

No. 1-14-2157

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SUZANNA STRIEDL,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 12 M1 302295
)	
TEXAS DE BRAZIL CO.,)	Honorable
)	Kathy M. Flanagan,
Defendant-Appellee.)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice McBride and Justice Cobbs concurred in the judgment.

O R D E R

¶ 1 *Held:* Summary judgment in favor of defendant affirmed in slip-and-fall negligence case where plaintiff presented no evidence that defendant's employees caused substance on which she fell to be on floor and no evidence that defendant had actual or constructive knowledge of its presence on floor.

¶ 2 Plaintiff Suzanna Striedl appeals from a grant of summary judgment in favor of defendant, Texas De Brazil Corp., in her action seeking damages for injuries she sustained when she slipped and fell in defendant's restaurant. On appeal, plaintiff argues that the trial court erred in granting summary judgment in favor of defendant because issues of fact existed as to whether

defendant had notice of the greasy spot on which plaintiff slipped and whether the spot was left by one of defendant's employees. We affirm.

¶ 3 On the evening of August 15, 2010, plaintiff went to Texas De Brazil, a Brazilian-style restaurant located at 51 East Ohio Street in Chicago. As a hostess led plaintiff to her table, plaintiff slipped and fell on a "greasy substance" that was on the floor. Plaintiff subsequently sued defendant seeking damages for injuries she sustained as a result of the fall.

¶ 4 Plaintiff's discovery deposition was taken on September 16, 2013. Plaintiff testified that, as she was walking to her table, the floor of the restaurant changed from tile to wood. When plaintiff stepped onto the wood surface with her left foot, she slipped and fell. The floor on which she landed, as well as the immediately surrounding area, was covered with "a very greasy substance" that plaintiff described as "not so much wet, liquid like, the consistency of water, but it wasn't like butter. It was kind of in-between." Plaintiff testified that when she fell down, the hostess turned around and said, "Don't worry, don't be embarrassed, you are not the first one to fall here." Plaintiff testified that she assumed that the hostess meant that she was not the first to fall on that exact same spot but acknowledged that she did not know whether the hostess may have been speaking more generally.

¶ 5 Plaintiff further testified that, because she had been looking straight ahead prior to her fall, she had not seen anything on the wood surface. Plaintiff was asked whether she saw anything that may have left grease on the floor, and she responded that waiters were "like carrying meat around on skewers." The walkway on which plaintiff fell was surrounded by tables, but they were far enough from plaintiff that she would not have been able to touch them if she stretched her arms out. A self-serve buffet table containing side dishes was located behind

the area where plaintiff fell, but plaintiff said that it was "not quite a ways [*sic*] but it wasn't right near." Plaintiff did not smell the substance that caused her to fall and did not know what the substance was. Plaintiff also did not know how long the greasy substance had been on the floor, how it had gotten there, or whether anyone who worked at the restaurant knew that the substance was on the floor.

¶ 6 After plaintiff fell, she was unable to put pressure on her left leg because she was in so much pain. Plaintiff eventually went to the emergency room, where she was evaluated and given crutches and a prescription to manage her pain.

¶ 7 On December 5, 2013, defendant filed a motion for summary judgment, arguing that there was no evidence that it had caused, or had notice of, the dangerous condition plaintiff alleged in her complaint, thereby entitling it to summary judgment. In support of that motion, defendant relied on plaintiff's discovery deposition, which it attached as an exhibit. Plaintiff filed a response in which she contended that, in light of her deposition testimony, issues of material fact existed as to the cause of her fall and whether defendant had actual or constructive notice of the substance on which she slipped.

¶ 8 The trial court granted defendant's motion for summary judgment. The court found that, although plaintiff identified a greasy substance as the cause of her fall, there was no evidence showing that defendant either caused the greasy substance to be on the floor or had actual or constructive notice of the substance. The court further found that the hostess's statement that plaintiff was not the first to fall was vague and general as to prior falls and was not equivalent to an admission that the hostess was aware of the existence of the greasy substance on the floor.

¶ 9 On appeal, plaintiff contends that the trial court erred in granting defendant summary judgment, claiming that the facts she presented support the conclusions that one of defendant's employees caused the greasy substance to be on the floor and/or that defendant had notice that the substance was on the floor prior to her fall.

¶ 10 Summary judgment is proper where the pleadings, admissions, affidavits and depositions on file reveal that there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010); *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 12. The moving party bears the burden of production on a motion for summary judgment. *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 49. In determining whether an issue of material fact exists, we must construe the pleadings and evidentiary materials in favor of the nonmoving party. *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). We review the trial court's entry of summary judgment *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 11 To prevail in her negligence action, plaintiff must establish that defendant owed her a duty, that the duty was breached, and that plaintiff suffered an injury as a proximate result of that breach. *Newsom-Bogan v. Wendy's Old Fashioned Hamburgers of New York, Inc.*, 2011 IL App (1st) 092860, ¶ 14. If the evidence fails to establish any element of a plaintiff's negligence claim, summary judgment for the defendant is appropriate. *Id.*

¶ 12 A business owner owes its customer the duty of exercising ordinary care in maintaining its premises in a reasonably safe condition. *Thompson v. Economy Super Marts, Inc.*, 221 Ill. App. 3d 263, 265 (1991). In general, when a customer is injured by slipping on a foreign substance on the premises, liability may be imposed if the proprietor or his servants placed the

substance there. *Olinger v. Great Atlantic & Pacific Tea Co.*, 21 Ill. 2d 469, 474 (1961); *Tomczak v. Planetsphere, Inc.*, 315 Ill. App. 3d 1033, 1039 (2000). If, on the other hand, the substance was placed on the premises by third persons, or if there is no evidence as to how it got there, liability may be imposed if: (1) the proprietor or his servants knew the substance was there, or (2) if the substance was there for a sufficient length of time that, in the exercise of ordinary care, the proprietor should have discovered it. *Id.* In sum, where the proprietor's employees are responsible for the presence of the foreign substance on the premises, the plaintiff need not establish the proprietor's actual or constructive knowledge of the substance, but if the substance is on the premises through acts of third persons or by an unknown cause, the time element to establish knowledge or notice to the proprietor becomes a material factor. *Thompson*, 221 Ill. App. 3d at 265.

¶ 13 Plaintiff presented no evidence to support either of these theories of recovery. She testified that she did not know how the substance came to be on the floor, so there is no direct evidence that one of defendant's employees caused it to be there. Nor did she present any evidence that defendant knew of the substance's presence. And she did not know how long the substance had been present on the floor, so she is unable to show it was of a sufficient duration that defendant should have known of its existence. See *Ishoo v. General Growth Properties, Inc.*, 2012 IL App (1st) 110919, ¶ 28 (no constructive notice where there were no facts to show how long liquid was on floor of shopping mall).

¶ 14 Plaintiff claims that she did present evidence of defendant's notice—she claims that there was evidence that, after she fell, "the hostess of the restaurant informed *** plaintiff that someone else had fallen in the same area." But her deposition testimony was not nearly so

specific. At her deposition, plaintiff testified that, after she fell, the hostess told her not to be embarrassed and that she was "not the first one to fall here." That statement is unclear as to location, timing, and cause. It does not convey that another patron fell in the *same area* as plaintiff fell, that this other fall even occurred on the same day as when plaintiff fell, or that this other fall was related in any way to the presence of a similar greasy substance on the floor. Indeed, when pressed at her deposition, plaintiff conceded that she did not know whether the waitress was referring to the same location, as opposed to referring, in her use of the word "here," merely to the restaurant in general. While we must construe the evidence in plaintiff's favor, no lenient construction could convert the hostess's statement into an admission that any of defendant's employees were aware of the greasy spot on the floor.

¶ 15 There is one other avenue of recovery still available to plaintiff, in instances where (as here) the plaintiff cannot directly show that the proprietor's employees were responsible for the foreign substance's presence on the floor, and where (as here) the plaintiff cannot demonstrate the proprietor's actual or constructive knowledge of the substance's presence. Where there is proof that the foreign substance was a product sold or related to the defendant's operations, and the plaintiff offers some further direct or circumstantial evidence, however slight—such as the location of the substance or the business practices of the defendant—from which it could be inferred that it is more likely that the defendant's employees, rather than a customer, dropped the substance on the premises, the trial court should allow the issue to go to the jury. *Donoho v. O'Connell's, Inc.*, 13 Ill. 2d 113, 122 (1958); *Olinger*, 21 Ill. 2d at 475-76; *Thompson*, 221 Ill. App. 3d at 265.

¶ 16 Plaintiff argues that she presented sufficient evidence on this score. She urges us to infer that one of defendant's employees placed the substance on the floor because the substance was likely grease that came from the cooked meat being served at the restaurant. Plaintiff contends that she presented evidence that the business practices of defendant were such that "waiters carrying skewers of meat walked about the restaurant rather than leaving the food in the kitchen until ordered," which supported the inference that it was more likely that one of defendant's employees, and not a third person, spilled the substance on the floor.

¶ 17 We cannot agree. Plaintiff failed to show that the substance on which she slipped was grease that dripped or spilled from waiter's trays, or that it was grease at all; she acknowledged that she did not know what the substance was. More importantly, even if she were entitled to the inference that the substance was food grease, plaintiff has failed to offer any evidence, however slight, that would support the inference that it is more likely that the grease was spilled by one of defendant's employees than by a patron. In her brief, plaintiff maintains that the walkway on which she fell was an area where waiters carrying skewers of meat "frequently walked," but at her deposition, plaintiff did not make such a statement, nor did she give any specifics regarding where the waiters stood or walked while serving patrons. In fact, the only time that plaintiff said anything about people passing through the area where she slipped was her statement that *customers* of the restaurant had to pass through that area to reach the buffet table and serve themselves side dishes. She testified, for example, that from the table where she and her friends were ultimately seated (she stayed for a brief time before leaving in pain), she would have to pass that area where she slipped to reach the buffet. Thus, it is just as likely that a customer carrying a plate of side dishes spilled the greasy substance on the floor.

¶ 18 Where the only evidence offered is the presence of the substance and the occurrence of the injury, the defendant is entitled to a directed verdict, because such evidence is insufficient to support the necessary inference that the defendant caused the substance to be on the floor or knew of its presence. *Thompson*, 221 Ill. App. 3d at 265-66. Because the only evidence plaintiff offered was the presence of the substance and the occurrence of the injury, we cannot infer that it is more likely that one of defendant's employees, rather than a customer, caused the substance to be on the floor. See *id.* (declining to infer grocery store employees left lettuce leaf on floor where only evidence was that plaintiff fell on a lettuce leaf in the produce section of grocery store; employee or patron could have left lettuce leaf on floor).

¶ 19 In sum, we find that there was no genuine issue of material fact regarding whether defendant breached its duty. Plaintiff presented no evidence that defendant spilled or placed the substance on the floor or that it had actual or constructive notice of its presence. We affirm the award of summary judgment in favor of defendant.

¶ 20 Affirmed.