

No. 1-10-3467

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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GREGORY DE LEON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
v.	)	
	)	No. 07 L 9495
ALLIED BARTON SECURITY SERVICES, TISHMAN	)	
SPEYER REALTY OF ILLINOIS, a/k/a, TISHMAN	)	
SPEYER PROPERTIES, INC., and TST 525 W.	)	Honorable
MONROE, L.L.C.,	)	James P. McCarthy
	)	Judge Presiding.
Defendants-Appellees.	)	

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JUSTICE MURPHY delivered the judgment of the court.  
Presiding Justice Steele and Justice Neville concurred in the judgment.

**ORDER**

¶ 1 *HELD:* Plaintiff has not established that her right to an impartial jury was violated where she has not shown that she was forced to accept a juror that should have been excused for cause.

¶ 2 Plaintiff, Gregory De Leon, appeals from orders of the circuit court of Cook County entering judgment on the jury's verdict in favor of defendants, Allied Barton Security Services, Tishman Speyer Realty of Illinois, and TST 525 W. Monroe, LLC, and denying her posttrial

motion to vacate judgment and for a new trial. On appeal, plaintiff contends that her right to an impartial jury was violated where she exhausted her peremptory challenges and was forced to accept an objectionable juror as a result of the circuit court's failure to excuse two biased jurors for cause. For the reasons that follow, we affirm.

¶ 3

### BACKGROUND

¶ 4 On February 23, 2009, plaintiff filed an amended complaint against defendants in which she alleged various claims of negligence and *respondeat superior* in connection with a slip and fall she suffered on February 22, 2007, in the freight elevator of a building located at 525 West Monroe Street in Chicago. Jury selection took place on August 11, 2010, and during *voir dire*, the circuit court asked a group of the prospective jurors if they, or a relative or close friend, had been or were currently involved in a lawsuit. Jolanta Jarczyk, a prospective juror, raised her hand and stated that her brother owned an apartment building and had been sued in a dispute involving a tenant about five years earlier. The court asked Jarczyk if her brother's experience would prevent her from deciding this case based upon the evidence, and she responded "probably not." Plaintiff's counsel later asked Jarczyk if she would have difficulty being impartial in this case, and she responded that she would not. Jarczyk further stated that she thought it was wrong for someone to sue without reason, but also stated that people sometimes had legitimate reasons for bringing a lawsuit. In response to questioning by defense counsel, Jarczyk stated that she owned an apartment building as well.

¶ 5 In addition, plaintiff's counsel asked Brian Kibiloski, a prospective juror who taught economics, law, and computer lit at a suburban high school, if he would have difficulty being

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fair and impartial during this case, and he responded:

"I've been teaching law for 30 years and I've done a number of these cases in the classroom and so forth. One thing I have an irritation in society is people who like to blame other people or other institutions for their own actions. Also I think that – I understand when someone injures him or herself – I've fallen a few times too, and I never sued anybody. I took responsibility for my own actions.

At the time, I don't understand why businesses or organizations aren't able to come to some kind of agreement and throw a few – you know come to some agreement to figure this out. Like this case here, I don't understand why the two sides don't get together and figure it out because it seems like it would be something that once you take responsibility, their side should maybe offer some kind of compensation. I have definite opinions on cases like this."

Kibiloski also stated that he had not filed any lawsuits against the high school at which he worked even though he had slipped and fallen on water there more than a couple times and that he would be able to leave those experiences outside the courtroom and decide the case based just on the evidence and the law.

¶ 6 The court later referenced the fact that Kibiloski taught law and asked him whether he was prepared to follow the law as given by the court regardless of his own understanding of the law, and Kibiloski responded that he was prepared to do so. The court also asked Kibiloski whether he favored one side or the other, and he responded "I lean a little bit one way in that regard, unfortunately." In response to questioning by defense counsel, Kibiloski stated that he

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would be able to follow the law as provided by the court, decide the case based on the evidence, and award plaintiff with reasonable compensation if it was justified. Plaintiff's counsel then asked Kibiloski "am I correct in understanding what you said is, you lean in favor of the defendants in this case? Without hearing anything else, you lean in their favor; isn't that right?" Kibiloski answered that he was leaning in defendants' favor "slightly" and apologized.

¶ 7 Also, during *voir dire* plaintiff's counsel asked Dharti Patel, a prospective juror, about her feelings regarding personal injury lawsuits, and she responded:

"I have slipped and fallen, myself, at Jewel. They didn't have a 'wet floor' sign up. But I blame myself because I should have known. It was frozen foods. I'm sure there's water around. You know?

I didn't go and sue them or anything. I'm sure I would have made money. It's Jewel. But I didn't. It was my fault. I was bruised up a little bit, but whatever.

I'm not going to be indifferent about it, but – I mean, I would be indifferent. I am not weighed one way more than the other though."

Patel further stated that the facts in this case might differ from those in her fall and that she would not have any problem evaluating the evidence and awarding a verdict for substantial damages if they were reasonable.

¶ 8 Plaintiff challenged Jarczyk, Kibiloski, and Patel for cause, and those challenges were denied by the court. During the ensuing selection of jurors, plaintiff exercised all five of her allotted peremptory challenges, including challenges of Jarczyk and Kibiloski, and did not have

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any remaining to use on Patel, who was seated on the jury. Upon the conclusion of the trial, the jury reached a verdict in favor of defendants and against plaintiff and answered a special interrogatory by finding that plaintiff's injuries were not caused by her slipping on a puddle of liquid on the floor of the freight elevator at issue, and the court entered judgment on the jury's verdict.

¶ 9 Plaintiff then filed a motion to vacate judgment and for a new trial in which she asserted that the court erred by failing to excuse Jarczyk, Kibiloski, and Patel for cause and that she was forced to accept Patel as a juror after she had exhausted all her peremptory challenges. The court denied plaintiff's motion, finding that Patel was seated as a juror because plaintiff had misused her peremptory challenges, and not because it had erred by failing to excuse Jarczyk, Kibiloski, or Patel for cause.

¶ 10

#### ANALYSIS

¶ 11 Plaintiff contends on appeal that her right to an impartial jury was violated where she was forced to exercise peremptory challenges to Jarczyk and Kibiloski by the circuit court's failure to excuse those venirepersons for cause and therefore had to accept Patel as a juror because she had exhausted her allotment of peremptory challenges. A litigant is entitled to an impartial panel of jurors who are free from bias or prejudice. *Kingston v. Turner*, 115 Ill. 2d 445, 464 (1987). The circuit court has substantial discretion in determining whether to excuse a prospective juror for cause (*Addis v. Exelon Generation Co., LLC*, 378 Ill. App. 3d 781, 792 (2007)), and its decision regarding whether to do so will not be disturbed absent an abuse of that discretion (*People v. Shaw*, 186 Ill. 2d 301, 317 (1999)). A court's failure to remove a potential juror for cause is

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grounds for reversal only if the aggrieved party has exercised all its peremptory challenges and an objectionable juror was allowed to sit on the jury. *People v. Pendleton*, 279 Ill. App. 3d 669, 675 (1996).

¶ 12 Defendants initially assert that plaintiff is not entitled to a new trial even if the circuit court erred by failing to excuse Jarczyk or Kibiloski for cause because she has not established that the allegedly objectionable juror, Patel, should also have been removed for cause. Our supreme court first addressed the issue of whether a party is entitled to a new trial where the circuit court has allegedly erred in failing to grant the party's challenge of a prospective juror for cause in *Spies v. People*, 122 Ill. 1, 257-58 (1887), in which it held that the court's ruling on such a challenge "will only be reviewed when *an objectionable juror* was forced upon the party after it had exhausted its peremptory challenges." (Emphasis in original.) *Flynn v. Edmonds*, 236 Ill. App. 3d 770, 779 (1992). This court has since defined the term "objectionable juror" as a juror who should have been dismissed for cause and who would prejudice the case. *People v. Reid*, 272 Ill. App. 3d 301, 309 (1995); *Flynn*, 236 Ill. App. 3d at 782. Thus, to establish that she is entitled to a new trial, plaintiff must show that circuit court abused its discretion by failing to excuse Patel for cause.

¶ 13 Plaintiff, however, maintains that she need only show that she was forced to accept Patel as a juror and that she found her objectionable and would have used a peremptory challenge to excuse her to establish that she is entitled to a new trial, and cites to *People v. Delgado*, 231 Ill. App. 3d 117 (1992), and *People v. Washington*, 104 Ill. App. 3d 386 (1982), for support. In *Delgado*, 231 Ill. App. 3d at 121-22, this court held that the defendant had not established that he

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was prejudiced by the trial court's failure to excuse a potential juror for cause where he failed to allege that he had exhausted all his peremptory challenges or that an objectionable juror had been forced upon him. In *Washington*, 104 Ill. App. 3d at 392, this court held that the defendant had waived his claim that the trial court had committed reversible error by denying a challenge for cause of a prospective juror where he did not indicate to the trial court that he had been forced to accept an objectionable juror.

¶ 14 Thus, this court did not attempt to define the term "objectionable juror" in either *Delgado* or *Washington*, but merely held that a party must establish that it had exhausted her peremptory challenges, been forced to accept an objectionable juror, and informed the trial court that it was being forced to do so to be entitled to a new trial. As such, we see no reason to depart from the settled definition of an "objectionable juror" as one who should have been dismissed for cause set forth by this court in *Reid* and *Flynn*, and therefore determine that plaintiff may only be entitled to a new trial if she can establish that Patel should have been excused for cause.

¶ 15 A circuit court will be found to have abused its discretion during *voir dire* where it has thwarted the selection of an impartial jury. *People v. Adkins*, 239 Ill. 2d 1, 18 (2010). Initially, although plaintiff briefly asserts in her reply brief that Patel should have been excused for cause because she demonstrated a hostile attitude toward slip and fall claims, she has waived that argument by failing to raise it in her appellant's brief. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Chicago Joint Board, Local 200, Retail, Wholesale and Department Store Union v. Illinois Labor Relations Board*, 2011 IL App (1st) 101497, ¶ 31. Moreover, the record shows that Patel was not impartial or biased against plaintiff where she stated that the facts in this case might

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differ from the slip and fall she had suffered at a Jewel grocery store and that she would not have any problem evaluating the evidence and awarding a verdict for substantial damages if they were reasonable. We therefore conclude that plaintiff has not established that Patel should have been excused for cause or that her right to an impartial jury has been violated in this case.

¶ 16

#### CONCLUSION

¶ 17 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.