

No. 1-13-0810

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|---|---|--------------------|
| RICHARD RAAP,                               | ) | Appeal from the    |
|   | ) | Circuit Court of   |
| Plaintiff-Appellant,                        | ) | Cook County.       |
|   | ) |                    |
| v.  | ) |                    |
|   | ) | No. 10 L 008354    |
| DEUTSCHE BANK NATIONAL TRUST COMPANY,       | ) |                    |
| as Trustee for MORGAN STANLEY ABS CAPITAL I | ) |                    |
| TRUST 2006-HE3, and WELLS FARGO BANK,       | ) |                    |
| N.A. d/b/a PREMIER ASSET SERVICES,          | ) | Honorable          |
|   | ) | Kathy M. Flanagan, |
| Defendants-Appellees.                       | ) | Judge Presiding.   |

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JUSTICE NEVILLE delivered the judgment of the court.  
Justices Pucinski and Mason concurred in the judgment.

**ORDER**

¶ 1 *Held:* The failure to have a handrail on a stairway that was more than two risers high violated section 13-196-570 of the Chicago Municipal Code but, where plaintiff did not know why he fell or what caused his injuries, plaintiff's evidence failed to establish that the violation was the proximate cause of plaintiff's injuries.

¶ 2 Plaintiff, Richard Raap, a real estate broker, filed a second amended complaint against the

defendants, Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2006-HE3 (Deutsche Bank), and Wells Fargo Bank d/b/a Premiere Asset Services (Premiere Asset)<sup>1</sup>, for damages he sustained when he slipped and fell down the stairs of a building owned by Deutsche Bank. Raap alleged that the stairway was dangerous because it did not have a handrail, which violated the City of Chicago's building code. Premiere Asset filed a third party complaint against Chicago Real Estate Resources, Inc. (Chicago Real Estate), the company that it hired to market and sell the subject property, and alleged that Chicago Real Estate failed to report or repair the missing handrail and failed to remove the snow and ice on the stairs.

¶ 3 Deutsche Bank, Premiere Asset and Chicago Real Estate (the defendants) filed motions for summary judgment and argued that the failure to have a handrail was not the proximate cause of Raap's injuries because Raap testified that he did not know what caused his fall. The trial court granted the defendants' motions for summary judgment.

¶ 4 On appeal, Raap argues that the trial court erred when it granted the defendants' motions for summary judgment because the evidence created a genuine issue of material fact as to whether the missing handrail was the proximate cause of his injuries. We find that Raap did not know why he fell. Therefore, the evidence in the record did not establish that defendants' failure to have a handrail on the stairway was the proximate cause of Raap's injuries. Accordingly, we hold that the trial court

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<sup>1</sup>The record contains two different spellings for Premiere Asset: "Premier" and "Premiere." Premiere Asset indicated in its answer to Raap's second amended complaint that "Premiere" is the correct spelling and we will use that spelling.

did not err when it granted defendants' motions for summary judgment.

¶ 5 Background

¶ 6 On February 24, 2010, Raap sustained injuries when he fell on the front stairway of a building located at 5701 North Magnolia Avenue, Chicago, Illinois, that was owned by Deutsche Bank. Deutsche Bank acquired the property in a foreclosure proceeding. Premiere Asset was responsible for outsourcing the maintenance, marketing and selling the property to local real estate brokers. Premiere Asset hired Chicago Real Estate to market and sell the property.

¶ 7 Raap, in a second amended negligence complaint, sought damages from Deutsche Bank and Premiere Asset for the injuries he sustained when he slipped and fell on February 24, 2010. Raap contended that defendants failed to maintain the stairs in a reasonably safe condition, that the failure to have a handrail on the stairs made the stairs dangerous and violated the City of Chicago's building code, and that defendants' failure to have a handrail on the stairs was the proximate cause of his injuries.

¶ 8 Raap testified in his deposition that he arrived at the property on February 24, 2010, between 5:45 p.m. and 6:00 p.m., to show the property to Sei Jin Lee, a prospective buyer. When Raap and Lee arrived at the property, it was already dark outside. There were stairs at the front of the house which led to the front door. Raap went inside the house for approximately fifteen minutes and showed it to Lee. After showing the house, Raap and Lee exited the house. The south side of the stairway was covered with snow and ice and there was no handrail. The north side of the stairs ran alongside and touched the exterior wall of the house. Raap was walking on the north side of the stairway when he took one step and fell down the remaining seven stairs. Raap testified that he did

not know what caused him to fall and he did not recall if he was holding on to the exterior wall on the north side of the stairs before he fell.

¶ 9 Raap's attorney asked Raap, "[A]t the moment you did start to fall, did you reach out your left arm and hand to the left toward where the railing had been?" Raap responded that "I'm sure I tried to grab out to anything I could to stop myself." Raap also testified that he did not attempt to walk down the stairs on the south side because there was snow on the south side of the stairway and there was no handrail. Raap believed that the north side of the stairway was safer because there was no snow or ice on the north side of the stairs. Raap further testified that if there had been a handrail on the south side of the stairs, he could have grabbed it to prevent himself from falling. Finally, according to Raap, the accumulation of snow and ice on the stairs was natural.

¶ 10 Lee corroborated Raap's testimony that there was snow and ice on the south side of the stairway. Lee testified that he stood behind Raap as Raap attempted to walk down the stairs, that he saw Raap slip and fall down the stairs, that the fall happened "pretty fast," and that he did not know what caused Raap's fall.

¶ 11 After the fall, the paramedics arrived and took Raap to the hospital. Raap suffered a ruptured right quad muscle and had surgery.

¶ 12 Premiere Asset filed a third party complaint against Chicago Real Estate for breach of contract, indemnification and contribution. Premiere Asset alleged that it contracted with Chicago Real Estate to manage and sell the subject property and that Chicago Real Estate failed to report or repair the missing handrail and failed to remove the snow and ice from the stairs.

¶ 13 Chicago Real Estate, in its answer to Premiere's third party complaint, admitted that Neil

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Hackler, one of its employees, visited the subject property sometime prior to January 2010, to inspect it and prepare it for sale. During Hackler's visit, he noted that a handrail was missing from the outside stairs and that he saw a handrail on the ground next to the stairs.

¶ 14 On June 13, 2012, Chicago Real Estate filed its motion for summary judgment and argued that even if a handrail was on the south side of the stairs, Raap would not have used the handrail because there was snow and ice on the south side of the stairs. Therefore, Chicago Real Estate argued that Raap was unable to prove that the missing handrail caused his fall.

¶ 15 On October 9, 2012, Deutsche Bank and Premiere Asset filed a joint motion for summary judgment arguing that they owed no duty to Raap because the missing handrail on the stairway was an open and obvious condition and that Raap assumed the risk by climbing the stairs with knowledge of the missing handrail. Deutsche Bank and Premiere Asset also argued that Raap could not establish that the missing handrail was the proximate cause of his injuries because Raap testified that he did not know what caused his fall.

¶ 16 Raap did not file a response to the defendants' motions for summary judgment. Instead, he submitted the affidavit of Gregory P. Wisniewski, an architect, who opined that because the stairs had eight risers, the Chicago building code required a handrail on the stairway and that the stairway was unsafe and dangerous due to the lack of a handrail. Wisniewski also opined that "[t]he existence of handrails and guards in conformance with industry custom and practice and the building code would have provided support for the plaintiff's descent of the subject treads and risers. The existence of a handrail would have likely prevented the occurrence, would have facilitated recovery from slippage, and/or would have reduced the severity of the uncontrolled descent."

¶ 17 The trial court noted that Wisniewski's opinion--that a handrail would have prevented Raap from falling--was unsupported by any facts, was a legal conclusion, and failed to provide a casual nexus between the code violation and Raap's fall. The court found that Raap failed to provide any evidence which casually linked the defendants' failure to have a handrail to Raap's fall, and therefore, Raap could not prove that the failure to have a handrail was the proximate cause of his injuries. Accordingly, the court granted Deutsche Bank, Premiere Asset and Chicago Real Estate's motions for summary judgment. Raap moved the court to reconsider but the court denied the motion. Raap filed this appeal.

¶ 18 ANALYSIS

¶ 19 A trial court is permitted to grant a motion for summary judgment only 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. *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011). We review a trial court's order that grants a motion for summary judgment *de novo*. *Thompson*, 241 Ill. 2d at 438.

¶ 20 On appeal, Raap argues that he presented sufficient evidence for a jury to reasonably find that defendants' building code violation--the failure to have a handrail on a stairway which was more than two risers high--was the proximate cause of his injuries. Raap maintains that the alleged building code violation, coupled with his testimony--that when he was about to fall he reached out and attempted to grab anything he could to stop his fall--provide direct or circumstantial evidence of a causal connection between the missing handrail and his fall or, at least, create a genuine issue of material fact as to the proximate cause of his injuries.

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¶21 Raap supported his argument with his expert's opinion that the lack of a handrail on the south side of the stairway violated section 13-196-570(b) of the City's building code. Chicago Municipal Code § 13-196-570(b) (1990). Raap's expert testified that the stairway had eight risers, and that section 13-196-570 of the Chicago Municipal Code required the house stairs to have a handrail. Section 13-196-570 of the building code provides in pertinent part:

"Every stairwell and every flight of stairs, which is more than two risers high, shall have rails not less than two and one-half feet high, measured vertically from the nose of the tread to the top of the rail." Chicago Municipal Code § 13-196-570(b) (1990).

¶22 The defendants do not dispute the fact that the building's stairway where Raap fell had more than two risers. We find that the defendants' failure to have a handrail on the stairway violated the City's building code. Chicago Municipal Code § 13-196-570(b) (1990).

¶23 A violation of a statute or ordinance designed to protect human life or property is *prima facie* evidence of negligence. *Kalata v. Anheuser-Busch Companies, Inc.*, 144 Ill. 2d 425, 434 (1991). Chicago's building code was adopted for the protection and promotion of public health, safety and welfare. Chicago Municipal Code § 13-12-010 (amended Oct. 2, 1995). To prevail on a claim of negligence based on a violation of a statute or an ordinance designed to protect human life, the plaintiff must show that (1) the plaintiff is a member of the class of persons the statute or ordinance was designed to protect; (2) the injury plaintiff suffered is the type of injury that the ordinance was intended to protect against; and (3) the defendant's violation of the ordinance was the proximate cause of the plaintiff's injuries. *Kalata*, 144 Ill. 2d at 434. Violations of an ordinance or a failure

to comply with the building code, standing alone, without evidence that the violations caused the injury, do not establish proximate cause. *Strutz v. Vicere*, 389 Ill. App. 3d 676, 681 (2009).

¶ 24 The defendants do not dispute that Raap belongs to the class of persons that the ordinance was designed to protect or that his injury was the type of injury that the ordinance was designed to prevent. But, the defendants do dispute that the failure to have a handrail on the stairway was the proximate cause of Raap's injuries.

¶ 25 The term proximate cause has two distinct requirements, cause in fact and legal cause, and both requirements must be met in order to establish proximate cause. *Simmons v. Garces*, 198 Ill. 2d 541, 558 (2002). "A defendant's conduct is a 'cause in fact' of the plaintiff's injuries only if that conduct is a material element and a substantial factor in bringing about the injury. *Abrams v. City of Chicago*, 211 Ill. 2d 251, 258 (2004). A defendant's conduct is a material element and a substantial factor in bringing about injury if, absent that conduct, the injury would not have occurred. *Abrams*, 211 Ill. 2d at 258 (citing *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 258 (1999)). Legal cause, by contrast is largely a question of foreseeability. *Abrams*, 211 Ill. 2d at 258. The relevant inquiry is whether the injury is of a type that a reasonable person would see as a likely result of his or her conduct. *Galman*, 188 Ill. 2d at 258 (citing *Lee*, 152 Ill. 2d 432, 456 (1992)).

¶ 26 While the issue of proximate cause is ordinarily a question for the jury to decide, it is well settled that the lack of proximate cause may be determined as a matter of law by the court where the facts as alleged do not sufficiently demonstrate both cause in fact and legal cause. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 395-96 (2004). Liability cannot be based upon speculation, imagination or conjecture. *Kalata*, 144 Ill. 2d at 437. Proximate cause can only be established when

there is a reasonable certainty that the defendant's acts caused the injury. *Salinas v. Werton*, 161 Ill. App. 3d 510, 514 (1987). Although a plaintiff may rely on reasonable inferences which may be drawn from the facts considered during a hearing on a motion for summary judgment, an inference cannot be established on mere speculation, guess or conjecture. *Salinas*, 161 Ill. App. 3d at 515. The circumstances must justify an inference of probability as distinguished from mere possibility. *Salinas*, 161 Ill. App. 3d at 515.

¶ 27 Here, we must determine whether defendants' violation of the ordinance, by failing to have a handrail on the stairway, was a cause in fact of Raap's injuries. In deciding whether defendants' conduct was a material and substantial element in bringing about Raap's injury, we ask whether, absent the defendants' conduct, Raap's injury still would have occurred. *Galman*, 188 Ill. 2d at 260.

¶ 28 The defendants maintain that *Strutz* provides support for their argument that the missing handrail was not the proximate cause of Raap's injuries because Raap testified that he did not know what caused his fall. In *Strutz*, Russell, a tenant, sustained fatal injuries in a slip and fall accident on a staircase of a building owned by defendants. After Russell was injured, he told his wife "I fell down over the railing." Russell told the paramedics that he fell down the stairs and he told one paramedic that he was taking out the garbage and walking backwards when he slipped and fell. Russell's wife brought a negligence and wrongful death action against the landlord. *Strutz*, 389 Ill. App. 3d at 677. The wife's expert opined in his affidavit that the staircase and railing violated the City of Chicago's building code. The wife argued that the alleged building code violations, coupled with her testimony--that Russell told her that he fell down over the railing--were direct evidence of a casual connection between the staircase and Russell's fall. *Strutz*, 389 Ill. App. 3d at 678. The

court found that the testimony and affidavits failed to explain what caused Russell's fall. *Strutz*, 389 Ill. App. 3d at 681. The *Strutz* court held that the possibility that the alleged unreasonably dangerous staircase caused Russell to slip and fall was insufficient to establish the necessary causal relationship between the defendants' alleged negligence and Russell's injuries. *Strutz*, 389 Ill. App. 3d at 681; see also *Kellman v. Twin Orchard Country Club*, 202 Ill. App. 3d 968, 975 (1990) (holding that the possibility that an unreasonably dangerous condition in the shower stall had caused the deceased to fall was insufficient to establish a causal relationship between the defendant's alleged negligence and the injuries suffered by the deceased).

¶ 29 Here, the material facts are not in dispute. Both witnesses testified that there was snow and ice on the south side of the stairway. Raap testified that he fell after he took his first step but he does not know what caused his fall. Lee witnessed Raap's fall but testified that he did not know what caused Raap's fall.

¶ 30 We find that Raap's expert's opinion— that a handrail would have prevented Raap from falling— was based on speculation or conjecture about the cause of Raap's fall and injuries (see *Kalata*, 144 Ill. 2d at 437) and was an inadmissible legal conclusion. *Todd W. Musburger, Ltd. v. Meier*, 394 Ill. App. 3d 781, 800 (2009) (expert testimony as to legal conclusions that will determine the outcome of the case is inadmissible). Here, the evidence clearly establishes that the south side of the stairway had a natural accumulation of snow and ice, and that Raap did not attempt to use the south side of the stairs because he thought that the presence of snow and ice made the stairs unsafe. Raap failed to present any evidence which connected defendants' failure to have a handrail on the stairway to his injuries. Therefore, we find that Raap failed to establish that defendants' failure to

have a handrail on the south side of the stairs was a cause in fact of his injuries.

¶ 31 Raap relies on *Kalata* to support his contention that defendants' failure to have a handrail on the steps proximately caused his injuries. We find the facts in *Kalata* distinguishable from the facts in this case. In *Kalata*, the plaintiff was injured when he fell down a snow and ice-covered stairway while exiting a warehouse owned by defendant. The plaintiff testified that after he walked out the door, he took two steps toward the left-hand side of the stoop in order to reach the left handrail, and that his fall occurred as he was taking those steps. Plaintiff further testified that if a right handrail had been provided, he would not have crossed the icy stoop to reach the left handrail. *Kalata*, 144 Ill. 2d at 436. Plaintiff filed a complaint against the defendant alleging, *inter alia*, that the defendant was negligent when he failed to provide a handrail on both sides of the stairs, in violation of the City of Chicago's building code. The *Kalata* court found that the trial court reasonably inferred from plaintiff's testimony that the absence of a right handrail resulted in plaintiff's taking those two steps which led to his fall. *Kalata*, 144 Ill. 2d at 438. Therefore, the *Kalata* court held that the evidence sufficiently supported the trial court's finding that the absence of a right handrail was a proximate cause of plaintiff's injuries. *Kalata*, 144 Ill. 2d at 438.

¶ 32 Here, unlike the plaintiff in *Kalata* who testified that he fell while trying to reach the left handrail, Raap testified that he did not know what caused his fall. Therefore, unlike *Kalata* where there was evidence to connect plaintiff's injuries to the handrail, there is no evidence which connects the missing handrail to Raap's injuries.

¶ 33 Because we find that defendants' violation of the ordinance was not the cause in fact of Raap's injuries, we need not address the issue of legal cause, the second requirement necessary to

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establish proximate cause. Therefore, because Raap failed to present any evidence which establishes that defendants' failure to have a handrail on the steps was the cause in fact, or a substantial factor in bringing about his injuries, he can not establish that defendants' conduct was the proximate cause of his injuries.

¶ 34

#### CONCLUSION

¶ 35 We find that Raap did not know what caused his injuries and therefore failed to present any evidence which established a causal connection between the missing handrail and his fall. Therefore, we hold that the defendants' violation of the ordinance was not the proximate cause of Raap's injuries. Accordingly, we affirm the trial court's order that granted defendants' motions for summary judgment.

¶ 36 Affirmed.