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SC Court of Appeals

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF CHARLESTON	)	**THE NINTH JUDICIAL CIRCUIT**
Stefani Eddins,	)	**Civil Action No.: 2020CP1002481**
Plaintiff,	)	
v.	)	**ORDER**
Tall Sam I Am, LLC d/b/a Tabbuli,	)	
Defendant.	)	

This matter came before the Court on April 21, 2022 for hearing on the Defendant Tall Sam I Am, LLC d/b/a Tabbuli's (hereinafter "Defendant") Motion for Summary Judgment. Counsel for Defendant and Plaintiff Stefani Eddins were present. The Court finds that adequate time for pertinent discovery has elapsed, and the Court has considered the arguments of counsel, supporting memoranda, deposition transcript excerpts and other exhibits, and the contents of the record in rendering its decision. For the reasons set forth below, Defendant's Motion for Summary Judgment as to all of Plaintiff's causes of action is **GRANTED.**

FACTS

This is a premises liability case, originally filed in this Court on June 5, 2020. Plaintiff Stefani Eddins alleges that on July 20, 2017, she suffered injuries when a stage lightbulb housing fell onto her head while seated on a couch at Defendant's restaurant, Tabbuli. Plaintiff testified that she and her fiancée Ashley Haynes were on vacation in Charleston at the time and first arrived at Tabbuli around 9:00 PM. The pair were initially seated in the front of the restaurant. Plaintiff testified that waitstaff then informed the two of a fashion show that was to occur shortly

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on the restaurant's back patio, and the two moved to a couch facing a stage in the back of the restaurant.

The couch was located adjacent to a structural roof pillar, onto which a large concert speaker had been attached. The light in question was possibly placed on top of this speaker. Plaintiff estimated that approximately forty-five minutes elapsed prior to the light falling onto her head. Plaintiff admitted that she had no knowledge of why the light fell, how it was attached, whether it was secured, who owned the light, or who installed the light. Plaintiff further admitted that she did not see the light at any point before it fell. Haynes testified identically.

There is no evidence in the record that any of Defendant's employees installed the light. There is no evidence in the record that Defendant in any way directed the manner in which the light was to be installed. There is no evidence that Defendant owned, rented, or controlled the light in question in any way. Rather, the evidence shows that Defendant hired a DJ through an independent contractual relationship to provide music and lighting for the fashion show, and that the light fixture in question was provided and installed by the DJ.

Defendant's manager at the time, Cait Chapin, testified that the typical practice of DJs hired to perform at these fashion shows was to bring their own lights, and that these DJs had discretion to place the lights where they wanted. Chapin further testified both that it was the responsibility of the DJs to place their own lighting in a safe and secure manner, and that she told the DJ to "make sure things are, you know, secured and safe." Chapin Dep. at 71:8 – 22. Defendant's Rule 30(b)(6) corporate designee likewise testified that the light was the "duty and responsibility of the DJ that was there that night," and that Defendant does not employ any DJs. Jeff Diehl Dep. 61:1-8; 87:15-18.

Plaintiff retained two expert witnesses. The first, Mark Williams, is a forensic architect. Mr. Williams admitted at deposition that he does not know the manufacturer of the light in question, whether the light included any safety devices designed to secure it to a base, what installation or usage instructions were included with this particular light, the weight of the light, what kind of lightbulb was installed, or whether music was playing through the speaker at the time it fell. Williams was likewise unsure of the industry standard regarding the usage of stage lights by DJs. Williams further admitted that he has no knowledge of how several of his cited sources pertain to the industry standard for temporary restaurant lighting in Charleston. Williams went on to admit that he was unable to vouch for the scholarly nature of at least one of his cited sources.

While Williams included a number of building, fire, and electrical code sections in his file materials and discussed them at length at deposition, Williams was unable to point to a building, fire, or electrical code section applicable and binding in Charleston, South Carolina that Defendant clearly violated; he further admitted that it would be "preposterous" to get a code inspector to review the temporary lighting in question. Williams Dep. at 80:22 – 81:6. Further, Williams did not know whether the various code sections included in his file materials were the most recent adopted versions – or whether Charleston County had adopted one cited body of code at all. *Id.* at 64: 1-3; 96:24 – 97:1; 75:24 – 76:3 ("Q: Do you know if Charleston County has adopted the 2015 IPMC [International Property Maintenance Code]? A: I don't know, but I doubt it."). Williams was also unable to "remember" whether he has ever previously been retained in a case dealing with how a lighting fixture was secured *Id.* at 119:10 – 13.

Williams nevertheless has opined that the light fell because it was not "properly" attached *Id.* at 79:1-4. Williams' answer when questioned specifically as to his opinion on the cause of the

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light's fall, however, was simply "it fell because gravity exists." *Id.* at 92:7 – 93:6. Critically, Williams went on to admit that there is no evidence to "point to" regarding the root cause of the light falling. *Id.* at 92:7 – 93:19.

Plaintiff's second retained expert witness, Mr. James Rivenbark, owns several restaurants and runs a restaurant operation consulting business. He has never previously consulted in litigation or testified as a retained expert. He has no background in engineering, lighting design, installation, or maintenance. He admitted that he knows "very little" about stage lighting. Rivenbark Dep. at 55:15 – 17.

Rivenbark testified that in his capacity as a restaurant owner and manager, he has hired musical acts and DJs to play for events, and that he was unable to recall a single instance on which he had requested such a contractor to adjust or change the installation of their lighting. Moreover, Rivenbark testified that he has never heard of such a request ever happening in the restaurant industry. Rivenbark further admitted that the procedure he would follow to render the premises in his restaurants safe in a situation like this would be to keep a lookout for obvious hazards in equipment set up by independent contractors, discuss that situation with the contractor in question, and expect them to remedy the situation – not his restaurant personnel. *Id.* at 54:13 – 55:2; 67:1 ("No, I'm not going to touch their stuff."). Rivenbark concurred that he had no knowledge of how the light was secured prior to falling. Finally, Rivenbark was unable to point to any alleged actions of Defendant or its personnel that violated an industry standard, regulation, or code in any way causally related to the light falling.

LEGAL STANDARD

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is

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no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "When a motion for summary judgment is made and supported by such facts as would be admissible in evidence at trial, the adverse party may not rest upon the mere allegations of his pleadings. Instead his response to the motion must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial. If he does not so respond, summary judgment should be entered against him." *Moody v. McLellan*, 295 S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App.1988) (citing Rule 56(e), SCRCP).

"To prevail in an action founded in negligence, the plaintiff must establish three essential elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately caused by a breach of duty." *Hinds v. Elms*, 358 S.C. 581, 585, 595 S.E.2d 855, 857 (Ct. App. 2004), *citing Vinson v. Hartley*, 324 S.C. 389, 399, 477 S.E.2d 715, 720 (Ct. App.1996). "The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial." *Baughman v. Am. Tel. & Tel. Co.,* 306 S.C. 101, 116, 410 S.E.2d 537, 545–46 (1991), *citing Celotex Corp. v. Catrett*, 477 U.S. 317, 106 (1986).

ANALYSIS

An action for premises liability lies in negligence. *See Singleton v. Sherer*, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (Ct. App. 2008). As such, the plaintiff must show that (1) the defendant owed a duty; (2) the defendant breached its duty; and (3) as a direct and proximate result of that breach, the plaintiff sustained injuries and damages. *Nelson v. Piggly Wiggly Central, Inc.,* 390 S.C. 382, 391, 701 S.E.2d 776, 780 (Ct. App. 2010) (citing *Bloom v. Ravoira,*

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339 S.C. 417, 529 S.E.2d 710 (2000)). Our courts have consistently held "a merchant is not an insurer of the safety of a customer in his store. His duty is to exercise due care to keep his premises in reasonably safe condition." *Anderson v. Winn-Dixie Greenville, Inc*., 257 S.C. 75, 77, 184 S.E.2d 77, 77 (1971); *see also Hunter v. Dixie Home Stores*, 232 S.C. 139, 143, 101 S.E.2d 262, 264 (1957); *Pennington v. Zayre Corp*., 252 S.C. 176, 178, 165 S.E.2d 695, 696 (1969); *Wintersteen v. Food Lion, Inc*., 336 S.C. 132, 135-136, 516 S.E.2d 828, 829 (1999); *Cook v. Food Lion, Inc.,* 328 S.C. 324, 327, 491 S.E.2d 690, 691 (Ct. App. 1997).

South Carolina law requires proof of a dangerous or defective condition as a prerequisite for the imposition of premises liability upon a business owner. *E.g., Shain v. Leiserv, Inc.,* 328 S.C. 574, 576, 493 S.E.2d 111, 112 (Ct. App. 1997*); Scott v. Cedar Fair Entm't Co.,* No. Civ. A 0:11-00910, 2012 WL 5306222, at *6 (D.S.C. Oct. 26, 2012). Therefore, to succeed on her negligence claim, Plaintiff bears the burden of proving: (1) Defendant placed the light in a dangerous or defective condition itself, or (2) that Defendant had actual or constructive notice of the presence of the light in a dangerous or defective condition and failed to remove it. *Pennington*, 252 S.C. at 178, 165 S.E.2d at 696. When the business owner or its agents "created the condition at issue, the key question is whether [the customer] presented sufficient evidence to create an issue of fact as to whether this condition was indeed hazardous." *Shain v. Leiserv, Inc*., 328 S.C. at 576, 493 S.E.2d 111, 112 (Ct. App. 1997).

I. Plaintiff has failed to establish that Defendant created or knew about a dangerous or defective condition.

The South Carolina Supreme Court upheld summary judgment in favor of a grocery store under similar facts to those of the case at bar in *Garvin v. Bi-Lo, Inc*., 343 S.C. 625, 541 S.E.2d 831 (2001). In *Garvin*, the plaintiff alleged that she was injured when, after reaching to grab a box of canned items from the top of a stack taller than her, several cans fell and hit her face.

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Critically similar to this case, the plaintiff in *Garvin* presented no actual evidence of "some defective manner of stacking the boxes, or that Bi–Lo was on notice that the stacked cans had become rickety," and merely claimed that the stack of cans was dangerous. *Garvin*, 343 S.C. at 628–29, 541 S.E.2d at 833; *see also id.,* 343 S.C. at 628, 541 S.E.2d at 833 ("This evidence is insufficient, as a matter of law, to demonstrate the store created a dangerous condition."). Because the plaintiff failed to present such evidence, the Supreme Court held that "there [was] simply no evidence from which a jury could find a dangerous condition was created by Bi-Lo." *Id.*

Without such evidence here, Plaintiff has not met her burden of establishing constructive knowledge and her claim must fail as a matter of law. *See, e.g.*, *Norris v. Wal-Mart Stores E., L.P.*, 2014 WL 496010 (D.S.C. Feb. 6, 2014) (holding that without evidence proving a spill was on the ground for a specific length of time, a plaintiff cannot establish constructive knowledge). A stationary, inanimate object on top of another stationary, inanimate object is not inherently a hazard. Despite the lengthy testimony of Plaintiff's experts, there is no evidence that Defendant or anyone else installed the light in a manner which violated a binding and applicable code, regulation, industry standard, or policy and caused the light to fall. There is likewise no evidence that Defendant or anyone else disobeyed a manufacturer's installation instructions or failed to install an included safety device. There is no credible scintilla of evidence that the light was in a dangerous or defective condition prior to its falling. Therefore, the Court finds that Plaintiff has failed to present sufficient evidence that Defendant created, knew about, or should have known about a dangerous or defective condition pertaining to the light. *See Shain,* 328 S.C. at 576, 493 S.E.2d at 112; *Garvin*, 343 S.C. 625, 541 S.E.2d 831. Plaintiff has thus failed to meet her burden,

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and Defendant is entitled to judgment as a matter of law. *Bloom,* 339 S.C. at 421, 529 S.E.2d at 712.

II. Plaintiff has failed to present sufficient evidence of causation.

Moreover, the mere fact that the light fell is not sufficient in itself to prove Defendant acted negligently. *See, e.g., Gillespie v. Wal-Mart Stores, Inc.,* 302 S.C. 90, 91, 394 S.E.2d 24, 25 (Ct. App. 1990) (mere presence of condition insufficient to impose liability on a merchant). "Injuries have countless causes, and not all should give rise to legal liability." *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 692, 131 S. Ct. 2630, 2637, 180 L. Ed. 2d 637 (2011). Plaintiff has put forth no evidence that any act or omission of Defendants caused or contributed to the light falling, and therefore summary judgment is mandated for Defendant. *Pennington*, 252 S.C. at 178, 165 S.E.2d at 696. As discussed *supra*, despite the extensive discovery in this case, no deponent has testified that they know why this light fell – with the apparent exception of Plaintiff's retained expert, Mark Williams, who blames the existence of gravity. Gravity may have assisted the light on its downward trajectory, but it did not initiate it. Plaintiff herself admitted that she does not have any idea why it fell. (Pl. Dep. at 27:20 – 28:6). Plaintiff has failed to meet her burden of proving a breach of duty causing the fall of the light and must therefore impermissibly rely on the doctrine of *res ipsa loquitur.*

South Carolina courts have consistently and steadfastly rejected the doctrine of *res ipsa loquitur*. *See, e.g., Watson v. Ford Motor Co*., 389 S.C. 434, 452-53, 699 S.E.2d 169, 179 (2010) ("We also note that Respondents may not rely solely on the fact that an accident occurred to prove their products liability case under a negligence theory since South Carolina does not follow the doctrine of res ipsa loquitur."). In a negligence case in South Carolina*, actori incumbit*

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onus probatio: the plaintiff always bears the burden of affirmatively proving a failure to exercise reasonable care by a preponderance of the evidence, and "this burden of proof cannot be met by relying on the theory that the thing speaks for itself or that the very fact of injury indicates a failure to exercise reasonable care." *Snow v. City of Columbia*, 305 S.C. 544, 409 S.E.2d 797 (Ct. App.1991) (citing *King v. J.C. Penney Co*., 238 S.C. 336, 120 S.E.2d 229 (1961); *Gilland v. Peter's Dry Cleaning Co*., 195 S.C. 417, 11 S.E.2d 857 (1940)). "No inference of negligence arises from the mere fact of injury." *Id.* (citing *Covington v. Atlantic Coast Line Railway Co*., 158 S.C. 194, 155 S.E. 438 (1930), *cert. denied,* 282 U.S. 858, 51 S.Ct. 33, 75 L.Ed. 759 (1930)). In essence, a South Carolina plaintiff must prove by direct or circumstantial evidence that the defendant specifically breached a duty of care, not merely point to an injury and claim that someone must have been negligent. *Id*. at FN 7.

Here, Plaintiff has merely done the latter. Instead of identifying a duty and presenting admissible evidence as to how Defendant breached that duty, as South Carolina law requires, Plaintiff has worked her case in reverse by claiming injuries and speculating that those injuries must have been Defendants' fault. Foundation for Plaintiff's *a posteriori* assumption simply does not exist. Not one of the deponents provided anything more than mere speculative conjecture as to how this accident occurred. There is no evidence that any negligent act or omission or Defendant's with respect to premises maintenance, safety, staff training, policies, or procedures caused the light to fall.

Furthermore, Plaintiff's experts have been unable to present any evidence whatsoever regarding the exact manner in which the light was installed prior to its fall or how that manner may have violated any manufacturer's recommendations, codes, regulations, or industry standards. Thus, no one can say what caused this accident. Even if this conjecture is to be

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believed, Plaintiff's burden is not to prove how this accident *might* have occurred, or what preventative measures may have *prevented* it, but how it *did* occur.

No evidence of a failure to exercise reasonable care exists in this matter. In fact, Plaintiff's own expert James Rivenbark testified that as a restaurant manager, he would have approached this situation in much the same way as did Defendant (Rivenbark Dep. at 54:13 – 55:2; s*ee also* 67:1). The lack of any evidence proving causation forces Plaintiff to rely on *res ipsa loquitur* through alleging that Defendant somehow caused this light to fall through a mechanism apparently unknown and unobservable to all parties. This is neither an accurate statement of the duty of reasonable care nor a supportable theory of recovery under South Carolina law. Therefore, Defendant is entitled to summary judgment because Plaintiff cannot present a credible scintilla of admissible evidence proving that any negligent act or omission on Defendant's behalf caused this light to fall, and thus any jury considering this case would have to impermissibly rely on *res ipsa loquitur*.

III. Even if the light was installed in a dangerous or defective manner, the only reasonable inference from the record is that it would have been so installed by an independent contractor.

Even assuming that there was sufficient evidence in the record to support a finding that the light was installed in a dangerous or defective condition, Defendant would still be entitled to summary judgment because the only reasonable inference from the record as presented is that any supposedly negligent acts or omissions were solely those of the DJ as an independent contractor. An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of the work. *Chavis v. Watkins*, 256 S. C. 30, 180 S. E. 2d 648 (1971). Generally under South Carolina law, a principal is not responsible for the

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negligence of an independent contractor. *See, e.g., Duane v. Pressley Construction Co.,* 270 S.C. 682, 244 S.E.2d 509 (1978).

Under these circumstances, the principal is shielded from liability because he has no control over the manner in which the contractor performs the work. *See id.* The only exceptions are 1) in the case of inherently dangerous work, 2) if the principal sees and realizes that the contractor is performing the work in a dangerous manner, 3) if the contractor is known to be unworthy of trust, 4) in the case of a nondelegable duty, or 5) when the principal has hired the contractor for the purpose of performing a wrongful act. *See Blue Ridge Rural Electric Co-op, Inc. v. Byrd,* 238 F. 2d 346 (4th Cir. 1956), *rev'd on other grounds*, 356 U. S. 525 (1958); *Alexander v. Seaboard Air Line R. Co.,* 221 S. C. 477, 71 S. E. 2d 299 (1952); *Simmons v. Robinson*, 303 S. C. 201, 399 S. E. 2d 605 (Ct. App. 1990), *rev'd on other grounds*, 305 S. C. 428, 409 S. E. 2d 381 (1991); *Colin v. City Council of Charleston*, 49 S. C. L. (15 Rich.) 201 (1868).

None of these exceptions apply to this case. Assuming *arguendo* that the light was installed in a dangerous or defective condition, there is no evidence that anyone other than the DJ created this condition. The only reasonable inference from the evidence in this case is that the DJ solely owned, controlled, maintained, and installed the light. The indisputable evidence in this case likewise proves that the DJ was an independent contractor, not an employee. There is no evidence that the lighting installation in this case concerns inherently dangerous work, presents a nondelegable duty, involved an untrustworthy contractor, or that the contractor was hired to perform a wrongful act. There is no evidence that Defendant or any of its employees saw a contractor performing work and realized that it was being done in a dangerous manner. Therefore, assuming that the light was installed in a dangerous or defective condition, Defendant

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would still be entitled to judgment as a matter of law because the only reasonable inference from the record is that any such installation would have been performed by an independent contractor.

IT IS THEREFORE ORDERED THAT summary judgment is **GRANTED** in favor of Defendant Tall Sam I Am, LLC d/b/a Tabbuli as to all of Plaintiff Stefani Eddins' causes of action.

IT IS SO ORDERED.

____
THE HONORABLE BENTLEY PRICE
Presiding Judge
Ninth Judicial Circuit

________________________, South Carolina

____________________, 2022

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Charleston Common Pleas

Case Caption: Stefani Eddins VS Tall Sam I Am Llc , defendant, et al

Case Number: 2020CP1002481

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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