STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

Aaron Green,

Plaintiff,

v.

B L, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-06-0321

ORDER GRANTING
SUMMARY JUDGMENT

Plaintiff alleges that he fell over a mat on the public sidewalk outside the Defendant's Subway restaurant on Main Street in Barnwell, South Carolina. Because this accident occurred on a public sidewalk, this is not a typical premises liability case. A landowner or occupier abutting a public sidewalk generally owes no duty with respect to the sidewalk. *Shaw v. City of Charleston*, 351 S.C. 32, 567 S.E.2d 530 (Ct.App. 2002).

Plaintiff must therefore prove that: (1) Defendant placed the mat on the side walk; (2) the mat was unsafe; and (3) the mat actually caused Plaintiff's injury. *See id.* Defendant moved for summary judgment, arguing that there is no evidence that a mat was even present when Plaintiff fell, that the mat was unsafe in any way, or that the mat caused the fall.[1] Plaintiff admits he did not see the mat before or after his fall and that he does not know why he fell, but argues that there is some evidence a mat was present, and that Defendant's motion is premature because further discovery is necessary.

After careful consideration of the arguments and submission of counsel, the court GRANTS Defendant's motion for summary judgment for the reasons set forth below.

[1] Defendant initially raised the statute of limitations, but Defendant withdrew that argument without prejudice.

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I. Plaintiff Failed to Show that the Mat Was Defective or Unsafe.[2]

Plaintiff must show that Defendant created an unsafe condition. *Shaw v. City of Charleston*, 351 S.C. 32, 567 S.E.2d 530 (Ct.App. 2002). However, a floor mat in and of itself is not inherently unsafe or dangerous. *See* 65A C.J.S. *Negligence* § 708 (Database updated 2013) (the mere presence of rug, mat or carpet on the floor does not constitute actionable negligence); 62A Am. Jur. 2d *Premises Liability* § 513 (Database updated 2013) (an owner may not be held liable for a customer's injuries resulting from a fall allegedly caused by tripping over a floor covering, unless there is some evidence that the covering contained some defect, or created a dangerous condition, and that the owner had notice of such dangerous condition or defect). In many cases, floor mats are used as safety devices, and store owners have been found negligent for failing to use floor mats.

Plaintiff must therefore come forward with evidence that the mat was defective or dangerous in some respect. Plaintiff failed to make this showing. He admits that:

- he did not see the mat either before or after his fall. (Green Dep. at 12:23 to 13:13);
- he has no personal knowledge of the mat whatsoever. *Id.* at p. 22:14 to 23:10;
- the mat was not curled up or folded over. *Id.* at p. 22:5-9;
- there was no water or moisture on the surrounding sidewalk; the sidewalk was dry. *Id.* at 27:3-7; and
- he does not recall if his clothes were wet after the fall or if there were any foreign substances on his pants or clothes after the fall. *Id.* at p. 19:2-6.

Plaintiff submitted no expert testimony and did not identify any industry standard or safety regulation which could have been violated.

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[2] Defendant argued that Plaintiff could not establish a mat was present when he fell. Plaintiff did see a mat when he returned to the scene weeks after the accident. The Court need not resolve whether the subsequent presence of the mat creates an inference that the mat was in place at the time of the fall because Plaintiff failed to come forward with any evidence that the mat was unsafe or dangerous, or that the mat, if present, caused his fall.

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Plaintiff did not produce *any* evidence which indicates that the mat was unsafe or dangerous.

II. Plaintiff Failed to Show that the Mat Caused His Fall.

Additionally and alternatively, the Court concludes that Plaintiff failed to establish that the mat, if present, caused his fall. When asked why he fell, Plaintiff stated that he did not know, he just went down. *Id.* at p. 12:23-13:13. The only evidence presented which connects the mat to Plaintiff's fall is the statement of an unidentified person at the hospital that Plaintiff tripped on the mat.

Defendant argues that this statement is inadmissible hearsay, and cannot be considered on summary judgment. *See Robertson v. First Union Nat'l Bank*, 350 S.C. 339, 565 S.E.2d 309 (Ct.App. 2002) (rules of procedure require parties to present admissible evidence at summary judgment hearing). Plaintiff did not challenge this argument at the hearing, and the Court agrees with Defendant that this statement is hearsay. It is an out of court statement asserted to prove the truth of the matter – that Plaintiff tripped over the mat. It is neither a present sense impression nor an excited utterance admissible under Rules 803(1) and 803(2), SCRE because it was not made at the scene of the accident, but sometime thereafter by someone at the hospital.

Because this statement cannot be considered, and there is no other evidence of causation, Plaintiff has failed to raise an issue of fact regarding the cause of his fall.

III. Defendant's Motion Was Not Premature.

Plaintiff's final argument is that the motion for summary judgment is premature. It is true that summary judgment should not be granted where a party has not had a full and fair opportunity to complete discovery. *Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537 (1991). However:

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> [a] party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact.

Guinan v. Tenet Healthsysems of Hilton Head, Inc., 383 S.C. 48, 677 S.E.2d 32 (Ct.App. 2009).

Here, Plaintiff has had years to undertake investigation of this case. Plaintiff fell in March of 2007. He filed suit three years later in March of 2010. This suit was dismissed pursuant to Rule 40(j) in June of 2011. It was restored under a new case number by order filed September 26, 2012. In short, more than 6 years has passed since Plaintiff's accident. More than three years has passed since this suit was originally filed. In that time, Plaintiff has not served a single discovery request or taken even one deposition.

While Plaintiff's counsel stated he hoped to conduct some additional discovery, he failed to explain why he had insufficient time to do so previously. The rule that summary judgment should not be granted where a party has not had a full and fair opportunity to complete discovery is not designed to protect a dilatory party. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); *see also Middleborough Horizontal Property Regime Council of Co-Owners v. Montedison S.P.A.*, 320 S.C. 470, 465 S.E.2d 765 (Ct.App. 1995) (plaintiff advanced no good reason why 4 months was insufficient to develop documentation in opposition of summary judgment).

Defendant's Motion for Summary Judgment is hereby GRANTED.

The Honorable A. Doyet Early, III
Presiding Judge

June 19, 2013