IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Nancy Samardzija, Plaintiff, v. Metropolitan Pier & Exposition Authority, d/b/a McCormick Place, a municipal corporation, Chicago Automobile Trade Association, a not-for-profit corporation, General Motors, LLC, a foreign corporation, General Motors Company, a foreign corporation, General Motors Corporation, a foreign corporation, and Global Experience Specialists, Inc., a foreign corporation, Defendants.	)	No. 11 L 1648

MEMORANDUM ORDER AND OPINION

A property owner owes no duty to a business invitee injured on property that does not present an unreasonable risk of harm. Nancy Samardzija tripped and fell on the defendants' ramp although it contained no physical defects and complied with all architectural and building codes. The ramp may, however, have presented an unreasonable risk of harm because it was visually misleading. For that reason, the defendants' summary judgment motion is granted in part and denied in part.

FACTS

General Motors contracted with George P. Johnson Company to design a display for GM's Equinox sport-utility vehicle at the 2010 Chicago Auto Show. GP Johnson's design included a platform elevated 3¾ inches above the surrounding floor. The display's design included three different floor treatments in three different colors. White flooring material covered the platform while yellow-brown carpet covered the showroom floor below the platform. (Beyond the yellow-brown carpet on the showroom floor laid gray carpet between auto displays.) Between the white platform flooring and the yellow-brown carpet, GP Johnson engineers constructed a ramp covered with a shiny, silver-colored plastic-flooring material. The engineers had added the ramp to avoid a tripping hazard. The ramp was 30 inches wide, had a one-in-eight-inch slope, and complied with all architectural and building codes.

On February 14, 2010, Samardzija attended the Auto Show. She wanted to look at the Equinox engine display which sat atop a pedestal resting on the platform floor. Samardzija looked at the engine as she walked toward it. The lighting was bright, but Samardzija could not see the entire display because people were in front of her. She assumed that the carpet, silver flooring, and white flooring were on the same level. As Samardzija walked toward the engine display, the toe portion of her left shoe hit the ramp and she fell forward, landing on the platform floor. The impact broke Samardzija's left humerus and caused subsequent nerve damage.

Samardzija filed a four-count complaint;[1] each count is brought in negligence. The claims in each count are identical – that the defendants permitted a dangerous condition to exist, failed to repair it, failed to maintain the ramp, maintained it defectively, failed to warn of the dangerous condition, and caused, created, and allowed the condition to remain. The defendants denied each of the claims.

ANALYSIS

The defendants bring their motion pursuant to the Code of Civil Procedure. That statute authorizes summary judgment "if the pleadings, depositions, 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 a judgment as a matter of law." 735 ILCS 5/2-1005. A defendant moving for summary judgment may disprove a plaintiff's case by introducing affirmative evidence that, if uncontroverted, would entitle the defendant to judgment as a matter of law – the so-called "traditional test" – *Purtill v. Hess*, 111 Ill. 2d 229, 240-41 (1986) – or may establish that the plaintiff lacks sufficient evidence to establish an element essential to a cause of action – the so-called "*Celotex* test" – *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), *followed Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6. To create a genuine issue of material fact and defeat a summary judgment motion, a plaintiff must present enough evidence in response to support each essential element of a cause of action. *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 85 (1st Dist. 2004).

A legally recognized cause of action in tort is one that alleges facts, not conclusions, which, if proven, would establish that: (1) the defendant owed the plaintiff a duty; (2) the defendant breached the duty; and (3) the breach proximately caused the plaintiff's injury. *Iseberg v. Gross*, 227 Ill. 2d 78, 86-87 (2007). Duty is a question of law to be decided by the court. *Choate v. Indiana Harbor Belt R.R.*,

[1] The second-amended complaint includes counts against Metropolitan Pier & Exposition Authority, Chicago Automobile Trade Association, General Motors, LLC, George P. Johnson Company, and Gail and Rice, Inc. On July 30, 2012, the court dismissed Gail and Rice with prejudice; it is unclear from the electronic docket when the court dismissed the other defendants. The second-amended complaint incorrectly numbers the counts, but this court will consider there to be only four remaining.

2012 IL 112948, ¶ 22. As to duty, a landowner is liable for an invitee's injury caused by a property condition if the owner: (1) knows or through reasonable efforts should learn of the condition and its unreasonable risk of harm; (2) should expect that the invitee would not discover the danger or protect against it; and (3) fails to exercise reasonable care to protect the invitee. *See* Restatement (Second) of Torts § 343 (1965). Here, the defendants do not deny that they owed Samardzija a duty; rather, they argue that no breach occurred because the display was not defective.

Whether a defendant breaches a duty is generally a question of fact for a jury, *Mazin v. Chicago White Sox, Ltd.*, 358 Ill. App. 3d 856, 862 (1st Dist. 2005), *citing Adams v. Northern Ill. Gas Co.*, 211 Ill 2d. 32, 43-44 (2004), but only if there is a genuine issue of material fact, *Espinoza v. Joliet, Elgin & E. Ry.*, 165 Ill. 2d 107, 114 (1995). Here, Samardzija did not identify a single physical defect with the ramp. Indeed, her testimony is that the toe portion of her shoe stubbed the ramp, not that her shoe went into a crevice or struck a protrusion. Photographs of the display area confirm that there were no physical defects with the display's flooring. The ramp was 30 inches wide, had a one-in-eight-inch slope, and complied with all architectural and building codes.

Since the record does not indicate that the ramp was physically defective in any way, Samardzija's claims to the contrary are controlled by *Kimbrough v. Jewel Co's, Inc.*, 92 Ill. App. 3d 813 (1st Dist. 1981). There, the court affirmed a summary judgment order because Kimbrough could not identify a defect that caused her to fall. *Id.* at 818. Since Samardzija is in the same position, summary judgment is appropriate as a matter of law and is granted as to her claims that the ramp was physically defective.

What remains are Samardzija's claims that the display was visually defective, making it appear that the platform, ramp, and floor were level. The engineers implicitly understood that the height differential between the floor and the platform could be a tripping hazard, so they added the ramp and chose a different flooring material to enhance the slope. The ramp's compliance with architectural and building codes does not mean that it could not be a tripping hazard. Those codes apply to how ramps are to be constructed, but they do not control how any particular ramp will appear visually *in situ*. Since Samardzija testified that the floor, ramp, and platform appeared to be level, there remains a question of material fact as to whether the ramp as it appeared at the time Samardzija fell was reasonably safe given the lighting, pedestrian traffic, color selection, and other visual factors. Summary judgment is, therefore, inappropriate as to Samardzija's claims as they relate to the ramp's visual appearance.

For the reasons explained above:

IT IS ORDERED THAT:

1. The defendants' motion for summary judgment is granted in part and denied in part;
2. Subparagraphs (a) – (f) are dismissed with prejudice as they pertain to physical defects;
3. Subparagraphs (a) – (f) are not dismissed as they pertain to alleged visual defects; and
4. The March 21, 2014 date at 11:30 a.m. will stand as a case management conference.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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