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FIRST DIVISION
April 28, 2014

No. 1-13-2111
2014 IL App (1st) 132111-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CAROLYN CATCHOT,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 10 L 1185
)	
MACERICH MANAGEMENT COMPANY)	Honorable
and UNNICO SERVICE COMPANY,)	Daniel Gillespie,
)	Judge Presiding.
Defendants-Appellees.)	

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

Held: Where plaintiff allegedly slipped in a puddle of water and fell, summary judgment in favor of defendants was proper where there was no evidence defendants had actual or constructive notice of puddle.

¶ 1 Plaintiff Carolyn Catchot was injured when she slipped on an alleged puddle of water in a shopping mall, and she sued defendants Macerich Management

Company and UNNICO Service Company for negligence. The circuit court granted summary judgment to defendants. We affirm.

¶ 2 In December 2008, plaintiff was shopping at a mall called the Shops at North Bridge. As she was walking towards a store on the first floor of the mall, plaintiff suddenly slipped and fell. Plaintiff had not seen any water in the area before she fell, but as she lay on the floor she noticed that her pants and hands were damp with clear water. She also claimed that she saw a maintenance worker holding a mop and bucket nearby.

¶ 3 Sead Hodzic worked as a housekeeper for UNNICO, which was responsible for maintenance and janitorial services at the mall. Hodzic testified at his deposition that one of his duties was patrolling the first floor of the mall in order to ensure that litter was picked up and that the floor was clean and dry. Shortly before plaintiff fell, Hodzic had inspected the area while performing his rounds, once about ten minutes before the accident and the second time about two minutes prior. Both times Hadzic inspected the area, he did not see any liquids on the floor. After passing through the area the second time, Hadzic walked about 20 meters further to the end of the mall and then turned around to walk back through the mall. When he returned to the area, he saw plaintiff lying on the floor.

¶ 4 Plaintiff filed this lawsuit against UNNICO and Macerich, which is the company that managed the mall, contending that they were negligent in maintaining the premises. The circuit court granted summary judgment to both companies, and plaintiff has now appealed.

¶ 5 We review an order granting summary judgment *de novo*. See *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 399-400 (2010). “[S]ummary judgment should be granted only where the pleadings, depositions, admissions and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to judgment as a matter of law.” *Id.* at 399.

¶ 6 Although the circuit court granted summary judgment to both defendants, it did so on different grounds. So far as Macerich is concerned, the record is clear that Macerich managed the property but contracted with UNNICO to perform maintenance and janitorial services. The circuit court granted summary judgment to Macerich because it determined that UNNICO was an independent contractor, and thus Macerich is not liable for any negligence by UNNICO. See generally *Wilkerson v. Paul H. Schwendener, Inc.*, 318 Ill. App. 3d 491, 493 (2008) (discussing the rule of nonliability of principals for the torts of independent contractors, as well as exceptions to the rule). Yet although plaintiff has appealed the judgment in favor of Macerich, plaintiff’s brief does not actually challenge the basis of the circuit court’s ruling. Indeed, plaintiff’s brief makes no effort to distinguish between the two defendants. Even after Macerich raised the issue of forfeiture in its response brief, plaintiff did not address it in her reply brief. Given the lack of any argument by plaintiff on the point, we affirm the circuit court’s judgment in favor of Macerich without further comment. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (“Points not

argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.”).

¶ 7 This leaves us with only the issue of UNNICO’s potential liability. The proper analysis for this type of situation has been settled for over half a century:

“Where a business invitee is injured by slipping on a foreign substance on the premises, liability may be imposed if the substance was placed there by the negligence of the proprietor or his servants, or, if the substance was on the premises through acts of third persons or there is no showing how it got there, liability may be imposed if it appears that the proprietor or his servant knew of its presence, or that the substance was there a sufficient length of time so that in the exercise of ordinary care its presence should have been discovered.”

Olinger v. Great Atlantic & Pacific Tea Co., 21 Ill. 2d 469, 474 (1961); see also *Tomczak v. Planetsphere, Inc.*, 315 Ill. App. 3d 1033, 1039 (2000).

In this case, there is no evidence in the record of the origin of the puddle that plaintiff claims she slipped on. According to Hadzic’s undisputed testimony, the floors of the mall are cleaned each night and were dry by the time Hadzic arrived for his shift on the morning of plaintiff’s injury, and there is no evidence that any UNNICO employee mopped the area prior to plaintiff’s fall. Indeed, Hadzic’s testimony that the area was dry just minutes before plaintiff fell is undisputed. Although plaintiff claimed that she saw a maintenance worker with a mop and

bucket standing near the area where she fell, she saw the worker only after she had fallen. Moreover, there is no evidence in the record that this unnamed individual was a UNNICO employee.

¶ 8 Without any evidence of the puddle's origin, UNNICO can only be held liable for plaintiff's injury if it had either actual or constructive notice of the hazard. See *Tomczak*, 315 Ill. App. 3d at 1039. We considered a nearly identical situation in *Ishoo v. General Growth Properties, Inc.*, 2012 IL App (1st) 110919. In that case, the plaintiff also claimed that she slipped and fell on a puddle in a mall. The undisputed evidence showed that janitorial staff inspected the floors of the mall about every 30 minutes and that no spills had been noted prior to the plaintiff's fall. We held that the defendants had neither actual nor constructive notice of the puddle prior to the accident because there was no evidence that the defendants knew that the puddle was there and no evidence of the length of time that the puddle was on the floor. See *id.* ¶¶ 27-28.

¶ 9 There is a similar lack of evidence of notice in this case. Hadzic inspected the area where plaintiff fell twice within ten minutes and did not see a puddle of water, and there are no other witnesses who examined the area prior to the accident. Indeed, plaintiff herself did not notice any water on the floor until after she fell. There is therefore no basis to conclude that UNNICO had actual notice of any hazard. Moreover, there is no evidence of the length of time that the water was on the floor. Given that Hadzic's undisputed testimony establishes that he inspected the area not two minutes before the accident, at most the water was on the floor for

less than that amount of time. Even taking into account the fact that Hadzic's sole duty at the time of the accident was to inspect the first floor of the mall for hazards and litter, as well as the speed at which he performed his rounds of the mall, two minutes is not sufficient time to discover the puddle. Indeed, Hadzic testified that he walked only about 20 meters past the area and then returned. Under these circumstances, it is unreasonable to claim that the puddle should have been discovered earlier. Without at least some evidence of actual or constructive notice of the hazard, summary judgment in favor of UNNICO is proper.

¶ 10 Plaintiff attempts to avoid this result by suggesting several scenarios that she contends present factual disputes that cannot be resolved on summary judgment. First, plaintiff posits that there is a dispute as to whether there was in fact water on the floor, noting that both Hadzic and another employee who responded to the accident claimed they did not see any water on the floor. Because plaintiff claims there *was* water, she contends that summary judgment is improper. This position, however, disregards the importance of the issue of notice. Even if we consider the evidence in the light most favorable to plaintiff and assume that a puddle of water did in fact exist, the lack of evidence of actual or constructive notice of the puddle is dispositive.

¶ 11 Second, plaintiff contends that there is an issue of fact as to whether Hadzic negligently inspected the area, which would explain why he did not see a puddle. Yet this is merely speculation. Plaintiff offers no evidentiary support for this contention, and it therefore is not sufficient to preclude summary judgment.

See *Keating v. 68th & Paxton, L.L.C.*, 401 Ill. App. 3d 456, 473 (2010) (“Liability against a defendant cannot be predicated upon speculation, surmise, or conjecture.”).

¶ 12 Third, relying on an affidavit by an architect, Mike Eiben, plaintiff contends that the lighting conditions and the color of the floor’s surface would make a clear liquid very hard to see, and thus Hadzic may have been unable to see the water when he inspected the area. Yet far from supporting plaintiff’s position, this argument undercuts it because it establishes that Hadzic’s failure to see the puddle was completely reasonable under the circumstances, which supports UNNICO’s argument that it lacked actual or constructive notice of any hazard. Plaintiff’s position seems to be that UNNICO is somehow responsible for the lighting and color of the floor and thus ultimately at fault for creating a hazardous condition. There is no basis for this argument in the record. The evidence is clear that UNNICO was contracted to perform maintenance and janitorial services, and it had nothing to do with the choice of materials used in constructing the floor of the mall or the placement of lighting.

¶ 13 Finally, plaintiff claims that either Hadzic or another maintenance worker must have seen the water before the accident and failed to remove it. The undisputed evidence shows, however, that Hadzic did not see any water when he inspected the area. Plaintiff’s argument appears to be based on plaintiff’s testimony that she saw a maintenance worker with a mop and bucket nearby after she fell. But there are two problems with this point. First, as we mentioned above, plaintiff

did not see this person until after she fell. There is therefore no evidence that the individual was aware of the water before the accident. Second, there is no evidence in the record of this person's identity or, more importantly, any evidence that this person was a UNNICO employee. Hadzic testified that he was the only UNNICO employee performing janitorial services on the first floor of the mall when the accident occurred. No witness other than plaintiff herself saw the maintenance worker, and there is nothing in her testimony from which we might infer the worker's employment status, such as whether the worker was wearing a UNNICO uniform or badge. Even if we assume that the worker knew of the puddle prior to plaintiff's fall, without some evidence that the worker was a UNNICO employee that knowledge cannot be imputed to UNNICO.

¶ 14 In sum, the evidence in the record is undisputed that UNNICO did not have actual or constructive notice of the puddle before the accident. Without at least some evidence of notice, UNNICO cannot be deemed negligent. Summary judgment in UNNICO's favor was therefore proper.

¶ 15 Affirmed.