safe and proper use of the bench which was open and obvious before her. The bench, not unlike any other sitting location such as a chair, stool, or ottoman, is safe for use provided the person using it is paying attention and properly positions herself to sit upon it in a reasonably safe way.

The Court notes that there is no evidence or testimony in the record to show that there were any prior or subsequent incidents involving complaints or issues about the bench, its placement, or its location in the dressing room area. Nor is there any testimony from any expert that the bench itself was dangerous or deficient in any way, that its placement created a dangerous or hazardous condition or that the failure of the bench to be secured or fixed to the floor created any such hazardous or dangerous condition. The Court also notes that in many commercial settings items such as chairs, benches, stools, and other furniture items are placed for the convenience of

customers and are not fixed or attached the floor. Accordingly, due to the open and obvious nature of the bench and the lack of evidence or testimony tending to show that the bench itself or its placement was a hazardous condition, Thomas has failed to present a genuine issue of material fact of TJ Maxx's liability, and TJ Maxx is entitled to summary judgment.

II. Notwithstanding Thomas' testimony, the video footage clearly shows the bench did not slide resulting in Plaintiff's fall. However, even if the bench did slide, the Plaintiff has failed to show a genuine issue of material fact establishing liability of TJ Maxx because the Plaintiff's failure to properly position herself as she was sitting was the reason for her fall.

During the hearing, the Court scrutinized the video footage of the incident. The footage was enlarged and slowed to a frame-by-frame depiction. A close and careful viewing of the position of the bench on the floor as Plaintiff is attempting to sit upon it shows that the bench does not slide, slip, or otherwise move. No testimony or evidence has been presented from any forensic video expert or similar type witness to suggest otherwise. The Court finds that the physical evidence of the video, which captures the fall incident in its entirety, incontrovertibly establishes to the Court's mind that the bench did not slide, slip, or otherwise move.

Moreover, upon viewing the video, the Court does not find that the bench was unsecure in any fashion such as to lead to the incident now complained of by the Plaintiff. Despite Thomas' deposition testimony, the video footage, even when viewed in a light most favorable to Thomas, simply does not support her claim that the bench slid or was unsecure. In cases where the evidence is susceptible to only one reasonable inference, no jury issue is created. *Singleton v. Sherer*, 377 S.C. 185, 207-08, 659 S.E.2d 196, 208 (Ct. App. 2008); *see also Hopson v. Clary*, 321 S.C. 312, 316, 468 S.E.2d 305, 308 (Ct. App. 1996) (barring plaintiff's claim under comparative negligence because even assuming some negligence on defendant, plaintiff's negligence was greater as a matter of law as it was the "determinative factor" in causing auto accident when plaintiff slowed

car, pulled to right, and attempted a U-turn causing collision). Moreover, "[t]estimony that contradicts undisputed physical evidence generally lacks probative value." *Legette v. Piggly Wiggly, Inc.*, 368 S.C. 576, 580, 629 S.E.2d 375, 378 (Ct. App. 2006) (citing *Lail v. South Carolina State Highway Dep't,* 244 S.C. 237, 136 S.E.2d 306 (1964) (stating that "testimony relied upon by plaintiff was inconsistent with incontrovertible physical facts and therefore lacked probative value.")).

However, even assuming that there is some evidence that the bench may have slid as Plaintiff attempted to sit upon it (which the Court does not observe upon a careful viewing of the video footage), the Court finds that the only reason the bench would have slid is as a result of the Plaintiff's improper and distracted effort to position herself upon the bench resulting in the weight of Plaintiff's body being unevenly distributed along the edge of the bench. Sitting down improperly upon any piece of furniture, whether it be a chair, stool, ottoman, or bench, can result in the movement of the furniture in a way that can result in a loss of balance. Indeed, as is shown in the video, the Plaintiff properly sits upon the bench following the fall and demonstrates that when properly used the bench functioned safely and without issue.

The *only* evidence supporting Thomas' contention that the bench slid out from under her comes from her own testimony. The video footage clearly does not, in the Court's mind corroborate Thomas's testimony and, in fact, indisputably contravenes it. Additionally, Thomas concedes in her deposition testimony that the video fairly and accurately portrayed the incident. (Dep. Thomas pp. 37-38). Thomas' unqualified admission to the accuracy of the video removes any probative value regarding her statements that the bench slid. The video footage clearly shows that that bench did not slide and cause Thomas's injuries. On the contrary, it clearly shows that Thomas simply failed to properly sit down on the bench, which caused her to fall and become

injured. *See Wiggins v. Aldi, Inc.*, No. 2017-CP-40-05549, 2019 WL 413516, *7 (S.C.Com.Pl. Jan. 25, 2019) (granting grocery store's directed verdict where Thomas fell when she missed an office chair with wheels as she was sitting).

Finally, the Court has considered the Health and Safety Guidelines which were presented at the hearing. While those guidelines do require store employees to monitor for unsafe conditions or hazards and to correct them when observed, the Court finds, consistent with the reasons stated in this Order, that neither the bench nor its placement nor the fact that it was not secured to the floor constitute a dangerous or hazardous condition.

Accordingly, TJ Maxx is entitled to summary judgment.

CONCLUSION

Taking all the evidence in the light most favorable to Thomas, this Court concludes that Thomas has not established that that the bench or its placement was a dangerous condition or that TJ Maxx was negligent towards her by not securing the bench to the wall or floor. Because Thomas has failed to show that any genuine issues of material fact exist in this case, TJ Maxx is entitled to summary judgment.

IT IS THEREFORE ORDERED, that based upon the above, Defendant TJ Maxx's Motion for Summary Judgement is GRANTED.

IT IS SO ORDERED.

The Honorable Donald B. Hocker
Presiding Judge, Richland County
Court of Common Pleas

Columbia, South Carolina
November 3, 2022

Richland Common Pleas

Case Caption: Koffi Thomas vs Tjx Companies Inc , defendant, et al

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Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167