

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Donna Douglass,

Plaintiff,

v.

Berkshires on St. Ives, Berkshire Property
Advisors, LLC, BVF North Cove LLC
and The Berkshire Group,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2013-CP-10-7133

ORDER

FILED
2015 APR 27 PM 12:24
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court upon Defendants' Motion for Summary Judgment. A hearing was held on April 8th, 2015 whereby Jerry Wigger represented Plaintiff and James Brogdon represented Defendants. After carefully considering the applicable law, arguments of counsel and supporting memoranda submitted by the Parties, I hereby GRANT Defendants' Motion for Summary Judgment as to all of Plaintiff's claims.

STANDARD

Summary judgment is appropriate where "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 judgment as a matter of law." Rule 56(c), SCRPC. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party." *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). However, "[i]t is not sufficient [to defeat a motion for summary judgment] that one create an inference which is not reasonable or an issue of fact

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that is not genuine.” *Shuler v Tuomey Reg'l Med. Ctr.*, 313 S C 225, 437 S E 2d 128, 129 (Ct. App. 1993). “In order to resist a motion for summary judgment, the non-moving party must come forward with specific facts showing genuine issues necessitating trial.” *NationsBank v. Scott Farm*, 320 S.C. 299, 303, 565 S.E.2d 98, 100 (Ct. App. 1995).

LAW

“The owner of property owes to an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of such duty.” *Larrimore v. CP&L*, 340 S.C. 438, 444-45, 531 S.E.2d 535, 538 (Ct. App. 2000) (quoting *Israel v. Carolina Bar-B-Que, Inc.*, 292 S.C. 282, 289, 356 S.E.2d 123, 128 (Ct. App. 1987), *cert. denied*, 293 S.C. 406, 360 S.E.2d 824 (1987) (citation omitted)). To recover for injuries caused by a dangerous condition, “a plaintiff must show either (1) that the injury was caused by a specific act of the defendant which created the dangerous condition; or (2) that the defendant had actual or constructive knowledge of the dangerous condition and failed to remedy it.” *Wintersteen v. Food Lion*, 344 S.C. 32, 35, 542 S.E.2d 728, 729 (2001). Generally, landowners are under no duty to warn invitee’s of open and obvious conditions. *Larimore*, 340 S.C. 438, 445, 521 S.E.2d 535, 539 (Ct. App. 2000).

“[U]nder South Carolina's doctrine of comparative negligence, a plaintiff may only recover damages if his own negligence is not greater than that of the defendant.” *Bloom v. Ravoir*, 339 S.C. 417, 422, 529, S.E.2d 710, 712-13 (2000) (citing *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991)). “In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent.” *Id.* (citations omitted).

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FACTS

This case arises out of an alleged trip and fall that occurred on January 6, 2011 in a stairwell at an apartment complex owned by Defendants in North Charleston, South Carolina. Plaintiff testified in her deposition that a burned out light in the stairwell created the darkness that caused her fall, and there were no lights burned out during her previous visits to the 700 building. Plaintiff also testified that she was aware the light was out before her fall and chose to traverse the dark stairwell. In addition, Plaintiff testified that she did not know (1) when the light went out, (2) what caused the light to go out, (3) whether the light outage had been reported to Defendants, or (4) whether a representative of Defendants noticed the light was burned out. Plaintiff submitted no evidence indicating Defendants' possessed actual or constructive notice of the light outage and, in fact, argues that notice is not required because Defendants' created the condition by placing the light in the stairwell and failing to replace the light bulb prior to it burning out. Plaintiff submitted no evidence relating to industry standard or any alleged building code violations to support her theory. Defense counsel argued, and the Court agrees, that such a theory is nonsensical as it is impossible to anticipate with any degree of accuracy when a light bulb may burn out, and to create such a standard would be to treat Defendants as the insurers of Plaintiff's safety.

FINDINGS

1. The condition that caused Plaintiff's fall was a burned out light bulb.
2. Despite Plaintiff's contention, Defendants did not create the condition of a burned out light bulb.
3. Under South Carolina law, Plaintiff was required to prove Defendants had actual or constructive notice of the condition that caused her injury. Plaintiff produced no

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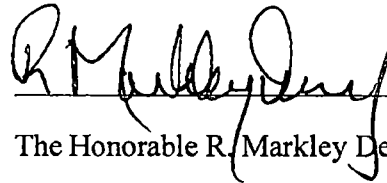
evidence that Defendants' possessed actual or constructive notice of the burned out light bulb at the time of Plaintiff's fall.

4. Without notice, Defendants did not owe Plaintiff a duty to warn of or remedy the lighting condition that Plaintiff claims caused her fall. As a result, Plaintiff's causes of action against Defendants must fail as a matter of law.
5. As an alternate ground, Plaintiff bears greater than fifty-percent (50%) of the fault for causing her fall by assuming the risk of traversing the dark stairwell despite recognizing the danger associated with doing so prior to her fall. As a result, Plaintiff's causes of action against Defendants must fail as a matter of law.

IT IS THEREFORE ORDERED:

Defendants' Motion for Summary Judgment is hereby GRANTED.

AND IT IS SO ORDERED.



The Honorable R. Markley Dennis, Jr.

Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

April 23, 2015

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