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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2023-000146

Koffi Thomas.....Appellant,

v.

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

RECORD ON APPEAL

Barry B. George (SC Bar # 2417)
Paige B. George (SC Bar # 75124)
Law Office of Barry B. George
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222
Attorney(s) for Appellant

Ronald Barton Diegel (SC Bar # 65076)
Zachary B. Randolph (SC Bar #105179)
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, South Carolina 29260
(803) 454-1207
Attorney(s) for Respondent

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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 Health 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), SCRPC. “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.

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

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.

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
Case Number: 2021CP4002555
Type: Order/Summary Judgment

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

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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.

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

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All of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein; said acts being in violation of the case and statute laws of the State of South Carolina.

4. That as a result of the above, the Plaintiff suffered injuries in and about her body, all of which has and will cause her to undergo much physical pain and suffering, has and will cause her to have to spend money on medical services, has and will cause her mental anguish, has and will cause her to lose money in the nature of wages and earnings, and has and will cause her permanent injury.

5. That the Plaintiff is informed and believes she is entitled to judgment against the Defendant for actual damages and punitive damages together in the amount of Seventy-four thousand (\$74,000.00) Dollars.

6. That the total amount in controversy, including fees and costs, does not exceed seventy-four thousand (\$74,000.00) Dollars.

7. That Plaintiff is not now seeking, nor will she ever seek, in excess of \$74,000.00 (Seventy-four Thousand and 00/100 Dollars) as a result of the incident alleged in the Complaint, inclusive of actual and punitive damages.

8. That the Plaintiff hereby agrees to and stipulates that the amount in controversy for the aggregate total of Plaintiff, under no circumstances will exceed \$74,000.00 inclusive of both actual and punitive damages, fees and costs, and that Plaintiff will not attempt to plead, prove or recover damages in excess of \$74,000.00.

WHEREFORE, Plaintiff prays for judgment against the Defendant for actual damages in an amount to be determined by a jury; for punitive damages in an amount to be determined by a jury; for the costs of this action; and for such other and further relief as this court may deem just and proper not to exceed Seventy-four thousand dollars (\$74,000.00).

[SIGNATURE LINE NEXT PAGE]

s/Paige B. George
Paige B. George (SC Bar # 75124)
Barry B. George (SC Bar# 2417)
Law Office of Barry B. George
Attorney For The Plaintiff
1419 Bull Street
Columbia, South Carolina 29201
(803) 400-1219
lawyer@paigebgeorge.com

**PLAINTIFF'S DISCOVERY REQUESTS ARE SERVED ON THE DEFENDANT WITH
THE SUMMONS AND COMPLAINT**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2021-CP-40-02555

Koffi Thomas,

Plaintiff,

v.

ANSWER OF DEFENDANT THE TJX COMPANIES, INC. D/B/A TJ MAX #339 TO PLAINTIFF'S COMPLAINT

The TJX Companies, Inc. d/b/a TJ Maxx #339,

(Jury Trial Demanded)

Defendant.

TO: PAIGE B. GEORGE, ESQUIRE, ATTORNEY FOR PLAINTIFF AND TO THE PLAINTIFF ABOVE NAMED:

The Defendant The TJX Companies, Inc. d/b/a TJ Maxx #339 (hereinafter "TJX") herein files its Answer to the Plaintiff's Complaint and would respectfully show as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Complaint not hereinafter admitted is expressly denied.

FOR A SECOND DEFENSE

2. The Defendant TJX would admit that it is a Delaware corporation which conducts business in Richland County, South Carolina and would further admit that on or about November 29, 2018 the Plaintiff Koffi Thomas was present in TJ Maxx store #339 located at 321 Forum Drive in the County of Richland, State of South Carolina; the Defendant would further admit that the Plaintiff alleges in her Complaint that a chair gave way underneath the Plaintiff while she was present in the store; all remaining allegations of the Plaintiff's Complaint are again denied.

FOR A THIRD DEFENSE

3. The Defendant TJX would show, upon information and belief, that the injuries sustained by the Plaintiff were the result of the sole negligence of the Plaintiff and therefore, the Plaintiff cannot recover any sum whatsoever from the Defendant.

FOR A FOURTH DEFENSE

4. The Defendant TJX would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to her own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendant, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred. The Defendant pleads such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiff and would ask that this Court compare the negligence of the Plaintiff and the Defendant and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendant, which is specifically denied, then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of the Defendant, then the amount of recovery available to the Plaintiff should be reduced by the percentage of the Plaintiff's own negligence, carelessness, recklessness and gross negligence.

FOR A FIFTH DEFENSE

5. The Defendant TJX reserves the right to move to amend its Answer based upon motion timely made once the process of discovery and depositions has been completed should additional defenses become known or warranted.

FOR A SIXTH DEFENSE

6. The Defendant TJX would show, upon information and belief, that any injuries or damages sustained by the Plaintiff, which are specifically denied, were the result of the acts or omissions of others not in the employ or control of this Defendant and, therefore, the Plaintiff cannot recover from this Defendant in any sum whatsoever.

FOR A SEVENTH DEFENSE

7. Pursuant to S.C. Code Ann. §15-32-520, any proceeding to determine punitive damages should be bifurcated from any trial to determine liability and compensatory damages.

FOR AN EIGHTH DEFENSE

8. Any award of punitive damages should not exceed the greater of three (3) times the amount of compensatory damages as provided for in S.C. Code Ann. §15-32-530.

FOR A NINTH DEFENSE

9. The Defendant TJX would show that any award of punitive damages, which is again denied, must be subject to review by the Court for compliance with the due process and constitutional standards of the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America as well as the South Carolina Constitution as set forth in the United States and South Carolina cases interpreting any awarding of punitive damages and the constitutional and due process limits thereof.

Wherefore, having fully answered the Plaintiff's Complaint, the Defendant TJX would pray that the same be dismissed with costs being granted to it. The Defendant TJX also prays for such other and further relief as the court deems just and proper, and also demands a trial by jury.

[signature page to follow]

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

s/Ronald B. Diegel

Ronald B. Diegel, Esquire – Bar No. 65076

4406-B Forest Drive (29206)

P.O. Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for Defendant The TJX Companies,

Inc. d/b/a TJ Maxx #339

Columbia, South Carolina
June 21, 2021

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	Case No.: 2021-CP-40-2555
)	
Koffi Thomas,)	
)	
Plaintiff,)	
)	
v.)	
)	
TJX Companies,)	
)	
Defendant.)	
)	October 19, 2022

TRANSCRIPT OF MOTION HEARING
(via WebEx teleconference)

BEFORE THE HONORABLE DONALD B. HOCKER
Circuit Court Judge, presiding

APPEARANCES:

For Plaintiff: Paige B. George, Esquire
For Defendant: Ronald B. Diegel, Esquire

Transcribed by:
Teresa B. Johnson, CVR-M-CM, RVR, RVR-M
P.O. Box 2812
Greenville, S.C. 29602

I N D E X

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EXHIBITS PAGE

NO.

DESCRIPTION

ID EV

(No exhibits offered.)

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P R O C E E D I N G S

THE COURT: All right. Looks like y'all are
batting clean up and this is the last case. Thomas
vs -- looks like TJX Companies. Is that right? Is
that right case?

MR. DIEGEL: Yes, sir. You're correct.

THE COURT: Okay. And I've got Paige George
and Ronald Diegel.

MR. DIEGEL: Diegel.

THE COURT: Diegel. Okay.

MR. DIEGEL: Yes, sir.

THE COURT: Let me -- let me call the case,
and we'll -- we'll get -- we'll get started.

We're on the record this afternoon in the
matter of Koffi Thomas vs. TJX Companies and
others. Paige George is present representing the
plaintiff, and the defendant is represented by
Ronald Diegel. The defense motion by TJX
Companies' motion for summary judgment.

Mr. Diegel, I'll be glad to hear from you.

MR. DIEGEL: Thank you, Your Honor. Again, my
name is Ron Diegel, representing TJX Companies,
doing business as T.J. Maxx. This is the
defendant's motion for summary judgment.

The case arises out of an incident that took

1 place in a local T.J. Maxx store here in Columbia
2 on November the 29th of 2018.

3 The background facts of the case really aren't
4 in dispute, I don't believe. The plaintiff in this
5 case, a lady named Koffi Thomas, was in the store
6 with a shopping companion and they made their way
7 back to the dressing room area of the store.

8 After they had made their way back to the
9 dressing room area of the store, there was an
10 incident which occurred where Ms. Thomas went to
11 sit down on a bench, which had been placed in the
12 dressing room area of the store for patrons to sit
13 on, and unfortunately for her, she did not sit on
14 it correctly. She sat more or less on the edge of
15 the bench, according to our view of the evidence,
16 and as a result, fell on the floor and claimed some
17 injuries.

18 There is a video of the incident which was
19 captured on the cameras there in the store. And I
20 have not done this before in a WebEx hearing. But
21 I was going to try to get this video to play. It's
22 a relatively short video which captures the
23 incident. I think my argument would make a lot
24 more sense and perhaps Paige's response arguments
25 would make a lot more sense if Your Honor could

1 view the video. So I'm going to -- I don't know if
2 I need to share screen or if I need to move the
3 video screen into the place where I am.

4 THE COURT: Whatever's -- whatever's easier
5 for you, Mr. Diegel.

6 MR. DIEGEL: Okay.

7 THE COURT: I'll let you do it however it
8 works out.

9 MR. DIEGEL: Okay. Well, I'm -- I'm
10 definitely technology -- technically challenged,
11 but I'll do my best here, Judge, hopefully.

12 THE COURT: Well --

13 MR. DIEGEL: I'm going to try to move the
14 video screen over into the place where I am if I
15 can --

16 THE COURT: Okay.

17 MR. DIEGEL: -- or at least onto the screen
18 that you're looking at. Are you -- are you able to
19 see that?

20 THE COURT: No.

21 MR. DIEGEL: No? Okay. So you're not seeing
22 a store camera video; is that right?

23 THE COURT: Not -- not at present. No.

24 MR. DIEGEL: Okay. Let me -- let me -- let me
25 try this. There's a share button down here. I'm

1 not sure how this works.

2 THE COURT: Yeah.

3 MR. DIEGEL: Ah, okay. Here we go.

4 THE COURT: Okay. Yeah. I got it now.

5 MR. DIEGEL: You got it? Okay.

6 THE COURT: Yeah.

7 MR. DIEGEL: All right. Can you -- and Paige,
8 can you see the video as well?

9 MS. GEORGE: Um, yes.

10 MR. DIEGEL: Okay. All right.

11 Now, Judge Hocker, this is -- this is the -- I
12 haven't started to play the -- the video yet.
13 These are just some -- some patrons in the dressing
14 room area of the store. Over here is where I'm
15 going to start the video, if you can see my cursor.
16 And the incident occurs shortly -- probably right
17 about here. And this will just take about 15 or 20
18 seconds. And I'll identify the parties as they
19 come into the picture.

20 And incidentally, Your Honor, I'm gonna let
21 you watch the video of the incident itself. I'm
22 gonna make my argument. And then I may come back
23 to the video once again and blow up some portions
24 of it so that certain aspects can be viewed a
25 little bit more closely.

1 THE COURT: Okay. All right. Now, I do not
2 see -- you referred to a cursor. I don't -- I
3 don't see that. So what you may have to do as
4 opposed to pointing to various individuals, you may
5 have to give me some description of what they're
6 wearing so I can kind of tell who they are.

7 MR. DIEGEL: Yes, sir. How about now? Can
8 you see that little arrow moving around?

9 THE COURT: Oh, yeah. I got -- yeah. I got
10 it now.

11 MR. DIEGEL: So I think when I go down below
12 to press play, that's when that cursor disappears.
13 But I'll move that back up for you.

14 THE COURT: Okay.

15 MR. DIEGEL: So here we go.

16 THE COURT: All right.

17 MR. DIEGEL: Okay. This is Ms. Thomas right
18 here.

19 THE COURT: Okay.

20 MR. DIEGEL: And this is her shopping
21 companion.

22 THE COURT: Okay.

23 MR. DIEGEL: This is the bench in question
24 right over here, a bench that used throughout
25 pretty much all of T.J. Maxx's stores. Come back

1 into the picture in just a moment. This -- again,
2 this is her companion. And this is Mr. --
3 Ms. Thomas.

4 THE COURT: Okay.

5 MR. DIEGEL: See. She's looking at her phone
6 there. Her companion's getting ready to go down
7 the hallway to try on some clothes.

8 Okay. So that -- that is the incident. If I
9 allow the video to play on, which I will for just a
10 moment, she will get up. This time, she does make
11 it onto the bench. And then the video continues to
12 play. Within a few minutes, her companion comes
13 back out. They have some interaction. And then
14 they leave. They go off the video, and that's it.
15 All right.

16 What I want to point out real quickly here,
17 Your Honor, just before I start into my argument is
18 one of the arguments I'm going to make is that the
19 bench is perfectly fine, but that she just doesn't
20 sit down properly, and that's what causes the fall
21 to occur.

22 Okay. Now I will stop the sharing on this if
23 I can figure that out. Let's see. There we go.
24 Okay.

25 THE COURT: Okay.

1 MR. DIEGEL: I'm actually amazed I was able to
2 figure that out, Judge.

3 THE COURT: And you did -- you did good.
4 Okay. Well, in the -- in this case, I did take
5 Ms. Thomas's deposition, and I asked her what she
6 alleged the store did wrong. And I have submitted
7 a memorandum and I believe Paige has also submitted
8 a memorandum. The entire deposition transcript of
9 Ms. Thomas, I think has actually been exhibit --
10 included as an exhibit to one or both of the
11 memorandums.

12 But essentially, Ms. Thomas alleges that the
13 bench or its placement created a dangerous
14 condition, because in her testimony, she says that
15 when she went to sit down, the bench slid out from
16 under her, causing her to fall. Simply,
17 Your Honor, the defense position focuses in on a
18 couple of points that I want to make. Number one,
19 the bench that Ms. Thomas sat on or attempted to
20 sit on the first time cannot in and of itself be a
21 dangerous condition any more than a chair, a stool,
22 an ottoman or any other type of sitting location
23 can be. It is a common everyday piece of
24 furniture.

25 I'd also point out, Your Honor, that there's

1 no evidence or testimony to show that the bench
2 broke in any way, that it collapsed, or it would
3 not have properly supported her if she had sat down
4 on it properly. Indeed, you see in the video after
5 -- after the fall, she's able to get up and she
6 does sit down on the bench properly without
7 incident and the bench supports her just fine. So
8 this is not a situation where the bench is
9 collapsing or the legs come out from under her at a
10 -- or anything such as that. The bench functions
11 and works just as it was designed to work as long
12 as the person who's sitting on the bench lowers
13 themselves and it's paying attention to what they're
14 doing as they go to sit down.

15 There's also, Your Honor, no evidence or
16 testimony in the record to show that there were any
17 complaints, incidents, or issues with this bench
18 either before or after the incident. Also,
19 Your Honor, there's -- there's not been any
20 testimony or evidence from any human factors expert
21 or any expert that might be presented by the
22 plaintiff side of the case to suggest that there
23 was anything wrong about the way the bench was
24 positioned, placed, or staged. There hasn't been
25 any testimony from any store witness to admit that

1 the store did anything wrong in any form or
2 fashion.

3 Now, as I mentioned at the beginning of my
4 argument -- my presentation, I should say,
5 Ms. Thomas does claim that the bench slid out from
6 under her and that it should have been somehow more
7 properly secured or -- or fixed in -- in place so
8 that when she sat down on the edge of the bench, it
9 wouldn't -- it wouldn't move.

10 We don't believe -- and I'll go into this in a
11 moment. We don't believe that the bench slid.
12 That's -- that's the first thing that I want to
13 say. But even if the bench did slide, our position
14 is that that does not create an issue of liability
15 for the store. And why is that?

16 Well, the reason is pretty simple, Your Honor.
17 The location, the placement, and the position of
18 the bench is open and obvious for anyone to see,
19 including Ms. Thomas. In fact, it would be our
20 position that she had the best opportunity to avoid
21 the accident by paying closer attention and
22 watching where she was sitting.

23 I would point out, Your Honor, that any chair,
24 bench, ottoman, stool, has the potential to move if
25 the person who is sitting down on it doesn't pay

1 proper attention and sits down improperly -- as the
2 video shows, sits down improperly on the edge of
3 the sitting location. Again, we don't believe that
4 the bench moved. But even if it did, the only
5 reason it moved -- the only reason it would have
6 moved would have been as a result of the
7 Plaintiff's body weight being applied to the edge
8 and thereby causing it to move. And that can't be
9 the store's fault. Your Honor, that simply can't
10 be the store's fault. If someone sits down
11 improperly on a bench and causes it to move, that
12 can't be the store's fault when an accident occurs.

13 I would point out, Your Honor, that this is
14 simply -- just a simple act of physics. If weight
15 or force is applied to an object, that will cause
16 the object to move. And that's how things work in
17 the physical world.

18 Finally, Your Honor, even -- even if there's
19 some suggestion that the store should have done
20 something more about placement or fixing of the
21 bench in place, it's our position as a third point,
22 Your Honor, that reasonable minds as a matter of
23 law, can -- can -- can necessarily conclude that
24 even if there is some amount of contribution or
25 fault on the part of the store, the only reasonable

1 inference from watching the -- the video and
2 considering what -- what is shown clearly on the
3 video, that the plaintiff's contribution in causing
4 the accident is greater than any contribution by
5 the store as a matter of law.

6 We -- we see from the video that Ms. Thomas
7 was not paying attention. We see from the video
8 that she was looking at her phone. We see from the
9 video that she did not look to see where she was
10 sitting. And we also see from the video that she
11 sat down on the edge of the bench, which caused her
12 to fall when she lost her balance. So for all of
13 those reasons, Your Honor, it's our position that
14 T.J. Maxx should be granted summary judgment. The
15 video speaks for itself, along with the arguments
16 that I've just made.

17 And I -- I want to -- I want to do one other
18 thing, Your Honor, before I turn over the floor to
19 Paige. I want to go back and I want to point out
20 to the Court the placement of the bench at the
21 moment of the fall and my view of -- of why I say
22 the bench does not move at the time of the
23 incident. So give me one second and I will try to
24 get that up.

25 THE COURT: Okay.

1 MR. DIEGEL: Okay. Here we are again. And I
2 am going to refute a feature here that allows us to
3 Zoom a little bit. And I'm going to back the video
4 up to the beginning or close to the beginning. And
5 I'm going to zoom little bit, move it over, zoom a
6 little bit, move it over, zoom a little bit, move
7 it over. One more time. Over.

8 Your Honor, I want you to notice in -- in this
9 closer up view of the camera angle exactly where
10 the bench is positioned. There's some distance
11 here you can tell between the edge of the wall and
12 the placement of the bench. The bench leg itself
13 is right here on this little white area of the --
14 the floor. This is significant because you'll see,
15 and I'll play this for you, after the incident one
16 of the assistants here or one of the employees of
17 T.J. Maxx comes over and she moves the -- the bench
18 up this way. But that does not in my mind
19 Your Honor mean that the bench necessarily moved
20 and I think the video will show that the bench --
21 the bench did not move. So here we go.

22 THE COURT: Okay.

23 MR. DIEGEL: And Your Honor, I would just draw
24 your attention to this placement of this leg here
25 on this little white area or lighter area of the

1 floor which I'm circling with the cursor. I may
2 slow it down here in just a moment.

3 Your Honor, just pay attention to the -- the
4 -- the positioning of the plaintiff as she first
5 lowers herself and then also pay attention to this
6 leg here. Alright. I've stopped it. As you can
7 see, part of the plaintiff's body is not landing on
8 that bench. It is actually off the bench. She's
9 looking at her phone. So as she's lowered herself
10 at this angle, her -- her body weight is actually
11 off the bench and that will precipitate the fall.
12 I'll continue to let it play.

13 Watch this.

14 Does not move. This is our lady coming over.
15 Obviously, she wants to give Ms. Thomas some
16 assistance. Sees her there.

17 Now you can see the bench is snug against the
18 little nook or the corner there, Your Honor.

19 Whereas the leg was previously here, it's now
20 been moved back here by the store lady when she
21 came over.

22 And on this occasion, Ms. Thomas is able to
23 successfully place herself on the bench. And as
24 the video shows, it -- it works -- works fine on
25 that occasion.

1 All right. Okay. Your Honor, that's our
2 argument.

3 THE COURT: Okay.

4 MR. DIEGEL: If I need to play the video for
5 Paige, I'm happy to do so.

6 THE COURT: All right. Thank you.

7 Ms. George, be glad to hear from you, ma'am.

8 MS. GEORGE: Thank you, Your Honor. We
9 believe that there's a genuine -- genuine issue of
10 material (inaudible) here. Ms. Thomas had her
11 deposition taken by Mr. Diegel. She was put under
12 oath and asked questions by him. Excerpts that
13 have been put in my memorandum and Mr. Diegel's
14 memorandum were from questions asked by Mr. Diegel,
15 and she responded that the chair stool moved
16 underneath her. When Mr. Diegel claimed -- the
17 video, when he pointed out that it was snug against
18 the corner, that was after the associate there had
19 already pushed -- was seen pushing the chair up
20 against the wall. We think it's -- that it's
21 foreseeable that a chair would move if not properly
22 secured. And Mr. Diegel, I think, also almost
23 agreed with that in his argument just now.

24 This is a negligence case where the burden of
25 proof is a preponderance of evidence. And under

1 South Carolina law, plaintiff only has to show a
2 mere scintilla of evidence to defeat summary
3 judgment. We believe taking the evidence in the
4 light most favorable to the plaintiff that we have
5 done so. Also defendant in its discovery responses
6 provided defendant's health and safety guidelines.
7 There are several excerpts from my memo -- memo in
8 that and I've attached the -- the health and safety
9 guidelines also in full to my memorandum. And in
10 those health and safety guidelines, it states every
11 associate has a responsibility to continuously
12 identify fix, or if the unsafe conditions cannot be
13 fixed by the associate, report the unsafe
14 conditions to management immediately. And we
15 believe that by having these policies and
16 procedures, that defendant took an additional duty
17 upon themselves to make sure the areas in their
18 store where patrons might sit are safe.

19 Citing *Madison ex rel. Bryant versus Babcock*
20 *Center* which is 638 S.E. 2d. 650, which is a
21 Supreme Court case from 2006, it has long been the
22 law that one who assumes to act, even though under
23 no obligation to do so, thereby becomes obligated
24 to act with due care. Additionally, citing
25 *O'Leary-Payne versus R.R. Hilton Head II*, which is

1 638 S.E. 2d. 96, which is a Court of Appeal case
2 from 2006, where the thing is shown to be under the
3 management of the defendant or his servants and the
4 accidents such as in the ordinary course of things
5 does not happen if those who have the management
6 use proper care. It affords reasonable evidence in
7 the absence of explanation by the defendants that
8 the accident arose from lack of care.

9 Additionally, Mr. Diegel pointed out that we
10 have no expert testimony here. I don't believe
11 expert testimony is needed here. Citing again, the
12 O'Leary versus Payne case, expert testimony is not
13 required to prove proximate cause if the common
14 knowledge or experience of a layperson is extensive
15 enough.

16 We believe that it was foreseeable that this
17 chair would move underneath Ms. Thomas. We believe
18 that the defendants took a duty upon themselves to
19 ensure that their store was safe. And between the
20 evidence of plaintiff's deposition testimony where
21 she says that the stool moved underneath her and
22 with the defendant's policies and procedures, we
23 think there are genuine issues of fact here. A
24 reasonable jury could determine that the defendant
25 failed to adhere to its own policies and procedures

1 and was negligent not discovering the unsafe
2 condition. Based on these genuine issues of
3 material fact, we think defendant's motion for
4 summary judgment should be denied.

5 THE COURT: Thank you, Ms. George.

6 Mr. Diegel, anything in brief response?

7 MR. DIEGEL: Yeah, just briefly, Your Honor.
8 If I misspoke earlier and suggested that the bench
9 had moved as a result of our store employee coming
10 over and then pushing it closer into the wall, I
11 didn't mean to say that. What I meant to point out
12 through the careful watching of the video was that
13 initial placement of the bench did not move at the
14 time of her fall and it was only moved afterwards,
15 and that was why I had a long discussion about
16 watching where the leg was. So I hope I made
17 myself clear on that. And that's all, Your Honor.

18 THE COURT: Okay. All right. Thank you.
19 Since you both have filed memorandums, I want to
20 take an opportunity to read those. And so I'll
21 take this under advisement and let -- let you know
22 something as soon as possible. Appreciate your
23 hard work.

24 MS. GEORGE: Thank you, Your Honor.

25 THE COURT: I'll be back in touch. Thank you.

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MS. GEORGE: Good to see you, Ron.

MR. DIEGEL: Bye-bye.

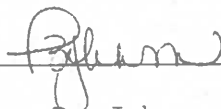
(End of video-recording proceedings.)

CERTIFICATE

I, the undersigned, Teresa B. Johnson, Official Court Reporter, do hereby certify that I transcribed the electronic recording of the remote hearing in this matter; and that the foregoing is a true transcript of said electronic recording.

I do further certify that I am not a relative, employee, attorney, or counsel of any of the parties connected with the action, nor am I financially interested in the action.

Dated: March 15, 2023



Teresa B. Johnson, CVR-M-CM, RVR, RVR-M
Official Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2021-CP-40-02555

Koffi Thomas,

Plaintiff,

v.

MOTION FOR SUMMARY JUDGMENT

The TJX Companies, Inc. d/b/a TJ Maxx
#339,

Defendant.

TO: PAIGE B. GEORGE, ESQUIRE, AND BARRY B. GEORGE, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF, AND TO THE PLAINTIFF ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through its undersigned counsel, will, ten days after service hereof or as soon thereafter as counsel may be heard, move for an Order granting the Defendant summary judgment on the grounds that there is no genuine issue of material fact as to liability and the Defendant is entitled to summary judgment as a matter of law.

This motion will be based on SCRCP 56. The motion will also be based upon the pleadings, discovery responses, deposition testimony, photographs, video, correspondence, and any and all other evidence properly accepted by the Court at the time of the hearing. A memorandum of law may also be presented.

<Signature page to follow>

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

s/Ronald B. Diegel
Ronald B. Diegel, Esquire
4406-B Forest Drive (29206)
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Defendant The TJX Companies, Inc.
d/b/a TJ Maxx #339

Columbia, South Carolina
August 12, 2022

ELECTRONICALLY FILED - 2022 Aug 12 1:12 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4002555

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
)	
Koffi Thomas,)	Civil Action No.: 2021-CP-40-2555
)	
Plaintiffs,)	
)	NOTICE OF MOTION AND
v.)	MOTION TO RECONSIDER
)	
The TJX Companies, Inc. d/b/a TJ Maxx)	
#399,)	
)	
Defendants.)	
)	

YOU WILL PLEASE TAKE NOTICE that Plaintiff by and through her undersigned counsel will move before the Honorable Donald B. Hocker, Presiding Judge, Fifth Judicial Circuit, on the tenth (10th) day after service hereof or as soon as thereafter as counsel may be heard for an Order setting aside the Court’s Order entered November 7, 2022 granting Defendant The TJX Companies, Inc.’s Motion for Summary Judgment. Plaintiff received notice of the Court’s order on November 7, 2022.

Before the Court were the memorandums of both parties, Plaintiff’s deposition, video from Defendant’s surveillance camera and Defendant’s Health and Safety Guidelines.

STANDARD OF REVIEW

“In determining whether any triable issue of fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196, 202 (Ct. App. 2008) (citing *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 642 S.E.2d 751 (2007)). “The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *South Carolina Rules of Civil Procedure*, Rule 56(c). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008) (citing *Gadson v. Hembree*, 364 S.C 316, 613 S.E. 2d 533 (2005) and *Montgomery v. CSX Transp., Inc.*, 362 S.C. 529, 608 S.E.2d 440 (Ct. App. 2004)) “Even when there is no dispute as to evidentiary facts, but only as to the conclusions

or inferences to be drawn from them, summary judgment should be denied.” *Id.* (citing *Montgomery v. CSX Transp., Inc.*, 362 S.C. 529, 608 S.E.2d 440 (Ct. App. 2004). “The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” *Singleton*, 377 S.C. 185 (citing *Bradley v. Doe*, 374 S.C. 622, 649 S.E.2d 153 (Ct. App. 2007)). “Summary judgment should not be granted even when there is no dispute at to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts.” *Huffman v. Sunshine Recycling, LLC*, 417 S.C. 514, 790 S.E.2d 410 (Ct. App. 2016) (quoting *Lanham v. Blue Cross & Blue Shield of S.C., Inc.* 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002)).

“Summary judgment is a drastic remedy and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues.” *Singleton*, 377 S.C. 185 (citing *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 594 S.E.2d 455 (2004); *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004)).

“[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.*, 673 S.E.2d 801, 381 S.C. 326 (2009)

LAW/ANALYSIS

As the matter at hand is a negligence action, the Court in *Hancock* established that only a mere scintilla of evidence is required to get past summary judgment. *Id.* The civil action in *Hancock* was a premises liability action in which the plaintiff was injured when she tripped and fell in a parking lot in disrepair. *Id.* The deposition testimony of the plaintiff in *Hancock* was that the plaintiff had “tripped on a rock or something to that effect.” *Id.* The lower court granted summary judgment “finding that the change in the elevation of the parking lot caused Petitioner’s fall, that the change in elevation was not a dangerous condition, and that even it was a dangerous condition, Respondent had no duty to warn since the elevation change was an open and obvious condition.” *Id.* The Court of Appeals affirmed the lower court. *Id.* In addition to concluding that a mere scintilla of evidence is all that is needed to survive summary judgment, the Supreme Court reversed the Court of Appeals finding “Respondent knew or should have known that a dangerous condition existed” and that “Respondent should have anticipated the harm” *Id.*

The following is an excerpt from the deposition of Koffi Thomas:

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.

Q: Okay. So as you were sitting down in the chair - -

A. I wasn't in the chair yet.

Q. Okay.

A. When she was in the dressing room, that's when I grabbed her pocketbook, got ready to sit down in the chair. As I got ready to sit down in the chair, the chair slipped up under from up under me.

Q. I gotcha.

A. Yes.

Q. Which direction did it move in?

A. Um -- I want to say the right side cause that's the side that I fell on.

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.

(Dep. Thomas pp. 19-20, p.21)

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. It didn't have no back. If they was saying that the chair was secure, it wasn't, because the back was actually holding the chair up. It had no sides or any of that.

Q. When you say the back was holding the chair up, you mean the wall?

A. The wall. Correct. Yes.

Q. Do you think you had any contribution in causing the accident?

A. I don't.

(Dep. Thomas p. 38, ll. 9-22)

The Court when considering a motion for summary judgment or when considering a directed verdict motion does not have the authority to decide credibility. “[M]atters of credibility **should not be determined at the summary judgment stage.** ‘All ambiguities, conclusions, and inferences arising in and from evidence must be construed **most strongly against the movant for summary judgment.**’” *Hiers by Hiers v. Mullens*, 425 S.E.2d 57, 61, 310 S.C. 63, 68 (Ct. App. 1992) (quoting *Shea v. State Department of Mental Retardation*, 279 S.C. 604, 610, 310 S.E.2d 819, 822 (Ct.App.1983)) (emphasis added) “When considering a directed verdict motion, neither the [circuit] court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence.” *Ray v. City of Rock Hill, S.C.*, 428 S.C. 358, 372, 834 S.E.2d 464, 471 (Ct. App. 2019) (citing *Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 188-89, 691 S.E.2d 170, 173 (Ct. App. 2010)). “A court considering summary judgment neither makes factual determinations **nor considers the merits of competing testimony**; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *Clary v. Borrell*, 398 S.C. 287, 296 727 S.E.2d 773, 777-778 (Ct. App. 2012) (citing *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006) (emphasis added).

The Court in ruling on Defendant's Motion for Summary Judgment did not consider the deposition testimony of the Plaintiff and granted Defendant's Summary Judgment motion solely on the basis of the video played for the Court. The Court in essence ruled on the credibility of the testimony of Ms. Thomas, the Plaintiff. The Court considered the merits of competing evidence when it discounted Plaintiff's deposition testimony. Such consideration is not properly before the Court but is a determination for the trier of fact.

The Plaintiff testified that the "the chair slipped from up under me." Plaintiff's testimony creates a conflict between it and the other evidence presented creating an issue for the trier of fact. The Court does not have the authority to resolve this conflict. *Id.* Additionally, the Court has not taken the evidence in the light most favorable to the Plaintiff. *Singleton*, 377 S.C. 185. Nor has the Court construed the evidence most strongly against the moving party. *Hiers by Hiers*, 425 S.E.2d 57. Here, there is a disagreement concerning the conclusions to be drawn from the facts making summary judgment improper. *Huffman*, 417 S.C. 514.

Plaintiff also provided the Court with Defendant's Health and Safety Guidelines. These Guidelines create a jury question as to whether the Defendant took on a duty to continuously identify, fix and report unsafe conditions. "[I]t has long been the law that one who assumes to act, even though under no obligation to do so, thereby becomes obligated to act with due care." *Madison ex rel. Bryant v. Babcock Center*. 638 S.E.2d 650, 657, 371 S.C. 123 (S.C. 2006) (citing *Sherer v. James*, 290 S.C. 404, 406, 351 S.E.2d 148, 150 (1986); *Roundtree Villas Assn. v. 4701 Kings Corp.*, 282 S.C. 415, 423, 321 S.E.2d 46, 50-51 (1984)) "[W]here the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from lack of care." *O'Leary-Payne v. R.R. Hilton Head, II, Inc.*, 638 S.E.2d 96, 100, 371 S.C. 340 (Ct. App. 2006) A reasonable jury could find that Defendant knew or should have known that a dangerous condition existed and that Defendant should have anticipated the harm. Additionally, expert testimony is not needed to show that the bench was deficient. "Expert testimony is not required to prove proximate cause if the common knowledge or experience of a layperson is extensive enough." *O'Leary-Payne v. R.R. Hilton Head, II, Inc.*, 638 S.E.2d 96, 101, 371 S.C. 340 (Ct. App. 2006) (citing *Bramlette v. Charter-Med.-Columbia*, 302 S.C. 68, 72-73, 393 S.E.2d 914, 916 (1990))

Conclusion

The instant case is one based in negligence; and, therefore, the burden of proof placed on the Plaintiff is a “preponderance of the evidence.” According to the Court in *Hancock*, Plaintiff need only show a **mere scintilla** of evidence that there is a genuine issue existing for trial to survive a motion for summary judgment.

Plaintiff testified that the seat slipped up from underneath her creating a material issue of fact for a jury. The evidence provided herein, between the Plaintiff’s deposition and Defendant’s policies and procedures, creates genuine issues of fact. A reasonable jury could determine that the Defendant failed to adhere to its policies and procedures and was negligent in not discovering an unsafe condition. Additionally, Plaintiff testified that the seat moved underneath her. This testimony, in itself, creates a conflict with other presented evidence creating a question for the trier of fact. It is only proper for a jury to determine the credibility and weight of Plaintiff’s testimony. While the video shows a general view of the scene, it is a jury question as to what specifically the video shows. Viewing the evidence in a light most favorable to the Plaintiff, Plaintiff has provided this Court more than a mere scintilla of evidence that could lead a reasonable jury to conclude that the seat moved underneath the Plaintiff; that the Defendant did not adhere to its own policies; that the injury to the Plaintiff was foreseeable; that the Defendant was negligent; and, that Defendant’s negligence was a proximate cause of Plaintiff’s injuries. Therefore, summary judgment is not proper. To hold otherwise, would deprive Plaintiff of a trial on disputed facts. *Singleton*, 377 S.C. 185.

Wherefore, based upon Rule 59(e) SCRPC, Plaintiff respectfully moves this Court to reconsider its Opinion and Order in these regards and to modify the Order to deny Defendant’s Motion for Summary Judgment.

Respectfully submitted,

s/Paige B. George
 Paige B. George (SC Bar # 75124)
 Barry B. George (SC Bar # 2417)
 Law Office of Barry B. George
 Attorney(s) for the Plaintiffs
 1419 Bull Street
 Columbia, South Carolina 29201
 (803) 400-1219
 lawyer@paigebgeorge.com

1 A. Just haven't been in there.

2 Q. Okay. Okay. Let's go to the day of accident.

3 A. Okay.

4 Q. And let me just ask this up front. Have you seen
5 a copy of the surveillance video?

6 A. I did this morning.

7 Q. Okay.

8 A. Yes.

9 Q. So you've seen that.

10 A. Yes.

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

17 A. Okay. Me and one of my best friends, she came to
18 pick me up around, I want to say had to have been
19 like after six, 6:30. I'm not sure of the
20 timeframe, but I think it was around that
21 afternoon time. We went and we drove to TJ Maxx
22 cause she wanted to look at some clothes, she
23 picked out some stuff. She said she needed to
24 try on some stuff. So me and her went to the
25 dressing room. She went inside of the dressing

1 room. I stayed out because I didn't want to, you
2 know, I wasn't buying anything and I wasn't, you
3 know, trying on anything. So I sat outside where
4 they had a chair that was sitting outside of the
5 dressing room. I sat in that chair -- when I got
6 ready to -- well, when I was going to sit in the
7 chair and went to the side of the chair, the
8 chair slipped from up under me.

9 Q. Okay. So as you were sitting down in the chair -

10 -

11 A. I wasn't in the chair yet.

12 Q. Okay.

13 A. When she was in the dressing room, that's when I
14 grabbed her pocketbook, got ready to sit down in
15 the chair. As I got ready to sit down in the
16 chair, the chair slipped up under from up under
17 me.

18 Q. I gotcha.

19 A. Yes.

20 Q. Which direction did it move in?

21 A. Um -- I want to say the right side cause that's
22 the side that I fell on.

23 Q. Okay.

24 A. But, you know, when you're going -- when you fall
25 and you can't really understand, you know, what's

1 all going on at the time?

2 Q. Right.

3 A. Cause everything's going on all at once?

4 Q. Okay.

5 A. So, yeah, one that right side, I believe.

6 Q. Okay. So you fell to your right?

7 A. Yes, I did.

8 Q. Do you think the chair that you went to sit in,
9 did it slide to the left or did it slide to the
10 right?

11 A. To the right.

12 Q. Okay. And as a result of that chair sliding to
13 the right, you fell on to what area --

14 A. The floor.

15 Q. -- of your body? Well, I know. Yes, I know you
16 fell onto the floor. What area of your body
17 struck the floor?

18 A. My knee and my shoulder.

19 Q. And what was the name of your best friend? Or
20 one of your best friends?

21 A. Nikki Boman. N-I-K-K-I B-O-M-A-N.

22 Q. B-O- --

23 A. M-A-N.

24 Q. -M-A-N?

25 A. Yes, sir.

1 Q. That was you falling?

2 A. Yes, that was me.

3 Q. Okay. All right. And that stool or that bench-
4 type seating area that you were sitting on, as
5 you went to sit down on it, your testimony is, I
6 think, that it slid somewhat?

7 A. It did slip.

8 Q. Okay. And you picked yourself up off the floor.
9 And the lady over here in sort of the striped
10 shirt, she'd come over to kind of see if you were
11 okay, and you sat back down on the bench; is that
12 fair?

13 A. Correct.

14 Q. Okay. Do you remember what you were doing on
15 your phone at this time now that you're on the
16 bench?

17 A. I do not.

18 Q. Okay. At this point in the video, you've not
19 asked for any sort of medical assistance, had
20 you?

21 A. No. But I was hurting.

22 Q. Okay.

23 A. And I thought she was going to get the manager
24 but she didn't ever go get the manager.

25 Q. Okay. And you're talking about the lady in the

1 watching the third video. All right. Let's jump
2 ahead. See if there's anything. Okay. We're at
3 6:34..55. That all looks familiar. That's
4 during the time period you'd gone to the back
5 with Nikki. Jump ahead again. We're at
6 6:38..30. You're back on the pink bench.
7 Nikki's still in the back. Let's jump ahead to
8 6:40..36. Still on the pink bench. Looks like
9 you're writing some stuff down on that piece of
10 paper we saw earlier. Nikki's still in the back.
11 Jump ahead. We're at 6:42..40. Nikki's back
12 out. Y'all are preparing to leave the dressing
13 room area. And here you are walking off. And in
14 a moment you'll go off screen. Okay. Now you're
15 gone. So we've watched, in its entirety, the
16 first video segment and then we watched sort of
17 extended clips of the second and third video.
18 They all seem to show the same thing, would you
19 agree?

20 A. (No response.)

21 Q. The same view of the accident and the same view
22 of the dressing room area?

23 A. Yes. The setup is the same.

24 Q. The setup is the same. And it does capture the
25 accident where you fell, correct?

1 A. Correct.

2 Q. Fairly and accurately captures that; is that
3 right?

4 A. Correct.

5 Q. Okay. Very good. All right. So we're done with
6 that. Okay.

7 MR. DIEGEL: Thanks, Paige.

8 MS. GEORGE: Sure.

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

12 A. The chair wasn't secure at all. It didn't have
13 no back. If they was saying that the chair was
14 secure, it wasn't, because the back was actually
15 holding the chair up. It had no sides or any of
16 that.

17 Q. When you say the back was holding the chair up,
18 you mean the wall?

19 A. The wall. Correct. Yes.

20 Q. Do you think you had any contribution in causing
21 the accident?

22 A. I don't.

23 Q. Are you aware of any evidence that the store had
24 ever had any issues with that particular bench
25 moving or sliding prior to the time of your

1 incident?

2 A. No.

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

6 A. Not to my knowledge.

7 Q. Had you ever sat on that bench before?

8 A. No, cause I don't shop in there fairly -- all the
9 time.

10 Q. I understand.

11 A. So, yeah.

12 Q. Yeah.

13 A. So, no, I didn't have any knowledge of that
14 chair. No, sir.

15 Q. Okay. I think you told me you've not been back
16 to the store since the time --

17 A. No.

18 Q. -- of the --

19 A. No.

20 Q. Okay.

21 A. Not that -- no.

22 Q. Gotcha. Tell me about the injuries that you had
23 in the accident.

24 A. The injuries that I were a contusion to my knee.
25 My right shoulder was bruised and swelling on --

1 I want to say up under the shoulder blade. I
2 don't know if there's a name for it, but it's up
3 under the shoulder blade up under here
4 (indicating) was bruised real bad.

5 Q. All right. And who did you go see for those
6 injuries?

7 A. Okay. At first, when the accident happened, I
8 ended up going to Providence NE ER. I went to
9 Dr. Abu- -- I can't pronounce his name.

10 Q. Okay.

11 A. And it was another doctor that I can't pronounce
12 either, as well. But those were the three
13 doctors that I seen.

14 Q. Looks like you went to Providence Health on the
15 day of the accident?

16 A. Correct.

17 Q. Okay. They documented that you had some pain in
18 your right shoulder and some pain in your right
19 knee?

20 A. Correct.

21 Q. And it looks like they diagnosed you with a
22 contusion to your right knee and a sprain to your
23 right shoulder?

24 A. Correct.

25 Q. Does that sound accurate?

1 Q. Okay. Do you know if any of the bills related to
2 your care or treatment for this incident were
3 submitted to Medicare?

4 A. As far as I know, from what was told to me, yes.

5 Q. Got it. After the incident took place, I know
6 you and Nikki go off screen.

7 A. Uh-huh.

8 Q. Can you tell me the story of what happened next
9 in the store? Where did you go? Who did you
10 talk to?

11 A. She carries -- well, I ain't gonna say carries
12 but we walked up towards the front of the store.
13 We spoke to a manager and whoever the cashier was
14 that night. The manager spoke to us. She took
15 my name down and said that I guess the store
16 manager would call me the next day. And the
17 store manager called me maybe two or three days
18 later.

19 Q. All right. So when y'all got -- I'm going to
20 back up just a little bit and make sure I got all
21 that.

22 A. Yes, sir.

23 Q. Y'all walked to the front of the store. You
24 spoke to the store manager and a cashier?

25 A. A assistant. I'm assuming she's a assistant

Health & Safety Guidelines

Store Management

Store Management is the Program Administrator and is responsible for providing a work environment reasonably free from recognized health and safety hazards.

Specifically, Management is responsible for:

- Knowing safety rules and procedures.
- Training Associates on working safely.
- Notifying Risk Management of any fatality or in-patient hospitalization due to a work-related accident at store level.
- Implementing Hazardous Chemical Communication Policy.
- Making sure flammable liquids are stored in designated areas.
- Completing New Hire Safety Orientation.
- Ensuring each Associate understands how to complete each assigned task safely.
- Training Associates on how to evacuate the building in the event of an emergency and where to meet after an evacuation.
- Providing monthly training on a safety topic during the Store Meeting.
- Conducting monthly safety inspection of the premises, reporting findings and executing the corrections as directed.
- Making sure that equipment and machines are in safe working condition.
- Keeping exits unobstructed, well lit and unlocked during working hours.
- Investigating all accidents and ensuring accidents are reported to the third- party administrator or insurer.
- Identifying the cause of a loss and either eliminating or controlling the exposure.
- Correcting unsafe and unhealthy conditions.
- Conducting periodic inspections of work area, including:
 - Keeping emergency exits, aisles leading to exits clear of clutter and storage
 - There must be a clear path to the electrical and sprinkler riser rooms at all times. Electrical room cannot be used for storage of boxes or other materials.

Health & Safety Guidelines

Associates

Associates are responsible for:

- Understanding safety rules and procedures.
- Performing tasks in a safe manner.
- Reporting the following to Management:
 - Unsafe conditions
 - Use of a fire extinguisher
 - All accidents
 - Any fatality or in-patient hospitalization due to a work-related accident at store level
- Knowing the location of fire alarms.
- Knowing the evacuation plan and the location of the evacuation meeting place
- Knowing the location of cleaning supplies
- Cleaning up spills (except for blood spills), foreign substances or other debris.
- Knowing the location of the first aid kit
- Knowing the location of:
 - Material Safety Data Sheets
 - Eye Wash Station

Training & Instruction

- Introduction**
- Training was initially provided when the Health & Safety Guidelines were first introduced to the stores in May 1998.
 - All Managers and Associates at HomeGoods receive safety training and instruction.
 - All newly hired Associates.
 - Any Associate given new job assignments for which training was not previously received (for example: Dressing Room, Cash Office, Backroom etc...).
 - Whenever new substances, processes, procedures or equipment are introduced to the workplace that may present a new hazard.
 - Whenever the Manager is made aware of a new or previously unrecognized hazard.
 - Whenever an Associate is observed working unsafely.
 - Periodically, as a refresher for general workplace safety to address job specific hazards and/or hazardous materials as applicable.

These methods allow Associates to learn their jobs properly. In addition, they bring new ideas into the workplace and reinforce existing ideas and practices to make Health & Safety a part of everyday life.

Training & Instruction includes the following:

Reporting Accidents All accidents must be reported to Management immediately, regardless of how minor the injury may appear.

If you witness an accident:

- Make sure the injured person is safe from further harm.
- Contact Management immediately.
- Notify store Management of any fatality or in-patient hospitalization due to a work-related accident at store level.

Identify, Fix and/or Report Unsafe Conditions Every Associate has the responsibility to continuously identify, fix, or if the unsafe conditions cannot be fixed by the Associate, report the unsafe conditions to Management immediately. Identifying potential unsafe conditions is done through recovery continuously throughout the day. Unsafe conditions include, but are not limited to the following:

- Loose mats or rugs
- Defective carpets or floor tile
- Sharp edges
- Congested aisles

Defendant_000021

- Blocked exits
- Wet floors
- Tripping hazards (loose tickets or hang tags on floor, etc.)
- Defective carts, racks, equipment, etc.
- Unstable displays or fixtures
- Missing face plates on electrical outlets

Safety Practices

The following safety practices are introduced to all new Associates during New Hire Safety Orientation and periodically throughout the course of an Associate's employment with the company.

Fire Alarms, Extinguishers

- Show Associates location of fire alarms, extinguishers, and sprinkler valves:
- Instruct Associates not to use a fire extinguisher unless trained to do so.
 - Advise Associates to report the use of a fire extinguisher to Management.

Housekeeping

- Explain housekeeping practices:
- Show Associates location of brooms, mops, caution cones and trash receptacles.
 - Explain general housekeeping practices.
 - Explain that work and storage areas must be kept clear of obstacles and tripping hazards.
 - Explain that Associates must clean up spills immediately or use a barrier until the area can be cleaned.

Proper Lifting Techniques

- Instruct Associates on proper lifting techniques:
- Lift with legs, not the back.
 - Never over-lift; get help when necessary.
 - Avoid twisting, turning, reaching or awkward positions.

Ladder Safety

- Explain guidelines regarding ladders, step stools and shelves:
- Never use racks, totes, shelves, chairs or other makeshift items as a substitute for a ladder.
 - Choose the right size ladder to reach the item you need.
 - Inspect the ladder to ensure it is stable and in good condition. Do not use an unstable or broken ladder.
 - Keep three points of contact when climbing up and down the ladder. That means one hand and two feet or two hands and one foot making contact with the ladder at all times.
 - Do not jump off a ladder.
 - If the item is out of reach, climb down and move the ladder closer to the item. Get help if needed. Never over-reach.

[Surveillance video]

(To be delivered to the Appellate Court pursuant to Rule 210, SCACR)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Donald B. Hocker., Circuit Court Judge

Case No. 2021-CP-40-2555

Koffi Thomas,

Appellant,

v.

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

Respondent.

NOTICE OF APPEAL

The Appellant, Koffi Thomas, appeals the order of the Honorable Donald B. Hocker dated December 29, 2022 denying Plaintiff's Motion to Reconsider and the order of the Honorable Donald B. Hocker dated November 7, 2022 granting summary judgment to Defendant The TJX Companies, Inc. d/b/a TJ Maxx #399. Appellant received electronic notice of entry of these orders December 29, 2022 and November 7, 2022 respectively.

January 27, 2023

s/Paige B. George
Paige B. George (SC Bar # 75124)
Barry B. George (SC Bar #2417)
Law Office of Barry B. George
Attorneys for the Plaintiffs
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222
lawyer@paigebgeorge.com
Blair41@bellsouth.net

Other Counsel of Record:

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

Ronald Barton Diegel (SC Bar # 65076)

Murphy & Grantland, P.A.

PO Box 6648

Columbia, South Carolina 29260

rbdiegel@murphygrantland.com

(803) 454-1207

Certificate of Appellant

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

September 2, 2023

s/Paige B. George
Barry B. George (SC Bar # 2417)
Paige B. George (SC Bar # 75124)
Law Office of Barry B. George
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222
Attorney(s) for Appellant

Certificate Of Compliance

The undersigned counsel for the Appellant, Koffi Thomas, certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

September 2, 2023

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s/Paige B. George
Barry B. George (SC Bar # 2417)
Paige B. George (SC Bar # 75124)
Law Office of Barry B. George
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222
Attorney(s) for Appellant