

Scalise Builders of S.C., 374 S.C. 352, 355, 650 S.E.2d 68, 70 (2007). However, summary judgment should be granted when it is clear that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. United States Leasing Corp. v. Janicare, Inc., 294 S.C. 312 (Ct. App. 1988).

FACTUAL ANALYSIS

An in-depth review of the pleadings reveals that this case arises from alleged injuries sustained to the Plaintiff while staying at the Defendant's hotel, the Marriott, located at 4770 Goer Drive in North Charleston, South Carolina. The Complaint, filed on August 16, 2019, states that on November 30, 2017, Plaintiff checked into the Marriott Hotel with her mother. On December 1, 2017, Plaintiff alleges that she was in her room and prepared to perform work at the desk. Plaintiff states that after sitting down at the desk, the back of the desk fell and struck her right knee and thereafter struck her left knee. Plaintiff alleges that the back of the desk was not properly secured to the wall, that Defendant was aware of this problem, and that the desk panel fell from the wall thereby causing her injury.

The desk panel that is the subject of this litigation is a wooden panel that is placed in front of wires and outlets to create a more streamlined look to the hotel room. In order for the panel to be opened, it must be manually removed. However, the panel, is on a track that physically stops it from opening more than a few inches absent manual removal. This is due to the tongue and groove hinge system at the lower face of the panel. Similarly, the upper face of the panel is secured by magnetic attachments. If one wanted to remove the entire panel from the wall, they would have to first pull back and separate the upper face from the magnets and thereafter use physical force to lift the lower face of the panel up and remove it from its track.

For the panel to open more than six inches, manual removal through physical force would be required.

Against Defendant, Plaintiff alleges negligence/gross negligence and generally pleads that Defendant had actual or constructive knowledge of the alleged defective condition pertaining to the desk panel and thereafter failed to timely take action, warn the Plaintiff of such dangers, or properly remediate such hazard.

For the reasons stated herein, this Court hereby grants Defendant's Motion for Summary Judgment as there exists no question of material fact exists and Defendant is entitled to judgment as a matter of law. This Court would also note that ample discovery has taken place prior to this hearing therefore making this matter ripe for summary judgment.

LEGAL ANALYSIS

In order to recover under a negligence cause of action, Plaintiff must prove, by a preponderance of the evidence, that the Defendant owed her a duty of care, that Defendant breached that duty of care by a negligent act or omission, and that she suffered damages proximately caused by the breach of duty. *See, e.g., Snow v. Columbia*, 305 S.C. 544, 554, 409 S.E.2d 797, 803 (Ct. App. 1991) (elements a plaintiff must prove in a negligence cause of action); *Grier v. Cornelius*, 247 S.C. 521, 534, 148 S.E.2d 338, 344 (1966) (a plaintiff bears the burden of proving he or she "was injured as a proximate result of negligent acts or omissions of the" defendant).

Plaintiff bears the burden of proving each and every element of negligence, including Defendant's alleged lack of due care and proximate cause. *See, e.g., Snow*, 305 S.C. at 555, 409 S.E.2d at 803 (explaining that, "[n]o inference of negligence arise[s] from the mere fact of injury," because South Carolina does not recognize the rule of *res ipsa loquitur*); *Fowler v.*

Coastal Coca-Cola Bottling Co., 252 S.C. 579, 584, 167 S.E.2d 572, 575 (1969) (“where the cause of plaintiff’s injury may be as reasonably attributed to an act for which the defendant is not liable as to one for which he is liable, the plaintiff has failed to carry the burden of establishing that his injury was the proximate result of defendant’s negligence”).

With respect to premises liability cases, South Carolina adheres to the long-standing rule that a property owner owes its invitees “the duty of exercising ordinary care to keep the premises in a reasonably safe condition.” Pennington v. Zayre Corp., 252 S.C. 176, 178, 165 S.E.2d 695, 696 (1969). However, a property owner is “not required to maintain the premises in such condition that no accident could happen to a patron using them.” Denton v. Winn-Dixie Greenville, 312 S.C. 119, 120, 439 S.E.2d 292, 293 (Ct. App. 1993). In other words, a property owner is not an insurer of its patrons’ safety, “but rather owes them the duty to exercise ordinary care to keep the premises in a reasonably safe condition.” Cook v. Food Lion, 328 S.C. 324, 327, 491 S.E.2d 690, 691 (Ct. App. 1997). In addition, a landowner generally does not owe a duty to warn others of open and obvious conditions on the property.” Larimore v. Carolina Power & Light, 340 S.C. 438, 445, 531 S.E.2d 535, 539 (Ct. App. 2000).

In Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001), the plaintiff alleged that the store had created a dangerous condition by stacking cans of goods in their original shipping boxes. The Supreme Court held that the store was entitled to summary judgment because the evidence in the case was “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.” 343 S.C. at 628-629, 541 S.E.2d at 833.

In the present instance, despite ample discovery, there has been no evidence that Defendant was placed on actual or constructive notice of the alleged hazardous condition pled by Plaintiff. Specifically, there has been no evidence provided to date that the Defendant had actual or constructive notice that the entire desk panel could come off the wall thereby causing injury to patrons. This lack of evidence to prove the essential element of notice by Plaintiff is the basis for this Court's grant of summary judgment. In order for an invitee to recover damages for injuries caused by an alleged dangerous or defective condition on a defendant's premises, a plaintiff must show, "that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it." Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001); *see also* Wintersteen v. Food Lion, Inc., 344 S.C. 32, 35, 542 S.E.2d 728, 729-30 (2001).

A linchpin in succeeding on a premises liability cause of action is proving that Defendant had actual or constructive notice of the dangerous condition. In the present case, there is no evidence of actual notice. Specifically, Defendant's 30(b)(6) witness testified in his deposition that prior to this alleged incident, there had been no incidents of a similar nature that had occurred at the premises. Specifically, there had been no prior incidents where an entire wall panel came off the wall thereby causing injury to patrons. Accordingly, this Court finds that there are no questions of material fact that the Defendant had no actual notice of a possible alleged deficiency with respect to the wall panel.

Similarly, there also is no evidence to conclude that the Defendant had constructive notice. Constructive notice of a dangerous condition may be established by showing that the condition existed for a sufficient length of time that the storekeeper would or should have discovered and removed it had they used ordinary care. Gillespie v. Wal-Mart Stores, Inc., 302 S.C. 90, 91, 394 S.E.2d 24, 24-25 (Ct. App. 1990). Applying these principles to the facts at hand

would require a showing that the dangerous condition, that being the allegedly loose desk panel, had been occurring for a sufficient amount of time that it should have been discovered by the Defendant. However, constructive notice cannot be proven by mere allegations or speculation. It is well-established in South Carolina that a “jury should not be permitted to speculate that [the dangerous condition existed] for such a length of time as to infer that defendant was negligent in failing to detect and remove it.” Wimberley v. Winn-Dixie Greenville, Inc., 252 S.C. 117, 122, 165 S.E.2d 627, 629 (1969); *see also* Pennington, 252 S.C. at 178, 165 S.E.2d at 696 (without specific evidence of how long plastic bags had been on the floor, inferring the merchant had constructive notice “would be pure speculation”).

As there have been no similar incidents pertaining to the complete removal of the desk panel and injuries resulting therefrom, Defendant could not possibly have been placed on constructive notice. Indeed, numerous guests have undoubtedly stayed in the room where the desk is alleged to have malfunctioned with no complaints or evidence of incident. Accordingly, this Court finds that there is no questions of material fact that the Defendant had no constructive notice of a possible alleged deficiency with respect to the wall panel.

While an issue “must be submitted to a jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror . . . this rule does not authorize submission of speculative, theoretical and hypothetical views to the jury . . . as verdicts may not be permitted to rest upon surmise, conjecture or speculation.” Hanahan v. Simpson, 326 SC 140,149, 485 SE2d 903, 908 (1997); *see also* Small v. Pioneer Machinery, 329 SC 448, 494 SE2d 835 (Ct. App. 1997) (although disputed issues should be submitted to a jury, “this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury”).

Since Plaintiff cannot prove that Defendant breached any duty of care owed to her, she cannot meet an essential prong of her claim and Defendant is entitled as a matter of law to summary judgment. Indeed, this Court finds that there exists no question of material fact that Defendant had neither actual nor constructive notice of any possible hazardous conditions with respect to the wall panel. As such, Defendant is entitled to judgment as a matter of law.

CONCLUSION

Accordingly, this Court hereby finds that no question of material fact exists and that the Defendant is entitled to judgment as a matter of law. As such, this Court hereby GRANTS Defendant's Motion for Summary Judgment and dismisses this case with prejudice.

AND IT IS SO ORDERED.

The Honorable R. Markley Dennis
Judge of the Ninth Judicial Circuit

Charleston, South Carolina

_____, 2021



Charleston Common Pleas

Case Caption: Treca DeShields VS JHM Enterprises Inc

Case Number: 2019CP1004310

Type: Order/Summary Judgment

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060