STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
VANESSA WIGGINS, Plaintiff, v. ALDI, INC., Defendant.	)	Civil Action No. 2017-CP-40-05549 **ORDER GRANTING DIRECTED VERDICT**

Procedural History

Plaintiff filed suit against Defendant on September 14, 2017 for alleged injuries arising out of a fall on June 17, 2017. On November 20, 2018 the parties agreed to a Consent Scheduling Order to place this matter on the Richland County Trial Roster for the week of December 10, 2018. On December 10, 2018, Plaintiff requested a one week continuance due to illness. This matter was set for trial the week of December 17, 2018. On December 14, 2018, Plaintiff moved to continue and/or dismiss the suit without prejudice. Plaintiff's motions were heard and denied on December 17, 2018. Plaintiff made the decision at that time to proceed with trial. The undersigned conducted a hearing on all motions in limine on December 19, 2018. Trial in this matter was commenced on December 20, 2018. Present at the trial were Plaintiff and her counsel Kelly Burnside and Frank Barton, a representative of Defendant (Kingsley Spiller), and counsel for Defendant Brett Bayne. At the close of Plaintiff's case, Defendant moved for a directed verdict pursuant to SCRCP Rule 50 on all causes of action. Following arguments of the parties, a review of the evidence and testimony, and a review of pertinent case law, the undersigned orally GRANTED the Directed Verdict Motion in favor of Defendant. This Order memorializes the

oral ruling in this case.

Factual Background

Plaintiff was a customer at an ALDI store on June 17, 2017. During the course of checking out, Plaintiff requested a chair to sit in. An ALDI employee brought a chair to Plaintiff. The chair was a standard office style chair with wheels and no arms. The chair was not defective and no allegation was made by Plaintiff that the chair was defective in any way. The ALDI employee wheeled the chair to Plaintiff. Video surveillance and testimony by Plaintiff revealed Plaintiff observed the employee wheel the chair to and bring the chair behind Plaintiff. Video surveillance revealed Plaintiff observed the employee walk away from the chair. Thereafter, approximately 3-5 seconds later, Plaintiff attempted to sit down, missed the chair, and fell to the ground. In the process of falling to the ground, Plaintiff grabbed her shopping cart and pulled it down on top of herself. Plaintiff filed this suit on September 14, 2017 alleging Defendant ALDI was "negligent, willful, wanton, and grossly negligent" in one or more of nine (9) ways enumerated in the Complaint.

Legal Standard

Rule 50 states: 'The motion for directed verdict may be made at the close of plaintiff's evidence, as well as at the close of all the evidence."' Estate of Haley v. Brown, 370 S.C. 240, 251, 634 S.E.2d 62, 68 (Ct. App. 2006). "In ruling on a motion for a directed verdict, the trial court must view the evidence and the inferences which reasonably can be drawn therefrom in the light most favorable to the party opposing the motion." Id. "In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or nonexistence of evidence." Id. "This court is not concerned with the weight of the evidence, but whether there is any evidence from which the jury is warranted in making a finding." Id. "When the evidence

yields only one inference, a directed verdict in favor of the moving party is proper." Id. "A directed verdict should be granted where the evidence raises no issue for the jury as to the defendant's liability." Fletcher v. Med. Univ., 390 S.C. 458, 462, 702 S.E.2d 372, 374 (Ct. App. 2010).

Legal Analysis

The undersigned surveyed both South Carolina and other state law to find the most applicable cases to this type of accident. The most specific case on point comes from Georgia. In Ford v. Bank of America 627 S.E.2d 376, 277 Ga.App. 708 (2006), the plaintiff (Hazel Ford) fell in a Bank of America when trying to sit down. The facts of that case are *identical* to this case. The court stated "Construing the evidence in the light most favorable to Ford, the record reveals that Ford entered the bank, located inside a grocery store…She had been in the bank many times, and it was not configured any differently that day. She backed up to an office chair with wheels, and as she started to sit down, the chair "just went out from under" her. She fell to the floor…" Id. In this case, Plaintiff did exactly what the plaintiff in Ford did—backed up to sit in a chair with wheels, failed to properly sit down, and the chair went out from under plaintiff causing a fall.

Ford has even more identical similarities to this case. The court notes the following facts which are present in this case: "…she admitted that she had sat in 'those chairs before in the banking center,' that she had sat in chairs with wheels before, and that nothing obstructed the chair wheels from her view. When asked if there was anything on the floor that caused the chair to slip out from under her, Ford responded, 'I didn't see it.' Finally, when asked if the chair was defective, she said, 'I don't know. Not to my knowledge. I did not examine it.'" Id. In this case, Plaintiff admitted she had sat in similar chairs before, testified there was nothing on the floor,

and had no knowledge of any defect in the chair.

The Ford court relied on a Georgia appellate case related to invitee and slip and fall. However, the standard in Georgia is the same as it is in South Carolina for the elements of proof required. Specifically, the court stated:

> "Proof of an injury, without more, is not enough to establish a proprietor's liability. Sams v. Wal-Mart Stores, 228 Ga.App. 314, 316, 491 S.E.2d 517 (1997). "[T]o recover for injuries sustained in a slip and fall action, an invitee must prove (1) that the defendant had actual or constructive knowledge of the hazard; and (2) that the plaintiff lacked knowledge of the hazard despite the exercise of ordinary care due to actions or conditions within the control of the owner or occupier." Hudson v. J.H. Harvey Co., 244 Ga.App. 479, 480, 536 S.E.2d 172 (2000). Without first establishing that a dangerous condition existed, the plaintiff cannot establish that the defendant knew about the danger and therefore cannot recover. Metts v. Wal-Mart Stores, 269 Ga.App. 366, 367, 604 S.E.2d 235 (2004); *Cohen v. Target Corp.*, 256 Ga.App. 91, 92-93, 567 S.E.2d 733 (2002)."

This is exact same standard is applied to invitee injury cases in South Carolina. Therefore, this court can apply the same rationale to a case which is factually identical.

Additionally, Ford advanced nearly identical arguments as Plaintiff in this case. Specifically, Ford alleged that "a chair with wheels on a slick, tile floor can certainly be a dangerous condition, and sub judice, did constitute a dangerous condition when [Ford] attempted to negotiate sitting in the chair." Id. The court rejected this argument and held "[m]erely stating that a condition is dangerous does not constitute evidence that it is so. Carroll v. Ga. Power Co., 240 Ga.App. 442, 443(1), 523 S.E.2d 896 (1999)." Id. The court noted the evidence was insufficient because the plaintiff "...proffered no expert testimony that the chair was hazardous, nor did she point to any rule or regulation allegedly violated by the chair, but simply testified that the chair was defective because it slid out from under her." Id. In the present case, Plaintiff has attempted to advance the same argument—that a fall while sitting de facto makes the chair

dangerous—and Plaintiff similarly failed to present any expert testimony that the chair or floor were hazardous, defective, or dangerous.

In sum, in Ford, the plaintiff attempted to sit down in a rolling style office chair and the chair merely came out from under her. The plaintiff could not identify any defect in the chair or the surface. The plaintiff could not point to any rule or regulation which was allegedly violated by the chair. The plaintiff's argument was merely "I fell, so it was dangerous." This is squarely within all four corners of this case. Plaintiff in this case has not identified a dangerous condition, has not identified any issues with the chair, and has done nothing more than show that she fell and as the Ford court succinctly stated—proof of an injury without more is not enough.

Another Georgia case which Ford relied upon is Weldon v. Del Taco Corp., 390 S.E.2d 87, 194 Ga.App. 174 (1990). In Weldon, the plaintiff received injuries when the chair she was occupying slipped out beneath her and dropped her to the floor. The court made the same holding as to "proof of nothing more than a fall" is insufficient to maintain a claim and establish negligence. Specifically, the court held

> "...according to the deposition testimony, there was no evidence of the presence of excessive wax or of any foreign substance on the floor; according to witnesses and appellant herself, the chair in which appellant was sitting appeared to be no different in design, construction, or condition from the other chairs in the restaurant; by her own admission, appellant had been in that restaurant many times and therefore could be presumed to be acquainted with and to have used its furnishings on previous occasions; she offered no reason for the chair's toppling other than that she was reaching to her left at the time. "[P]roof of nothing more than the occurrence of the fall is insufficient to establish the proprietor's negligence." J.C. Penney Co. v. Smith, 173 Ga.App. 612, 613, 327 S.E.2d 574 (1985); *cited* in Harmon v. Reames, 188 Ga.App. 812, 374 S.E.2d 539 (1988)."

This case is similarly analogous as it was to Ford. Plaintiff cannot present a *reason* why she fell or attribute the fall to any defect in the chair or the floor. Rather, Plaintiff fell and is attempting

to argue that the mere presence of a fall is proof of a dangerous condition. Simply put, it is not. Absent *proof* of more—not just assertion—Plaintiff's claim fails.

This issue has been taken up in numerous other venues as well. Each and every court which has addressed this specific type of fall—falling out of/while sitting down in a rolling chair—has determined that a chair with wheels is not a dangerous or defective condition of a premises.

In Jones v. United States, 194 F.Supp.3d 849, the United States District Court, E.D., Wisconsin, the plaintiff alleged the defendant was negligent when it allowed a rolling chair to be present in the waiting room of a clinic. The court stated "...wheeled chairs are in homes and offices everywhere and yet nowhere are they considered hazardous, particularly if they are on a carpeted surface. Because rolling chairs are so ubiquitous in society, the clinic was entitled to expect that patients and visitors alike would understand that the chair was mobile and that some modicum of extra care would be required with their use." The court went on to find "...any 'danger' arising out of the fact that the chair had wheels was an obvious one."

In Smith v. Marks Isaacs Co., 147 So. 118, 119 (La.Ct.App.1933), the plaintiff alleged negligence on the part of a beauty salon when it used a rolling chair "on a hard marble floor on which it could so easily roll." The court rejected that argument, concluding that "we cannot believe that such a chair if safe on a linoleum floor could be said to be unsafe just because of its use on a marble floor."

In Granison v. Builders Square, Inc., 266 A.D.2d 922, 922, 697 N.Y.S.2d 800, 801 (1999), the court of appeals reversed and found that the trial court should have granted summary judgment holding "neither the chair nor the manner of its placement amounted to a dangerous or defective condition, and plaintiffs failed to raise an issue of fact. Contrary to plaintiffs'

contention, defendant had no duty to lock or otherwise fix the wheels of the chair to prevent it from moving; mobility is the very function of the wheels. There is no evidence in the record that the chair 'constituted a hidden danger to plaintiff so as to require defendant [ ] to give her special notice or warning with respect to said object. * * * Furthermore, there is no duty to warn against a condition that can be readily observed by the use of one's senses.'"

Similarly, a court in Ohio appears to have recognized that the law does not treat persons as helpless infants, but instead as individuals with a duty to exercise ordinary care for their own safety. In Streets v. Chesrown Enterprises, the court of appeals cited the "open and obvious" doctrine to preclude liability when a wheeled chair slipped out from a customer at a car dealership: "appellant's claim fails under the open and obvious doctrine. It is clear that even an invitee has a duty to exercise care for his or her own safety.... It is also clear that in this case, appellant did not exercise care for her own safety. Appellant simply failed to look at the legs of the chair, misjudged the location of the chair, and did not grab onto the chair as she went to sit down." Streets v. Chesrown Enterprises, Inc., 2004 WL 235198, *3 (Ohio Ct.App.2004). The court stated "Appellant points to no specific evidence that Chesrown was unreasonable in any way, that the chair at issue was defective in any way, that having chairs with wheels on a hard linoleum type floor is unreasonably dangerous, or that Chesrown had notice of any defective condition. There is no evidence that any customers or employees fell from that chair or any other chair within the showroom. Therefore, we find the legs of the chair were an open and obvious condition appellant could have discovered upon reasonable inspection." Id. at *4.

In a Virginia case, a trial court overturned a jury verdict, recognizing the problem present here, which is that the Plaintiff simply has no idea what happened when she fell. The court stated "In the case-at-bar, plaintiff failed to prove even 'a probability of negligence.' At most, she

proved that she was directed to sit in a chair by an MCV employee in a position of authority, that the chair was on wheels, that it was on a linoleum floor, that it was designed to roll freely, that it had a relatively small back, that it had no arms, and that plaintiff was a relatively large woman. She did not prove how and why the accident happened. All she said was that the chair went out from under her when her buttocks contacted it. She did not say whether her buttocks made contact with the entire seat of the chair or whether, like the overwhelming majority of people have done at least once in their lives, she simply 'missed' the seat." Williams v. Com., 53 Va. Cir. 399, 2000 WL 1618010 (2000).

Also ruling as a matter of law, a federal district court in Mississippi rejected a claim that a chair was more dangerous because it was situated on a concrete floor, rather than on carpeting. "Plaintiff claims, however, that the removal of the carpet created a hazard because Piccadilly placed chairs with rollers on the bare concrete floor. Plaintiff has not offered any admissible evidence that a rolling chair on a concrete floor constitutes an unreasonable dangerous condition or hidden peril. Nor has plaintiff presented any other evidence that some other unreasonably dangerous condition existed which caused the chair to move from underneath her when she attempted to sit on it." Chapman v. Piccadilly Restaurants, Inc., No. CIVA 305CV354 HTWLRA, 2007 WL 2872417, at *2–3 (S.D.Miss. Sept. 26, 2007).

The Court of Appeals of Arizona also weighed in in the case of Castro v. J.K. House, Inc., No. 1 CA-CV 10-0467, 2011 WL 2176154, at *1 (Ariz. Ct. App. May 24, 2011). Mrs. Castro, a 73–year–old woman, was injured when she fell while having her fingernails done at Total Concept. At the time of the accident, she had been having her nails professionally done twice per month for approximately five years. Each time she had her nails done, Mrs. Castro followed the same routine. She sat on a rolling chair at a table where Corral filed, filled, and

buffed her nails. Mrs. Castro would get up from the rolling chair, go to the bathroom to wash her hands, return to the rolling chair at the table, and sit down to complete the process. On the day of the accident, Mrs. Castro returned from washing her hands in the bathroom, began to sit down on the rolling chair, and the chair rolled out from under her. As she fell, she grabbed the table in front of her, which was also on rollers, and the table fell on top of her. The Castro court stated "A business owner has an affirmative duty to maintain the premises in a reasonably safe condition. Tribe v. Shell Oil Co., 133 Ariz. 517, 519, 652 P.2d 1040, 1042 (1982). This standard of reasonable care requires the owner "to discover and correct or warn of hazards" that present a reasonably foreseeable danger to the invitee. Markowitz v. Ariz. Parks Bd., 146 Ariz. 352, 355, 706 P.2d 364, 367 (1985). The business owner is generally not liable for injuries to invitees from dangerous conditions that are open and obvious or are as well known to the invitee as to the owner. Tribe, 133 Ariz. at 519, 652 P.2d at 1042." In finding against the plaintiff, the court held "Here, the record demonstrates Mrs. Castro was fully aware of the conditions at the salon; indeed, the conditions at the salon were as open and obvious to her as they were to Total Concept."

"The cases cited above are all variations on the same theme. What emerges from this line of cases is that rolling chairs are not considered dangerous even when they are on smooth floors, and even when they involve less-than-steady plaintiffs. In addition, the courts cited above were ruling as a matter of law, either on summary judgment or in post-trial rulings. These courts have sensibly concluded that rolling chairs simply are not hazardous, and, to the extent they pose even a minuscule danger, that danger is an obvious one." Jones v. United States, 194 F. Supp. 3d 849, 855 (E.D. Wis. 2016).

Turning to South Carolina case law on similar issues, in Pringle v. SLR, Inc. of

Summerton, 382 S.C. 397, 675 S.E.2d 783 (2009), a restaurant patron filed suit when the chair patron occupied collapsed underneath patron. The Honorable George C. James granted Directed Verdict in the case.

In Pringle, the plaintiff was seated in a chair at a buffet when the chair suddenly collapsed underneath her causing her to fall for the floor. During the deposition, the plaintiff testified she did not notice anything wrong with the chair before it collapsed and that the chair was not "rickety," "wobbly," or otherwise unstable. She also admitted no prior issues with the chairs in prior visits or any knowledge of any prior issues with chairs for any other customers. Directed Verdict was granted because the plaintiffs "...failed to offer any evidence that Knights Inn knew the subject chair was defective or in a dangerous condition." Id. The Court of Appeals noted "[t]o recover damages for injuries caused by a dangerous or defective condition on a defendant's premises, a 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)." Id. Further, the court noted that even if the defendants *did* create the condition it was not sufficient to survive Directed Verdict "...unless there is evidence that in creating the condition, the defendant acted negligently. *See* Shain v. Leiserv, Inc., 328 S.C. 574, 576, 493 S.E.2d 111, 112 (Ct.App.1997) (stating the evidence required to show a condition created by the defendant was indeed hazardous must show the defendant was negligent either in the choice of materials used to create the condition or in the manner of their application)." Id. The Court of Appeals affirmed Directed Verdict stating "[t]o hold otherwise would be directly at odds with the applicable standard of care that "[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 a reasonably safe condition." Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001)." Id.

Plaintiff did not—and cannot—show in the present case that there 1) was a dangerous or defective condition, 2) even if there were a dangerous or defective condition that Defendant knew about any dangerous or defective condition, 3) Defendant did anything to create a dangerous or defective condition, and/or 4) even if there were a dangerous or defective condition that Defendant acted negligently to create the condition. Plaintiff's claim(s) must fail.

Another South Carolina case touches on premises liability issues, albeit with a door instead of a chair. In McElmurray v. The Cato Corporation, 2011 WL 13175156 (June 13, 2011, Judge Doyet A. Early, Aiken County Common Pleas), the plaintiff alleged she was injured when a dressing room door fell and caused her injuries. The defendants denied having any knowledge of a defective or dangerous condition and there was no evidence presented by plaintiff to suggest otherwise. The court held "...[defendant] had no notice of any defect in the dressing room door that allegedly fell on the plaintiff. If [defendant] had no notice, the plaintiff's case must fail. To recover damages for injuries caused by a dangerous or defective condition on a defendant's premises, a plaintiff must show that either the injury was caused by a specific act of the defendant which created the dangerous condition, or that the defendant had actual or constructive knowledge of the dangerous condition and failed to remedy it. Pringle v. SLR, Inc. of Summerton, 382 S.C. 397, 675 S.E.2d 783 (Ct. App. 2009)." Id.

As in Pringle above, Plaintiff's case fails under the McElmurray case as well. Plaintiff has presented no evidence of a defective or dangerous condition nor that Defendant had notice of any defective or dangerous condition. Because of that, Plaintiff's claim fails and Directed Verdict is proper.

Garvin v. BI-LO, Inc., 343 S.C. 625, 541 S.E.2d 831 (2001) is the seminal case dealing with the duties of a shopkeeper and the genesis of the jurisprudence which states that a shopkeeper is not the insurer of a customer's safety. In Garvin, a customer was injured when a display of canned items fell onto her as she reached up and took cans off the top of the stack. Garvin filed suit against Bi-Lo alleging, *inter alia,* Bi-Lo had negligently created a condition which was dangerous to its invitees. Bi-Lo was granted Directed Verdict on the ground that a) Bi-Lo had no notice of a problem with cans falling, and b) there was no evidence Bi-Lo committed a negligent act which caused the cans to fall.

The court held "[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.* Pennington v. Zayre Corp., 252 S.C. 176, 165 S.E.2d 695 (1969)." Id. The court further explained, as also noted throughout this memorandum, that "[t]o recover damages for injuries 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, 371 S.E.2d 530 (1988); Pennington v. Zayre Corp., 252 S.C. 176, 165 S.E.2d 695 (1969); Hunter v. Dixie Home Stores, 232 S.C. 139, 101 S.E.2d 262 (1957); Cook v. Food Lion, Inc., 328 S.C. 324, 491 S.E.2d 690 (Ct.App.1998)." Id.

In granting Directed Verdict, the court noted "[t]his evidence is insufficient, as a matter of law, to demonstrate the store created a dangerous condition. Absent evidence of some defective manner of stacking the boxes, or that Bi-Lo was on notice that the stacked cans had become rickety, there is simply no evidence from which a jury could find a dangerous condition

was created by Bi-Lo...To accept Garvin's contention would render Bi-Lo an insurer of its customers' safety. This is simply not the law in South Carolina." Id.

Plaintiff's contentions are the same in this case—she seeks to have ALDI held responsible as the insurer of her safety. Plaintiff simply failed to properly sit down in a chair. ALDI undertook no duty to assist her or insure that she was properly seated. Plaintiff has not—and cannot—point to a single legal duty ALDI owed or breached in the process of Plaintiff sitting in a chair. Further, Plaintiff has not—and cannot—show any evidence that ALDI was aware of any dangerous or defective condition with the chair, cart, and/or floor or that ALDI did anything negligently to create a dangerous or defective condition with the chair, cart, and/or floor. Directed Verdict is required.

Conclusion

Based on the foregoing, Directed Verdict is proper for Defendant. Plaintiff fell because she missed the chair and sat down "short" of the chair. Plaintiff did not ask for assistance in sitting down and has testified she did not need assistance in sitting down. As Plaintiff missed the chair and fell, she grabbed her shopping cart and pulled it down on top of herself. Plaintiff has not alleged the chair was dangerous or defective, the shopping cart was dangerous or defective, or the flooring surfaces were dangerous or defective. Plaintiff did not call any experts to testify to any issues relating to the chair, cart, and/or floor. Even if such allegations were made, Plaintiff has not made any showing of any dangerous or defective condition of the chair, cart, and/or floor—let along a showing sufficient to survive Directed Verdict.

Plaintiff has admitted she is not aware of any dangerous condition. Plaintiff has admitted she did not need assistance. Plaintiff has admitted she observed the chair prior to sitting. Plaintiff has admitted she did not look back at the chair prior to sitting down. Plaintiff has admitted there

was nothing that prevented her from sitting in the chair properly. Plaintiff has admitted she was not instructed to sit nor was she given an "all clear" type signal to sit down. Plaintiff admits it is "prudent" to look before you sit but admits she did not do so. Plaintiff admitted she was aware that rolling chairs may move before or while sitting down. Plaintiff went so far as to admit it was "common sense" that chairs with wheels may move.

Further, even if there was a showing that the chair constituted a danger—and none was made—any danger alleged by Plaintiff would constitute an open and obvious condition where Plaintiff admits she was aware the chair had wheels, observed the chair being rolled on wheels, and admits she knew chairs with wheels could move when sitting.

Plaintiff has not advanced a single viable theory of recovery or negligence. Further, case law both in South Carolina and in other states make it clear there is no liability for the exact type of fall suffered by Plaintiff. The Ford case cited herein is an identical fall to the fall suffered by Plaintiff—down to the exact same argument advanced by Plaintiff. The court in Ford affirmed a grant of summary judgment against the plaintiff. Other cases cited herein (Weldon, Pringle, McElmurray, Garvin, etc.) related to falls, chairs, and other conditions also support a grant of Directed Verdict for Defendant. The entire progeny of cases on this issue reveal that the mere fact of a fall involving a chair, absent more, is insufficient to impute a legal duty or to survive Directed Verdict.

Robert E. Hood, Judge

January 25, 2019