

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO: 2021-CP-40-02555

Koffi Thomas,

Plaintiff,

v.

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

Defendant.

**ORDER DENYING PLAINTIFF'S  
MOTION TO RECONSIDER**

This matter initially came before the court on October 19, 2022, when Defendant TJX Companies, Inc. d/b/a TJ Maxx # 399 (hereinafter "TJ Maxx") filed a Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Both TJ Maxx and Plaintiff Koffi Thomas (hereinafter "Thomas") submitted memoranda of law in support of their respective positions. Also submitted was the entire deposition transcript of Thomas as well as TJ Maxx's Health and Safety Guidelines and video footage from TJ Maxx's surveillance camera. On November 7, 2022, after thorough and careful review of the memoranda, guidelines, and video surveillance footage, the Court granted TJ Maxx's Motion for Summary Judgment. Thomas filed her Motion to Reconsider on November 17, 2022 and TJ Maxx filed its memorandum in opposition on December 5, 2022. Both parties agreed to forgo a subsequent hearing on Thomas' Motion to Reconsider and agreed to the Court rendering a decision based upon the written materials. Upon a review of the pleadings, motions, memoranda, and the evidence presented at the Summary Judgment hearing, the Court denies Thomas' Motion to Reconsider.

**RECEIVED**

**JAN 30 2023**

**SC Court of Appeals**

### **FACTUAL BACKGROUND**

This is a personal injury case in which Thomas alleges she was injured while shopping at TJ Maxx retail store on November 29, 2018. (Dep. Thomas pp. 19-20). While shopping for clothes inside the store, Thomas and her companion journeyed to the dressing rooms to try on their prospective purchases. (Dep. Thomas pp. 19-20). Thomas, while distracted on her mobile phone, attempted to sit down on a bench in the waiting area located outside the dressing rooms and near the customer support desk. (Dep. Thomas p. 20). As she lowered herself down towards the bench, Thomas misjudged its position and sat down towards the edge of the bench and partially off the bench. (Dep. Thomas p. 20; Video Surveillance 11:29:47). Her bodyweight shifted towards the unsupported area of her body, causing her to fall and land on the floor. (Dep. Thomas p. 20; Video Surveillance 11:29:47).

On May 27, 2021, Thomas filed her Summons and Complaint, alleging TJ Maxx was negligent and reckless in several ways relating to conditions in its store. (Plaint. Compl.). Specifically, Thomas alleges that TJ Maxx created a hazardous condition upon the premises and failed to remedy it, which caused her injuries. (Plaint. Compl.). However, Thomas later gave deposition testimony specifying her allegations against TJ Maxx, claiming the bench slid or moved from underneath her as she attempted to sit on it and that TJ Maxx should have secured the bench. (Dep. Thomas p. 27 & 38). Video surveillance footage was produced during discovery which captured the incident and the events that occurred immediately before and after. Plaintiff agreed in her deposition that the video footage is accurate and fairly depicts the incident. (Dep. Thomas p. 38).

### LEGAL STANDARD

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). 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). “In 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 Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Nevertheless, “when the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted.” *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct.App.1997) (citation omitted). When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted. *Id.* at 197, 659 S.E.2d at 20. To resist a motion for summary judgment, the nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.” *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991) (citations omitted). A scintilla must still be a “verifiable spark, not something conjured by the shadows.” *McCord v. Laurens County Health Care System*, 429 S.C. 286, 292, 838 S.E.2d 220, 223 (Ct. App. 2020).

## DISCUSSION

After carefully reviewing the pleadings, memoranda, submissions, Thomas' deposition transcript, and viewing the video footage of the incident, and considering the evidence presented in a light most favorable to Thomas, Thomas' Motion for Reconsideration is denied because there exists no genuine issue as to any material fact regarding her claim against TJ Maxx.

I. **There is no genuine issue of material fact as to Thomas' claim that TJ Maxx is legally responsible for her claimed injuries because the video footage shows that the bench did not move, and Thomas agrees the video accurately and fairly depicts the incident.**

Thomas fails to provide any evidence that the bench was dangerous or defective. Although Thomas testified that bench slid or moved from under her, the video surveillance footage—upon careful scrutiny and upon enlarged viewing—shows that the bench did not slide or move. While Thomas may earnestly *believe* the bench slid or moved, there is not a scintilla of evidence to suggest that it actually *did* move. As indicated previously, the video surveillance footage was carefully watched with a view toward ascertaining if there was a scintilla of evidence when viewed in a light most favorable to the Plaintiff. No video expert or testimony from any forensic witness has been presented to the Court to suggest that the bench moved, nor has any witness besides the Plaintiff offered any evidence or testimony to support her claim that the bench moved.

Plaintiff's testimony is not sufficient, in and of itself, to survive summary judgment when clear and objective physical video evidence demonstrates inconsistency with Plaintiff's testimony. *See 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 to establish liability was inconsistent with

incontrovertible physical facts and therefore lacked probative value.”)). The evidence in this case is susceptible to only one reasonable interpretation - that the Plaintiff failed to properly sit on the bench as is shown in the video, which caused her to fall and become injured. *See 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).

In her Motion to Reconsider, Thomas references *Hancock v. Mid-South Management Co., Inc.* to support her argument that she presented a “mere scintilla” of evidence through her own testimony and TJ Maxx’s Health and Safety Guidelines. Although the *Hancock* court reversed the lower court’s grant of summary judgment, it was not because it found a mere scintilla of evidence. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 331, 673 S.E.2d 801, 803, n. 3 (2009) (“We note that this appeal does not depend on whether a mere scintilla of evidence is sufficient to defeat a motion for summary judgment because Petitioner has presented more than a scintilla of evidence.”). Rather, the evidence in *Hancock* overwhelmingly showed that a genuine issue of fact existed as to whether there was notice of the disrepairs to the parking lot. *Id.* The plaintiff’s testimony, witness testimony, employee affidavits, and photos all showed the extent of disrepair to the parking lot. *Id.* at 331, 673 S.E.2d at 803.

Unlike in *Hancock*, Thomas fails to present any evidence of any “disrepair” or other dangerous condition at the TJ Maxx store. Notably, Thomas does not even allege that the bench was in a state of disrepair or was otherwise in an unsafe condition based upon its construction or

design. She merely relies on her own deposition testimony alleging that the bench slid from underneath her when she sat down. No other testimony or demonstrative evidence tends to show that the bench slipped, slid, or moved from under Thomas or that the bench otherwise constituted a hazardous condition. On the contrary, the clear and objective video surveillance footage, which Thomas agrees is accurate, clearly shows that the bench did not move upon her attempt to sit on it.

Further, the surveillance footage indisputably shows that Thomas sat only partially upon the bench which resulted in her falling to the side and in the direction of her unsupported weight. Notwithstanding Thomas' lack of evidence demonstrating that the bench was not secure or that there was a standard or requirement that the bench be secured, common sense dictates that sitting down improperly on the edge of any seat, chair, stool, bench or other piece of furniture can result in a loss of balance. Accordingly, in light of Thomas' full deposition testimony as well as the video surveillance footage, Thomas has failed to present a genuine issue of material fact as to TJ Maxx's liability, and Thomas' Motion to Reconsider is denied.

**II. The Court did not improperly rule upon Thomas' credibility but properly considered her full deposition testimony.**

Additionally, Thomas argues that the Court erred in granting TJ Maxx's Motion for Summary Judgment because it made an improper ruling on her credibility when it did not consider her deposition testimony regarding the bench, and instead made its ruling solely on the video surveillance footage. Thomas is mistaken. Although she references South Carolina case law to support the proposition that credibility issues are not appropriate at the summary judgment stage, there is no issue of credibility in this case. Thomas' is the only testimony on record and the only other evidence on record, the video footage, confirms that the bench did not move or slide

underneath her. *See Heirs by Heirs v. Mullens*, 310 S.C. 63, 68-69, 425 S.E.2d 57, 60 (Ct. App. 1992) (holding question of fact existed when plaintiff's conflicting deposition testimony was confirmed by other evidence). Again, while Thomas may legitimately *believe* that the bench moved, this earnest belief does not create an issue of fact or a credibility determination to be weighed and considered when the objective video evidence, which she agrees is a fair and accurate depiction of the incident, simply does not support her allegation.

Moreover, the entirety of Thomas' deposition testimony was considered during the Court's deliberations. It was attached to TJ Maxx's Motion for Summary Judgment, reviewed by the Court, and the same is noted in the Court's Order. Additionally, the Court was presented with Thomas' material and relevant testimony when the memorandums of law filed by both parties incorporated her testimony regarding the bench as well as her own admission as to the accuracy of the video surveillance footage:

- Q: So we've watched, in its entirety, the first video segment and then we watched sort of extended clips of the second and third video. They all seem to show the same thing, would you agree?**
- A. (No response.)**
- Q. The same view of the accident and the same view of the dressing room area?**
- A. Yes. The setup is the same.**
- Q. The setup is the same. And it does capture the accident where you fell, correct?**
- A. Correct.**
- Q. Fairly and accurately captures that; is that right?**
- A. Correct.**

(Dep. Thomas pp. 37-38; Def. Memo in Support of Summary Judgment, pp. 9-10). The Court not only considered Thomas' allegation regarding the bench, but it also considered her admission

to the accuracy of the video surveillance. Importantly, Thomas does not contend that the video evidence is inaccurate, incomplete, altered or in some way non-representative of what happened. Consequently, no credibility determination was made as to Thomas, but rather the Court accepted her testimony that the video surveillance accurately and fairly captured the incident in the store.

**III. TJ Maxx's Health and Safety Guidelines do not automatically create a genuine issue of fact and this argument does not comport with South Carolina law and public policy.**

Finally, Thomas argues that TJ Maxx's Health and Safety Guidelines automatically create an issue of material fact on whether TJ Maxx undertook a continuous duty to identify, fix, and report unsafe conditions. However, other than Thomas' own testimony, she fails to provide any evidence that the bench in question was an unsafe condition that required TJ Maxx to identify, fix, or report. Notably, Thomas concedes she has no evidence demonstrating that TJ Maxx knew or should have known of any issues with the bench allegedly moving or sliding before or after this incident:

**Q: Are you aware of any evidence that the store had ever had any issues with that particular bench moving or sliding prior to the time of your incident?**

**A: No.**

**Q: Are you aware of any evidence to show that the store had had any issues with that bench moving or sliding after the time of your incident?**

**A: Not to my knowledge**

(Dep. Thomas pp. 38-39). Thomas offers no evidence that anyone had fallen off the bench either before or after the incident and she offers no evidence that TJ Maxx had any reason to believe a fall was likely. The bench is an open and obvious condition. Notwithstanding any evidence showing that the bench was not secured or was an otherwise unsafe condition (of which the court

notes there is none), retail merchants are not responsible for open and obvious conditions which can be readily observed and appreciated. Thomas, or any other customer, is best equipped through common knowledge and awareness to appreciate any typical “hazards” or “dangers” associated in failing to properly interact with furniture items such as benches, chairs, stools, or other sitting locations.

According to Thomas’ argument, any benches, stools, chairs, ottomans, or other pieces of furniture are *conceivably* dangerous conditions despite the lack of any evidence demonstrating a dangerous condition (provided an incident occurs), so long as store policy states that it will identify “unsafe conditions.” This argument, if accepted, would make every retail merchant an insurer of its customers’ safety because any item of furniture could conceivably be a dangerous condition if a person fails to safely interact with it. This does not comport with long-standing South Carolina law and public policy, which provides that retail merchants are not insurers of its customers. *See Garvin v. Bi-Lo*, 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001); *Easterling v. Burger King Corp.*, 416 S.C. 437, 451, 786 S.E.2d 443, 451 (Ct. App. 2016), *Pringle v. SLR, Inc. of Summerton*, 382 S.C. 397, 406 675 S.E.2d, 783, 788 (Ct. App. 2009). Accordingly, Thomas’ Motion to Reconsider should be dismissed.

### CONCLUSION

After careful consideration and scrutiny of all the evidence and testimony and taking all the evidence in the light most favorable to Thomas, this Court concludes that Thomas has not established that the bench or its placement was a dangerous condition or hazard or that TJ Maxx was negligent towards her by not securing the bench. Because Thomas has failed to show that

any genuine issues of material fact exist, her Motion to Reconsider is denied, and the Court's previous order granting summary judgment is affirmed in all respects.

IT IS THEREFORE ORDERED, that based upon the above, Plaintiff Koffi Thomas' Motion to Reconsider is DENIED.

IT IS SO ORDERED.

---

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

Columbia, South Carolina  
December \_\_, 2022



Richland Common Pleas

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

**Case Number:** 2021CP4002555

**Type:** Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

Electronically signed on 2022-12-29 11:52:47 page 11 of 11