2015 IL App (1st) 150112-U

No. 1-15-0112

Fourth Division
December 24, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

MICHELLE ODOM Plaintiff-Appellant, v. ENVIRONETX, LLC, Defendant-Appellee, and STEELCASE, INC., and OFFICE CONCEPTS, INC., Defendants.	))))))))))))	Appeal from the Circuit Court of Cook County. No. 11 L 3367 Honorable John Ehrlich, Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice McBride and Justice Ellis concurred in the judgment.

¶ 1 *Held:* Trial court properly granted defendant's motion for summary judgment where defendant did not owe plaintiff a duty of care; trial court did not abuse its discretion when it declined to consider evidence of subsequent remedial measures.

¶ 2 Plaintiff Michelle Odom (Odom) brought action against various defendants, including Environetx, LLC (Environetx), for injuries she sustained after a storage tower fell on top of her

at work.[1] On appeal, Odom contends that the trial court erred in granting Environetx's motion for summary judgment. She also contends that the court abused its discretion when it declined to consider both a training video and e-mail correspondence which were made after her accident, although they reflected and memorialized an installation process that was in effect at the time of her accident. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On April 2, 2009, Odom was filing a document in the third drawer of a storage tower located at her workstation. She pulled the drawer out about six to eight inches and then her phone rang. As she turned to answer her phone, the knit sleeve of her sweater became caught on the storage tower. The drawer flew open, and the storage tower teetered, and then proceeded to tip over on top of her, taking her to the ground. Odom alleged that, as a result of the accident, she developed severe Complex Regional Pain Syndrome, which has rendered her permanently disabled.

¶ 5 In July 2012, Odom filed a seven-count amended complaint against defendants Environetx, LLC (Environetx), Steelcase, Inc. (Steelcase), and Office Concepts, Inc. (Office Concepts). Steelcase manufactured the storage tower, which was called a "Universal Vertical Drawer Tower." Office Concepts was one of Steelcase's distributors, and sold the storage tower to Odom's employer, Chicago Mercantile Exchange (CME). Office Concepts entered into an agreement with CME to install the storage tower, and Officer Concepts subcontracted the installation work to Environetx. Counts I-VI alleged strict liability and negligence claims against Steelcase and Office Concepts. Count VII alleged that Environetx was negligent in its installation of the file cabinet in failing to: (1) install necessary safety components to prevent the

[1] We note that the trial court entered an order pursuant to Supreme Court Rule 304(a) (eff. Feb. 26, 2010), which gives this court jurisdiction to review the trial court's final judgment as it relates to Environetx. Steelcase and Office Concepts are not a party to this appeal.

cabinet from falling, including but not limited to ganging, adding counterweights, and/or anchoring; (2) warn the CME and its employees that the cabinet was installed without necessary safety features to prevent it from falling; and (3) place screws in all of the cabinets to properly secure them and prevent them from falling.

¶ 6 Caution Labels, Instructions, and Specifications

¶ 7 The storage tower was shipped directly to CME with a caution label affixed to the outside of the tower by Steelcase. The label provided, "[i]nstallation and use instructions are contained on the CAUTION label permanently attached to the left side of the drawer/rollout shelf. The directions MUST BE FOLLOWED to prevent the cabinet from tipping over, resulting in an injury." [Upper case in original]. The second caution label, to which the first label referred, consisted of six "panels" of pictures and text, which Steelcase attached to all products in its "family" of file cabinets, including the storage tower. The top of this label reads, "FOLLOW THESE INSTRUCTIONS TO PREVENT CABINET FROM TIPPING OVER AND CAUSING PERSONAL INJURY, THESE INSTRUCTIONS APPLY TO ALL FILES." [Upper case in original]. The second panel states, "[g]ang cabinets together side-to-side or back-to-back thru [*sic*] knockout holes using hardware included. Wall ganging hardware is not included." The second panel included an illustration of two of Steelcase's lateral file cabinets being ganged together. The third panel states, "[i]f cabinet cannot be ganged or mounted under a work surface, a counterweight package must be installed." The third panel included an illustration of one of Steelcase's lateral file cabinets.

¶ 8 The "specification guide" for the storage tower stated that "counterweights are not required for use with vertical drawer towers." In another paragraph labeled "Connections," the guide stated, "ganging hardware is included to increase stability and maintain alignment by adjoining adjacent components side by side, back to back, or both." It also stated that the storage

tower could also be "bolted to the floor or wall for stability." Pictured above the paragraph were two storage towers sitting side by side.

¶ 9 Deposition Testimony

¶ 10 Environetx installed the storage tower without ganging or counterweights. Mike Krueger, Environetx's Vice President, testified during his deposition that, according to Steelcase, ganging was not needed with tower cabinets. He also stated that, to his knowledge, Steelcase did not offer counterweights for its storage tower. Although he was familiar with the instruction manual for the storage tower, he was not familiar with the specification guide. He stated that the caution label that was affixed to the storage tower, which instructed installers to gang the unit, only applied to lateral cabinets; however, he noted that the label did not say the ganging requirement was limited to lateral cabinets. When installing the storage tower, Environetx's installers relied on their experience installing furniture and Steelcase's instruction manual. Steelcase did not provide installers with any other written information as to how to install the storage tower.

¶ 11 Raymond Poskus, an Environetx employee overseeing the 2007 installation at CME when the subject storage tower was installed, testified during his deposition that all of Steelcase's cabinets arrived at the installation site with an instruction manual but not a specification guide. The storage tower had a caution label on the door and a second warning label inside. Poskus explained that the second label referred only to lateral cabinets, but then said that if the label was on the storage tower, then it "definitely" applied to that particular cabinet as well. When asked why he did not follow the instruction on the label to gang the storage tower, Poskus responded, "because that tower is a freestanding unit, which does not need to be ganged." He further noted,"there was nothing to gang [the storage tower] to. If there [were] two cabinets in that workstation side by side, they would have been ganged together. Since it sits alone and there's one cabinet per station, I call it a stand-alone, that stands by itself." Poskus also stated that

although he could have ganged the storage tower to "anything," typically, he would not gang it to anything other than another storage tower. Poskus admitted that he had inserted screws in other storage towers at CME, but it was done for aesthetic purposes to line up the overhead unit to the storage tower. He denied that the screws were inserted for the purpose of increasing stability, but he conceded that it would have reduced the risk of the unit tipping over.

¶ 12 Employees of Steelcase provided deposition testimony regarding the storage tower. Gary Dubridge, Associate Test Engineer, stated that the storage tower did not require ganging or counterweighing to be stable. Ted Hann, Engineer Team Leader for Product Development, testified that the storage tower "was adequately stable against the [ANSI/BIFMA][2] and the tougher Steelcase standards," but noted that a consumer may want to gang the storage tower for aesthetic purposes, so that it will line up perfectly with another storage tower placed next to it.

¶ 13 Jeffery Bradley, Product Manager, testified that Steelcase did not make a counterweight package for its storage tower because it was designed to be freestanding, and was inherently stable without needing to be attached to any other storage tower, product or work surface. In 2010, Steelcase published a training video for dealers and installers to emphasize proper installation of its storage tower. The video suggested that ganging and counterweighing would make the storage tower more stable. Bradley stated that the purpose of the video was to provide "extra measures to help installers in the installation of counterweights and ganging." He noted that the installation method demonstrated in the training video accurately reflected the installation method that Steelcase had always intended.

¶ 14 Randal Carter, Principal Engineer for Global Codes and Approvals, acknowledged that the caution label affixed to the storage tower states that these instructions apply to "all files;"

[2] ANSI/BIFMA is an organization that develops voluntary standards for the furniture industry, including standards addressing the amount of force needed to tip a cabinet over.

however, he noted that "only some of the information provided on the label is accurate for that product." He explained, "if a person read step number three and attempted to implement that step, they [*sic*] would encounter additional information that make it clear that step three is not applicable to the specific cabinet." He continued:

> "a person would read the label, and it would tell them *** 'a counterweight package must be installed.' And that cannot be achieved without obtaining a counterweight package, which as it turns out is not available for the subject cabinet. So, therefore, while it may appear that the label is incorrect, the label is merely one piece of information in a chain or series of information that are required to achieve the direction."

Carter emphasized that Steelcase supplements its general caution label with additional information, including installation manuals and specification guides that accompanied each particular product model. He concluded that an installer would have to "consider the label in combination with additional information." As of November 2011, Steelcase had shipped over 75,000 storage towers, and with the exception of Odom's allegations, Carter had never received any complaints of "a tip-over" accident.

¶ 15 Mike Abson, a consultant for Steelcase, testified that on June 18, 2010, Steelcase received an e-mail from a Steelcase employee about a potential tipping issue involving a freestanding unit. In the e-mail, Abson responded, "I cannot emphasis this enough; Steelcase's position is that the proper counterweight packages must be installed in all freestanding storage products per the installation directions, as is noted in our literature and caution label attached to the product. Failure to do so could introduce the risk of personal injury."

¶ 16 Odom offered expert testimony from Professor Ralph Barnett and liability expert Stuart Statler. Professor Barnett opined that the storage tower was unreasonably dangerous due to its design and that Odom's accident was foreseeable. The label on the storage tower, which referred

installers to a more detailed instruction label, said at its top that the warning applied to all cabinets; therefore, Environetx should have followed the labels instructing that the storage tower be ganged and counterweighted. Professor Barnett questioned how the label could state that it applied to all cabinets, but that Steelcase at the same time could take back part of that warning by claiming that it did not apply to the very cabinet to which it was affixed. He noted that the only document that indicated that a counterweight was not needed was the specification guide, but noted the contrast between the specifications and the caution label on the storage tower which stated that you need counterweights or other safety measures. However, he agreed that the storage tower was designed to be freestanding, and that bolting it to the floor or ganging it to another cabinet would be contrary to the intent of the design. Professor Barnett acknowledged that there was no adjacent storage unit to gang the storage tower to and that Steelcase did not make a counterweight package for this particular model of storage cabinet. He also stated that Office Concepts did not require installers to gang the storage tower, and that CME never requested that the storage towers be ganged. Professor Barnett believed that the ANSI/BIFMA standard for stability was inadequate, but he agreed with defense counsel that Environetx's installation of the storage tower exceeded the ANSI/BIFMA standard for stability. He further opined that every storage cabinet using the ANSI/BIFMA standard as the basis for designing its tipping point is unsafe.

¶ 17 Statler testified that he had no opinions critical of Environetx in this matter. Steelcase marketed the storage tower as a freestanding product, but he believed that it "meant for [its storage tower] to be properly secure" because Steelcase was aware that the unit was susceptible to tipping over based on complaints it had received regarding other freestanding units. However, he believed that Steelcase failed to implement necessary safety measures such as "proper training techniques and having warnings that were not incompatible with one another." Statler noted that

the caution labels indicated that the storage tower should be ganged or counterweighted, but the specification guide stated that counterweights were not required. He also pointed out that the specification guide was "silent" on whether ganging was required, but stated that ganging hardware was included and that the storage tower could be bolted to the wall or floor for stability. Statler also noted that although Steelcase did not make counterweights for its storage tower, a counterweight could have been purchased and installed.

¶ 18 Environetx's Motion for Summary Judgment

¶ 19 Environetx filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005(c) (West 2012)) and the trial court granted the motion. Citing *Hunt v. Blasius*, 74 Ill. 2d 203 (1978), the court found that Environetx did not owe a duty of care to Odom because there was no evidence that it deviated from any specification provided by Steelcase. The court noted that Odom's own experts opined "that there was no deviation from the specifications and that there was no criticism of how they installed it." The court declined to consider Steelcase's 2010 training video as well as Mr. Absom's 2010 e-mail correspondence, finding that the items were evidence of subsequent remedial measures, and therefore, would be inadmissible at trial.

¶ 20 Odom subsequently filed a motion to reconsider, arguing that both of her experts opined that Environetx was negligent and deviated from Steelcase's specifications when it failed to secure the storage tower, contrary to the court's findings. She emphasized that the caution labels indicated that the storage tower had to be secured by ganging or some other method. Odom argued that *Hunt* did not provide immunity to an installer that merely carried out the specifications *intended* by the manufacturer, but who actually followed the written specifications, because "any installer could get summary judgment by simply having the manufacturer lie and say it 'intended' the installer to do whatever was actually done, even though

what was done was contrary to every written instruction and specification required." She also argued that the court should have considered the training video and e-mail which provided evidence that Steelcase had always required installers to secure its cabinets.

¶ 21 The court responded that there was no evidence in the record that the caution labels affixed to the storage tower were specifications. The court commented that it was "unsure that the labels in this instance actually make any difference" because the labels applied to file cabinets and not the storage tower at issue in this case. The court rejected Odom's argument that an installer could obtain summary judgment by simply having a manufacturer lie as "nonsensical," because it depended on the manufacturer assuming liability that it did not have to assume. The court also stated that such an argument would depend on whether there was evidence that the manufacturer lied, and noted that there was "no evidence in this case that Steelcase [was] lying."

¶ 22 ANALYSIS

¶ 23 Motion for Summary Judgment

¶ 24 First, Odom contends that the trial court erred when it granted Environetx's motion for summary judgment, finding that Environetx did not owe her a duty of care, in light of evidence that: (1) the caution label instructed Environetx installers to secure the storage tower; (2) Professor Barnett testified that the installers were negligent for not following that label; and (3) the installers never saw the specification guide in which the court justified their failure to secure the storage tower. Environetx responds that the court correctly held that it owed Odom no duty of care to judge the safety of the installation plans it had merely been contracted to carry out.

¶ 25 Summary judgment is proper in a negligence action only where "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(c) (West 2012). When determining whether a genuine issue of material fact exists, we must construe the pleadings, depositions, admissions and affidavits strictly against the movant. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). We review *de novo* the entry of summary judgment. *Id.*

¶ 26 In order to state a cause of action for negligence, a plaintiff must establish that the defendant owed a duty of care to the plaintiff, the defendant breached that duty, and that the plaintiff was injured as a proximate result of that breach. *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011). Thus, in determining whether summary judgment was properly granted in a negligence action, a reviewing court must first determine whether the defendant owed the plaintiff a duty, which is a question of law. *Bucheleres v. Chicago Park District*, 171 Ill. 2d 435, 445 (1996).

¶ 27 In *Hunt v. Blasius*, 74 Ill. 2d 203, 209 (1978), our supreme court addressed the duty of independent contractors to third parties and held that, as a general rule, "an independent contractor owes no duty to third persons to judge the plans, specifications or instructions which he has merely contracted to follow." Thus, "if a contractor carefully carries out or follows specifications provided him, he is justified in relying on their adequacy" without fear of tort liability. *Id.* An exception to this rule arises only where the plans and specifications are so obviously dangerous that no competent contractor would follow them. *Id.* Therefore, in this case, the primary inquiry is whether Environetx carried out the specifications that Steelcase provided for its storage tower.

¶ 28 Odom argues that Environetx did not follow Steelcase's specifications because it ignored the instructions on the caution label affixed to the storage tower which indicated that the unit was intended to be counterweighted or ganged. However, Steelcase employees consistently testified that although the caution labels applied to all of Steelcase's file cabinets, the second and third

panel, which stated that the cabinet should be ganged or counterweighted, did not specifically apply to the storage tower at issue in the instant case. This testimony is supported by the fact that both panels included illustrations of lateral file cabinets, not the storage tower at issue in this case. Also, the third panel specifically states that counterweights must be installed if a cabinet cannot be ganged or mounted; however, Steelcase did not make a counterweight for its storage tower. Odom argues that a counterweight from another model would have fit the storage tower, but we reject Odom's suggestion that because counterweighs *could* be installed that Environetx was somehow *required* to procure a counterweight from another product model to install them. The mere fact that Steelcase did not offer a counterweight for this particular storage tower model clearly supports Steelcase's position that it did not intend for its storage tower to be counterweighted.

¶ 29 Additionally, Mr. Carter, one of Steelcase's principal engineers, testified that Steelcase intended installers to "consider the label in combination with additional information," including the specification guides that accompanied each particular product model. The specification guide, which applies exclusively to the storage tower, explicitly stated that counterweights were not required. Moreover, although the specification guide indicates that ganging hardware was included in the assembly package, nothing in the guide indicates that ganging was required for the storage tower to be stable. Mr. Hann, one of Steelcase's engineers, testified that ganging was optional and that customers typically ganged storage towers for aesthetic purposes, so that they would line up perfectly when placed next to each other. Furthermore, both Environetx's employee Mr. Poskus and Odom's expert Professor Barnett acknowledged that there was no adjacent storage unit to gang the storage tower to, as the CME office space in which the storage tower was installed had only one storage unit per station. Odom argues that Poskus could have connected the storage tower to an overhead as he had done other units at CME, but Poskus

testified that this connection was made specifically to line up the overhead unit to the storage tower, a fact consistent with Steelcase's position that ganging was typically employed for aesthetic purposes. Moreover, although Odom demonstrates that ganging the storage tower to an overhead unit or work surface was a feasible installation option, ultimately Environetx was not required to perform this task, as nothing in Steelcase's specifications requires its storage tower to be ganged and neither did CME or Office Concepts make such a request. See *Hunt*, 74 Ill. 2d at 209.

¶ 30 Odom next contends that the testimony of one of her experts, Professor Barnett, indicated that Environetx was negligent in its installation of the storage tower; however, our review of the record reveals otherwise. Professor Barnett testified that he believed that the storage tower was unreasonably dangerous due to its design and that Environetx should have followed the instruction on the caution label to secure the storage tower; however, he also noted that Environetx's installation of the storage tower *exceeded* the industry standard for stability. Although Professor Barnett ultimately took issue with the design of the storage tower and discussed ways in which Environetx could have stabilized the storage tower, he did not refute the fact that Steelcase intended its storage tower to be a freestanding unit, and that Environetx's installation of the product followed these specifications. Therefore, we do not believe that his testimony amounted to evidence that Environetx was negligent in is installation of the storage tower.

¶ 31 Odom also contends that Environetx's installers never saw the specification guide on which the court justified their failure to secure the cabinet, and therefore the trial court's granting of summary judgment was error. We reject this argument. Although it was established at trial that the specification guides were never sent to the work site, and thus never seen by Environetx's installers, even without the specification guides the installers had enough

information at their disposal to determine proper installation of the storage tower based on the caution labels, instructions, and their professional experience installing the storage towers. It is undisputed that Steelcase intended its storage tower to be freestanding; which lends itself to the reasonable inference that ganging was not necessarily required. Moreover, as discussed above, a careful look at the caution labels makes it clear to installers that the panel referencing counterweighing did not specifically apply to the storage tower as Steelcase did not make a counterweight for this model. Therefore, although the installers never saw the specification guide, the evidence does not show that they deviated from Steelcase's specifications.

¶ 32 Lastly, Odom notes that the trial court improperly judged the credibility of witnesses and made findings of fact in reaching its ruling. Odom argues first that the trial court erred when it stated that there was no evidence that Steelcase employees were lying in their depositions. A review of the record reveals that the trial court's comment was in direct response to an argument made by Odom in her motion to reconsider that an independent contractor could obtain summary judgment by having a manufacturer lie about the intent of its design to align with how the product was actually installed. The trial court rejected this argument as "nonsensical." Odom also argues that the court made a finding of fact that the caution labels were not specifications; however, we find that the trial court was merely noting the undisputed evidence that the caution labels provided general instruction that applied to "all files," whereas the specification guide contained more detailed instructions regarding the storage tower at issue in this case.

¶ 33 Additionally, we note that Odom fails to allege that Steelcase's specifications were so flawed that Environetx should have been put on notice that the product would be dangerous and likely to cause injury. *Hunt*, 74 Ill. 2d at 210. She also fails to provide any facts from which a court might infer that the specifications were so "glaringly dangerous" that Environetx should have refrained from complying with the specifications. *Id.* In fact, even Odom's liability expert,

Mr. Statler, indicated that he had no opinion critical of Environetx in the installation of the storage tower. Additionally, as of November 2011, Steelcase had shipped over 75,000 storage towers, and barring Odom's allegations, had never received any complaints of a tip-over accident. Thus, Odom has not shown how Steelcase's specifications were obviously dangerous to the point that Environetx would have been justified in refusing to follow them. See *Id.*; see also *Wha Ja Yu v. Neenah Foundry Co.*, 164 Ill. App. 3d 975, 978 (1987). Finding no evidence that Environetx deviated from the specifications provided by Steelcase or that the specifications were so obviously dangerous that no competent contractor would follow them, we conclude that Environetx did not owe Odom a duty of care.

¶ 34 Evidence of Subsequent Remedial Measures

¶ 35 Odom next contends that the trial court erred when it refused to consider both a training video produced by Steelcase as well as an e-mail authored by Steelcase engineer Mr. Absom that suggests that Steelcase always intended that its storage tower be secured by either ganging or adding counterweights to the unit at the time of installation. Environetx responds that that trial court did not abuse its discretion when it declined to consider evidence that did not exist when Odom's accident occurred.

¶ 36 Decisions to admit or exclude evidence are within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *DiCosolo v. Janssen Pharmaceuticals, Inc.*, 2011 IL App (1st) 93562, ¶ 32. A trial court abuses its discretion when its decision is arbitrary or fanciful, or where no reasonable person would adopt the trial court's position. *Napcor Corp. v. JP Morgan Chase Bank, NA*, 406 Ill. App. 3d 146, 155 (2010). Moreover, "it is 'axiomatic that error in the exclusion or admission of evidence does not require reversal unless one party has been prejudiced or the result of the trial has been materially affected.' " *Spaetzel v. Dillon*, 393 Ill. App. 3d 806, 814 (2009) (quoting *Stricklin v. Chapman*, 197 Ill. App. 3d 385,

388 (1990)). The party seeking reversal bears the burden of establishing substantial prejudice and showing that the trial court's ruling materially affected the outcome of the trial. *DiCosolo*, 2011 IL App (1st) 93562, ¶ 40.

¶ 37 Generally, evidence of subsequent remedial measures is not admissible as proof of defendant's negligence. *Herzog v. Lexington Township*, 167 Ill. 2d 288, 300 (1995); *Schaffner v. Chicago & North Western Transportation Co.*, 129 Ill. 2d 1, 14 (1989). This rule has been established because " 'later carefulness does not imply prior negligence' " and because the " 'correction of unsafe conditions should not be deterred by the possibility that such action will constitute an admission of negligence.' " *Schaffner*, 129 Ill. 2d at 14, quoting *Lundy v. Whiting Corp.*, 93 Ill. App. 3d 244, 252 (1981)). However, such evidence may be admissible for other purposes, such as to prove ownership or control of property (when disputed by the defendant), to establish the feasibility of precautionary measures (when disputed by the defendant), or for impeachment. *Herzog*, 167 Ill. 2d at 300-01. However, even if one of the foregoing exceptions is invoked, if the value of the remedial conduct evidence rests on an inference of negligence, the evidence should be excluded. *Id.* at 301-02. Our supreme court has identified several reasons justifying the rule excluding evidence of post-accident remedial measures, including: (1) a strong public policy that favors encouraging improvements to enhance public safety; (2) subsequent remedial measures are not considered sufficiently probative of prior negligence, because later carefulness may simply be an attempt to exercise the highest standard of care; and (3) a jury may view such conduct as an admission of negligence. *Id.* at 300.

¶ 38 We agree with the trial court's finding that the training video and e-mail correspondence are barred by the general rule against the admissibility of evidence of subsequent remedial measures as proof of negligence. The video and e-mail were produced over a year after Odom's accident, and therefore, are largely irrelevant to the question of whether Environetx deviated

from Steelcase's specifications because the evidence did not exist at the time Environetx installed the storage tower at issue in this case. Odom argues that the training video is not barred by the general rule because it reveals measures that were meant to be taken at the time of the accident and simply memorialized and confirmed "the standard of care for cabinet installation at the time of the accident." However, the holding in *Herzog* does not suggest that evidence of subsequent remedial measures is admissible for such purposes. Moreover, Odom does not cite to, and our research has not revealed, case law which acknowledges these exceptions to the general rule.

¶ 39 Finally, Odom contends that both the training video and e-mail would have impeached the testimony and argument offered by Environetx that counterweights were neither needed nor available at the time of Odom's accident. However, the value of this evidence rests on an inference of Steelcase's prior negligence. That is, not previously requiring installers to secure the storage tower by ganging or installing counterweights must have been inadequate and negligent if Steelcase later made the statements that such precautions were necessary to ensure the stability of the storage tower. This admission of remedial conduct evidence for this purpose is explicitly barred under *Herzog*. *Id.* at 301-02. Therefore, we reject Odom's contention that the trial court erred when it did not consider evidence of Steelcase's subsequent remedial measures, as the evidence would have been otherwise inadmissible at trial. See *People ex rel. Vuagniaux v. City of Edwardsville,* 284 Ill. App. 3d 407, 412 (1996) (holding that any evidence that would not be admissible at trial cannot be considered in a summary judgment proceeding).

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 42 Affirmed.