THIRD DIVISION
November 14, 2012

No. 1-12-0880

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN H. LOHMEIER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	
	)	No. 09 L 8836
ABM LAKESIDE, INC., an Illinois corporation	)	
	)	
Defendant-Appellee.	)	Honorable
	)	Jeffery Lawrence,
	)	Judge Presiding.

ORDER

PRESIDING JUSTICE SALONE delivered the judgment of the court.
Justices Neville and Sterba concurred in the judgment.

HELD: The trial court did not err in granting summary judgment in favor of defendant because plaintiff failed to allege any facts to establish that defendant owed a duty of care to plaintiff.

¶ 1 Plaintiff, John Lohmeier, filed suit against several parties, including defendant ABM Lakeside, Inc. (ABM), to recover damages for injuries Lohmeier sustained while visiting an office

building. Lohmeier sued ABM for negligence under a theory of premises liability. ABM moved for summary judgment, which the trial court granted. Lohmeier now appeals the trial court's ruling. For the following reasons, we affirm.

¶ 2 On November 5, 2008, John Lohmeier accompanied a friend to her doctor's appointment, located on the 11th floor of 680 North Lake Shore Drive in Chicago, Illinois. Lohmeier requested a key to access the men's restroom, which was located in the common area at the end of the hallway. The men's restroom contains a step up to the facilities approximately two feet from the doorway. Upon opening the door, Lohmeier took a step and immediately caught his foot on the step. He fell onto the bathroom floor, sustaining injuries to his knee, shoulder and mouth. According to his deposition, Lohmeier did not see any sign on the wall across from the door warning incoming patrons, only a sign further in the facilities, viewable to patrons leaving the restroom.

¶ 3 On March 5, 2009, Lohmeier returned to the building to take pictures of the restroom where he fell. These pictures reveal a sign warning "Caution - Step up" on the wall immediately inside the door (and before the step at issue). Lohmeier alleges that the sign was in disrepair and not in its original position; the pictures do not indicate any visible damage to the sign, nor does Lohmeier explain in what position the sign should have been. On June 21, 2009, Donald Noordhof, the building's staff engineer, rehung the 11th floor sign. The record does not indicate why the sign was rehung or who requested the work.

¶ 4 Lohmeier filed suit against several entities which collectively owned and managed the building (Golub) as well as ABM. At the time of the incident, Golub and ABM had a contract whereby ABM would provide cleaning and other janitorial services for certain restrooms in the

building, including the 11th floor men's restroom where Lohmeier was injured. ABM's duties included reporting to Golub any damaged or missing caution signs in the restrooms. Lohmeier alleges that ABM was negligent in not reporting the missing caution sign to Golub.

¶ 5 The trial court's order did not explain its reasoning for granting summary judgment to ABM. Even if it had, the trial court's basis would have no bearing on our decision. We review decisions on summary judgment motions *de novo*. *Pekin Insurance Co. v. Pulte Home Corp.*, 404 Ill. App. 3d 336, 339 (2010).

¶ 6 The purpose of summary judgment is not to try a question of fact, but to determine whether a genuine question of material fact exists. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002). Although summary judgment is encouraged to aid the expeditious disposition of a lawsuit, it is a drastic means of disposing of litigation. *Espinoza v. Elgin, Joliet and Eastern Ry. Co.*, 165 Ill. 2d 107, 113-14 (1995). Summary judgment should only be granted where the movant's right to relief is clear and free from doubt. *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 280 (2007).

¶ 7 Summary judgment is proper where the pleadings, depositions and admissions on file, together with any affidavits, show there is no genuine issue as to any material fact such that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010). See also *Pekin*, 404 Ill. App. 3d at 339. Summary judgment is also proper where the plaintiff cannot establish an element of his or her cause of action. *Hussung v. Patel*, 369 Ill. App. 3d 924, 931 (2007). While a plaintiff need not prove his or her case to survive summary judgment, enough evidence must be presented to create a genuine issue of material fact. *Id.* Where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different

inferences from the undisputed facts, summary judgment should be denied. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 162-63 (2007). In our review, this court will construe the record strictly against the moving party and liberally against the nonmoving party. *Forsythe*, 224 Ill. 2d at 280.

¶ 8 Under section 343 of the Restatement (Second) of Torts (the Restatement), which has been adopted in Illinois, an owner or occupier of land owes a reasonable duty of care to its invitees or licensees. Restatement (Second) of Torts § 343 (1965). See also *Rhodes v. Illinois Central Gulf R.R.*, 172 Ill. 2d 213, 227-28 (1996); *O'Connell v. Turner Construction Co.*, 409 Ill. App. 3d 819, 824 (2011). In order for a defendant to be deemed an owner-occupier, or possessor, of land, he must occupy the land with the intent to control it. Restatement (Second) of Torts § 328E (1965); *Williams v. Sebert Landscape Co.*, 407 Ill. App. 3d 753, 756 (2011). The ability to control property often includes the ability to exclude people from the property or to direct how the property is used. *Williams*, 407 Ill. App. 3d at 756.

¶ 9 Plaintiff asserts that ABM had control over the men's restroom. Plaintiff points to ABM's contract with Golub, under which ABM must exclude patrons from using the restrooms while the facilities are being cleaned. This power of exclusion, he asserts, subjects ABM to liability under section 343 of the Restatement.

¶ 10 However, in focusing on this provision, plaintiff fails to consider whether ABM actually *occupied* the land. Occupation has been interpreted to refer to acts done to manifest a claim of *exclusive control* and to indicate to the public that the land has been appropriated. *O'Connell*, 409 Ill. App. 3d at 824. Furthermore, possession has been defined not just as having the ability to control or exclude people and activities from property, but as having the power to exercise dominion over

the property. *Id.*

¶ 11 Plaintiff has made no argument that ABM has exercised dominion over the property where his injuries occurred. Nor has plaintiff pointed to any evidentiary materials (affidavits, depositions, etc.) which would show that ABM manifested exclusive control over the area. The reasoning behind the rule of premises liability is that those who are in possession of property are in the best position to discover and control its dangers. *Madden v. Paschen*, 395 Ill. App. 3d 362, 375 (2009). There was no evidence in the record that ABM was in the best position to control the dangers posed by the step in this instance. Because plaintiff has failed to present any evidence which would satisfy the elements of a cause of action under premises liability, we uphold the judgment of the trial court granting summary judgment to ABM.

¶ 12 Affirmed.