SECOND DIVISION
December 22, 2015

No. 1-15-0386

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SAYED G. MADANI,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 L 2797
	)	
FARMER'S BEST NORTHLAKE, INC.,	)	Honorable
	)	William E. Gomolinski,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Simon concurred in the judgment.

O R D E R

¶ 1 *Held*: Summary judgment was properly granted for defendant where plaintiff presented no evidence that defendant's employees caused substance on which he fell to be on the floor and no evidence that defendant had knowledge of its presence on the floor.

¶ 2 Plaintiff Sayed Madani appeals from an order of the trial court granting summary judgment to defendant, Farmer's Best Northlake, in his negligence action for injuries sustained in a slip and fall in defendant's store. On appeal, plaintiff contends that the trial court erred in granting summary judgment where the evidence created jury questions as to whether the

substance upon which he slipped was on the floor due to the acts of defendant's employees, and whether defendant had notice of said condition. We affirm.

¶ 3 This case arises from injuries plaintiff allegedly sustained on September 20, 2011, when he slipped and fell at defendant's grocery store at 23 West North Avenue in Northlake, Illinois. Plaintiff filed a complaint in negligence seeking damages for those injuries.

¶ 4 Plaintiff specifically alleged that defendant had a duty to keep and maintain the floor of its premises in good condition and warn of any foreign materials on the floor. Defendant breached that duty by allowing the floor near the entranceway to be covered by a liquid, thus creating a dangerous condition. The complaint further alleged that defendant knew or should have known of the dangerous condition on its floor, but continued to permit the floor of the premises to remain in a dangerous, unsafe, and unsuitable condition. Plaintiff also alleged that defendant failed to post any warning signs or otherwise provide notice of the dangerous condition. The complaint asserted that defendant's negligent acts caused plaintiff to fall that day and suffer serious temporary and permanent injuries. Plaintiff requested a judgment against defendant in excess of $50,000.

¶ 5 On August 6, 2013, defendant filed an answer to plaintiff's complaint denying any negligence on its part. Defendant also raised an affirmative defense based on comparative negligence, which plaintiff denied in his reply.

¶ 6 A deposition was taken from plaintiff who testified that on September 20, 2011, he dropped his wife off in front of defendant's grocery store and then parked his car. It had not rained that day, and plaintiff wore sandals with rubber soles to the store. He walked in the front of the store, which had "perfect" lighting conditions, simultaneously with an employee who was

bringing shopping carts inside. As plaintiff stepped into the store, he slipped on the floor and fell face down on the ground, pinning his left shoulder underneath his stomach. The employee asked plaintiff if he needed any help, but plaintiff said he was "okay."

¶ 7 When plaintiff stood up, he noticed the front part of his shirt was a little damp but not soaked. He observed that the floor was wet and slippery with a sticky substance. Plaintiff did not notice the substance's color, and there was no puddle of liquid. A few yards away from plaintiff, he observed another employee who was either mopping the floor or had just finished mopping. Plaintiff thought the employee also had a bucket, but was not entirely sure, and he could not remember the appearance of the employee. Because of both the employee's proximity to the location where he fell and the substance on the floor, plaintiff believed the substance that caused his fall came from the solution used by that employee to mop the floors. Plaintiff, however, conceded that he never saw the employee mop the area where he fell, and no one told him that area had been mopped. He believed that the employee bringing the carts in was the only person who witnessed his fall.

¶ 8 After plaintiff stood back up, he did not file an incident report at the store, and no one asked him to fill one out. He explained that at the time, he did not feel any pain. Plaintiff proceeded to find his wife in the store, pay for their groceries and leave. Later that evening, plaintiff began to feel a small pain in his left shoulder. A few days later, the pain was very sharp, and plaintiff could not lift his arm or hold anything with the arm. Plaintiff eventually saw a doctor, who diagnosed him with a torn muscle in his left shoulder.

¶ 9 On October 8, 2014, defendant filed a motion for summary judgment, arguing that plaintiff failed to present evidence that defendant had actual or constructive notice of the alleged

substance on the floor, or that defendant caused the substance to be on the floor. Defendant further argued that plaintiff merely speculated that the wet spot came from the employee with the mop a few yards away.

¶ 10 Plaintiff filed a response in which he contended that when he saw the employee with the mop, it could be inferred that the employee created the wet floor, which caused plaintiff to fall. Moreover, because defendant's employee created the condition, plaintiff asserted that it "strains credulity to argue that [d]efendant had no knowledge and no notice of the slippery condition." Defendant replied, arguing plaintiff's assumptions regarding the cause of his fall were speculative.

¶ 11 On January 16, 2015, the trial court entered a written order granting defendant's motion for summary judgment. This appeal followed.

¶ 12 Summary judgment is appropriate only when the pleadings, depositions, and admissions and affidavits on file demonstrate there is no genuine issue of any material fact, and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012); *Gurba v. Community High School District No. 155*, 2015 IL 118332, ¶ 10. These documents must be viewed in the light most favorable to the nonmoving party. *Gurba*, 2015 IL 118332, ¶ 10. We review the trial court's grant of a summary judgment motion *de novo*. *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001).

¶ 13 In a cause of action for premises liability negligence, the plaintiff must prove the existence of a duty of care owed by the defendant, a breach of that duty of care and an injury proximately resulting from that breach. *Keating v. 68th & Paxton, L.L.C.*, 401 Ill. App. 3d 456, 470 (2010).

¶ 14 Here, the parties do not dispute that defendant, as a business owner, owed plaintiff, a business invitee, a duty of care to maintain its premises in a safe condition. See *Newsom-Bogan v. Wendy's Old Fashioned Hamburgers of New York, Inc.*, 2011 IL App (1st) 092860, ¶ 16. However, plaintiff alleges that defendant breached its duty of care to maintain its premises in a safe condition for the benefit of its customers when it caused the wet floor, knew or should have known of this dangerous condition, and failed to warn customers of the liquid's presence.

¶ 15 Although plaintiff is not required to prove his case at the summary judgment stage, he must present evidentiary facts to support the elements of his cause. *Bank Financial, FSB v. Brandwein*, 2015 IL App (1st) 143956, ¶ 40. Plaintiff failed to do so in this case.

¶ 16 Plaintiff testified he walked into defendant's store, and slipped and fell onto the floor. Plaintiff did not see the liquid on the floor until he was lying in it, did not know the color or identity of the substance, did not know where it came from, and no wet floor signs were posted. Rather, plaintiff speculated that a store employee must have been responsible because he saw an employee a few yards away from him with a mop and possibly a bucket. However, conjecture and speculation are insufficient to withstand an entry of summary judgment. See *Olinger v. Great Atlantic & Pacific Tea Co.*, 21 Ill. 2d 469, 476 (1961) (holding the store was not liable for the plaintiff's injuries where only by the "wildest speculation" could it be concluded that the substance on which the plaintiff slipped was cough syrup as the evidence only showed the plaintiff slipped on a reddish substance and the defendant sold red cough syrup from a counter near the location of the plaintiff's fall). Therefore, plaintiff has failed to provide any evidence that defendant or its employees actually caused the substance on the floor where he fell.

¶ 17 Nevertheless, even where there is no showing as to how the liquid came to be on the floor, the business owner will be found in breach of its duty of care if either the business knew of the substance's presence, *i.e.* actual notice, or the substance was present for a sufficient length of time that the business should have known of the substance's presence, *i.e.* constructive notice. *Newsom-Bogan*, 2011 IL App (1st) 092860, ¶¶ 15-16. Plaintiff concedes in his reply brief that "constructive notice is not at issue," asserting instead that defendant had actual notice. In particular, plaintiff maintains that the employee's presence with a mop near the spot where he fell suggested knowledge that the floor needed to be cleaned. However, defendant's contention is again mere speculation (see *Brandwein*, 2015 IL App (1st) 143956, ¶ 40), and he offered no evidence to show that the owner or employees knew of the liquid's presence. Under these circumstances, liability cannot attach to defendant. See *Tomczak v. Planetsphere, Inc.*, 315 Ill. App. 3d 1033, 1040 (2000) (holding liability cannot be imposed upon a business owner for the presence of a substance that no one had knowledge of immediately prior to a plaintiff's fall).

¶ 18 In reaching this conclusion, we note that plaintiff's reliance on the Illinois Pattern Jury Instructions on circumstantial evidence (see Illinois Pattern Jury Instructions, Civil, No. 3.04 (Supp. 2009)), is misplaced. It is the trial court's role to determine whether the evidence is sufficient to create a triable issue of fact, and here, the trial court found the evidence insufficient. Furthermore, to the extent plaintiff relies on *Miller v. National Ass'n of Realtors*, 271 Ill. App. 3d 653 (1994) and *Donoho v. O'Connell's, Inc.*, 13 Ill. 2d 113 (1958), we find both cases distinguishable. In *Miller*, 271 Ill. App. 3d at 657, the defect that caused the accident was present for three months prior to the incident. In *Donoho*, 13 Ill. 2d at 116, 124, the plaintiff was able to identify with specificity the partly smashed onion that caused her fall, and the cleaning practices

of the defendant's bus boy consisted of wiping food debris from the table to the floor in order to be later swept up. Here, however, there was no evidence as to the amount of time the liquid was on the floor, and the liquid that caused plaintiff's fall was unidentified.

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County granting summary judgment to defendant.

¶ 20 Affirmed.