2012 IL App (2d) 110777-U
No. 2-11-0777
Order filed March 27, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JAN FORE,	)	Appeal from the Circuit Court
	)	of Stephenson County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 07-L-46
	)	
ROBERT SILAGGI and	)	
SHELIA SILAGGI, d/b/a	)	
South Side Saw,	)	Honorable
	)	David L. Jeffrey,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

Held: The trial court properly granted defendant summary judgment on plaintiff's negligence complaint, as defendant owed plaintiff no duty: there was no evidence that the slope of defendant's parking lot, in which plaintiff fell, created an unnatural accumulation of ice.

¶ 1 Plaintiff, Jan Fore, slipped and fell in the parking lot of South Side Saw, which is owned by defendant, Robert Silaggi.[1] In her amended complaint, plaintiff sued defendant for negligence,

[1]In her amended complaint, plaintiff sued Robert and his wife, defendant Sheila Silaggi.

claiming that defendant breached his duty to exercise reasonable care to eliminate the danger created by the accumulation of ice in the parking lot and to provide a safe means of ingress to and egress from South Side Saw. Defendant moved for summary judgment (735 ILCS 5/2-1005 (West 2010)), and the trial court granted the motion. Plaintiff timely appeals from the order granting summary judgment. We affirm.

¶ 2 In count one of her two-count amended complaint, plaintiff alleged that, on December 15, 2005, she drove to South Side Saw to retrieve a snow blower she recently purchased from defendant. Plaintiff alleged that she parked her car in the parking lot, which, unbeknownst to her, was covered by a layer of ice. Plaintiff claimed that the parking lot had a steep decline to the front door of defendant's business, that she slipped and fell as she walked in the lot, and that defendant knew or should have known the condition of the lot or should have realized that "the accumulation of ice" had created an unreasonable risk of harm to customers. In count two, plaintiff alleged that defendant had a duty to provide a reasonable means of ingress to and egress from South Side Saw. Plaintiff claimed that defendant breached this duty when he failed "to eliminate the danger created by the accumulation of ice on [the] parking lot."

¶ 3 In her deposition, plaintiff stated that, on the day that she fell, it was snowing and misting. When she left work to retrieve her snow blower at around 4:30 p.m., it had stopped snowing, but there was approximately one inch of snow on the ground. When she pulled into the parking lot of South Side Saw, she noticed that the parking lot "appeared to be clear" and "[j]ust looked like

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Because Sheila had no ownership interest in South Side Saw, she was dismissed as a defendant in this case.

blacktop," with no salt crystals or any other substance visible on the blacktop. To the side of the parking lot, away from the area where plaintiff fell, were piles of snow.

¶ 4 Plaintiff parked directly in front of South Side Saw, in the parking spot closest to the door; put on her emergency brake because of the slope of the parking lot; and exited her car. She walked around the front of her car with her hand on the hood as a precautionary measure. Although plaintiff did not notice any slippery spots as she walked around her car, she believed that the blacktop might be slippery, especially given the "angle of the parking lot." As plaintiff walked up the slope in order to open her passenger-side door, she fell. Although plaintiff did not see any snow or ice in the area where she fell and did not see anything that caused the fall, she believed that "[b]lack ice," which was "not visible," caused her to fall. After she fell, plaintiff told defendant that she should not have worn the wool clogs that she had on, as they were going to get ruined in the snow. Plaintiff denied telling defendant that her shoes caused her to fall.

¶ 5 In his deposition testimony, defendant indicated that the slope of the parking lot is approximately half an inch "at most." Defendant stated that the slope is there to help with drainage. On the day that plaintiff fell, defendant made sure that, throughout the day, the parking lot was cleared and salted. No one but plaintiff has ever fallen in the parking lot.

¶ 6 At approximately 3 p.m. that day, it stopped snowing. At that time, defendant used a snow blower to remove snow from the area around the South Side Saw building. Once the snow was removed from that area, a friend of defendant's plowed the parking lot, pushing the snow away from the parking lot. At 4:15 p.m., defendant surveyed the parking lot to make sure that the area was cleared out and salted.

¶ 7 Plaintiff arrived at approximately 4:45 p.m. As defendant was bringing plaintiff's snow blower over to her car, he saw plaintiff fall. Plaintiff told him that she thought her shoes caused her to fall. Defendant stated that he had no difficulty walking in the area where plaintiff fell and that the area was lit.

¶ 8 Based on the amended complaint and the deposition testimony, defendant moved for summary judgment. The trial court granted the motion, finding that plaintiff failed to establish that the slope in the parking lot created a dangerous condition. Moreover, the court found that, although cases have found that a business owner has a duty to provide a reasonable means of ingress to and egress from the business premises, and that that duty is not abrogated by the presence of a natural accumulation of ice, the business owner's duty is not breached unless the business owner knows of the dangerous condition and fails to either warn people about the dangerous condition or repair the dangerous condition.

¶ 9 The issue presented in this appeal is whether granting defendant's motion for summary judgment was proper. Summary judgment is appropriate 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 2010). A triable issue precluding summary judgment exists where material facts are disputed or where the material facts are undisputed but reasonable persons might draw different inferences from the undisputed facts. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). We review *de novo* the entry of summary judgment. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 10 To prevail in a negligence action, the plaintiff must prove that the defendant owed a duty to him, that the defendant breached that duty, and that the plaintiff's injury proximately resulted from that breach. *Tzakis v. Dominick's Finer Foods, Inc.*, 356 Ill. App. 3d 740, 745-46 (2005). At issue in this appeal is whether defendant owed a duty to plaintiff.

¶ 11 The existence of a duty is a question of law and, therefore, may be resolved on a motion for summary judgment. *Ralls v. Village of Glendale Heights*, 233 Ill. App. 3d 147, 154 (1992). In the context of a duty to remove snow and ice, courts have found:

> "One is generally not liable for injuries caused by natural accumulations of ice or snow, and there is no duty to remove natural accumulations of ice or snow. [Citation.] However, a duty may arise on the part of the defendant-premises owner, if the defendant voluntarily undertook the task of removing natural accumulations of ice or snow and did so negligently or if the defendant was responsible for an unnatural accumulation of ice or snow. Liability will be imposed on a defendant where the plaintiff shows an injury that was caused by such an unnatural accumulation of ice or snow. [Citation.]" *Ordman v. Dacon Management Corp.*, 261 Ill. App. 3d 275, 279 (1994).

¶ 12 Plaintiff argues that the trial court improperly granted defendant summary judgment, because defendant had a duty to provide a reasonably safe means of ingress to and egress from South Side Saw and defendant breached this duty when he allowed black ice to remain on the slope in the parking lot and did not warn plaintiff about the danger that this black ice created. We disagree.

¶ 13 It is well established that a plaintiff cannot recover for injuries resulting from a fall on ice, snow, or water unless the plaintiff can establish that the accumulation was unnatural and was created directly or indirectly by the defendant. *Tzakis*, 356 Ill. App. 3d at 746; *Finn v. Dominick's Finer*

Foods, Inc., 244 Ill. App. 3d 278, 281 (1993); *Stypinski v. First Chicago Building Corp.*, 214 Ill. App. 3d 714, 716 (1991). "In order to withstand a motion for summary judgment, a plaintiff must come forward with sufficient facts to allow a trier of fact to find that the defendant was responsible for the unnatural accumulation which caused plaintiff's injuries." *Finn*, 244 Ill. App. 3d at 281; see also *Crane v. Triangle Plaza, Inc.*, 228 Ill. App. 3d 325, 330 (1992). " 'A finding of an unnatural or aggravated natural condition must be based upon an *identifiable* cause of the ice formation.' " (Emphasis in original.)" *Crane*, 228 Ill. App. 3d at 330-31 (quoting *Gilberg v. Toys "R" Us, Inc.*, 126 Ill. App. 3d 554, 557 (1984)). Here, plaintiff failed to put forth any facts to establish that defendant caused the ice to form in the parking lot.

¶ 14 Plaintiff's theory is that, because of the slope, the ice on the blacktop in the parking lot made the parking lot dangerous, and, because defendant knew that this was so, given that he frequently salted the area, he had a duty to warn plaintiff about the icy condition of the sloping parking lot. However, plaintiff failed to present any evidence establishing that the accumulation of ice was unnatural, *i.e.*, that the ice formed on the blacktop because of the slope. Thus, summary judgment was proper.

¶ 15 In *Smalling v. LaSalle National Bank of Chicago*, 104 Ill. App. 3d 894, 895 (1982), the plaintiff was injured when he slipped and fell on a snow-covered ramp while he was helping an employee of a sporting-goods store carry a ping-pong table that the plaintiff had purchased. The plaintiff filed a negligence lawsuit against the defendants, claiming, among other things, that the defendants failed to warn the plaintiff about the unsafe condition of the ramp. *Id.* The defendants moved for summary judgment, the trial court granted the motion, and the plaintiff appealed. *Id.* On appeal, the plaintiff argued that summary judgment was improperly entered, because material

questions of fact existed concerning the condition of the ramp. *Id.* The reviewing court disagreed. *Id.* at 896. Specifically, the court stated:

> "[N]o allegation was made in [the] plaintiff's complaint that the ramp was unsafely designed or defective, and no affidavits or other evidence was introduced on this issue aside from [the] plaintiff's testimony that the ramp was 30 degrees in grade. If [the] plaintiff had such evidence to present regarding the defective nature of the ramp, it was incumbent upon him to produce evidence of such defective design prior to the hearing on [the] defendants' motions for summary judgment to support his *prima facie* case." *Id.*

¶ 16 Thus, we reject plaintiff's claim that "the parties have not completed the discovery phase and [p]laintiff can hire an expert for the purposes of trial to show the inclined steep slope of the driveway to the business is a hazardous design condition." As in *Smalling*, plaintiff had to present evidence, aside from defendant's deposition testimony concerning the grade of the slope and her own deposition testimony that the slope was steep enough that she had to put on her emergency brake, to withstand defendant's motion for summary judgment.

¶ 17 Because plaintiff failed to produce evidence that the slope of the parking lot created the accumulation of ice, she cannot establish that defendant breached his duty to provide her with a reasonable means of ingress and egress. Instructive on this point is *Richter v. Burton Investment Properties, Inc.*, 240 Ill. App. 3d 998 (1993). There, the plaintiff, a mail carrier, slipped and fell in the entryway of a building owned by the defendant. *Id.* at 999. The plaintiff claimed that the tile covering the floor in the entryway was excessively slippery and became even more slippery the day he fell because snow had been tracked in from outside. *Id.* at 1000. The defendant moved for summary judgment, the trial court granted the motion, and the plaintiff appealed. *Id.* at 1001.

¶ 18 On appeal, this court noted that "[a] property owner has the duty to provide a reasonable means of ingress and egress from its premises, 'and this duty is not abrogated by the presence of a natural accumulation of ice, snow, or water.' " *Id.* at 1002 (quoting *Branson v. R & L Investment, Inc.*, 196 Ill. App. 3d 1088, 1092 (1990)). This court went on to state that "[w]hen the landowner prescribes a means of ingress and egress, it has a duty to illuminate properly and give adequate warning of a known, dangerous condition, or it must repair the condition." *Id.* Because the plaintiff failed to present any evidentiary facts to support his allegation that the defendant installed unreasonably slippery tiles or maintained the tiles in an excessively slippery condition, this court found that summary judgment was properly entered. *Id.* at 1003-04.

¶ 19 The rule in *Richter*, that a business owner has a duty to provide a reasonable means of ingress to and egress from the business even when there is a natural accumulation, imposes liability only when a business owner has provided (irrespective of any accumulation of snow, ice, or water) an unreasonable way for people to gain entry to and leave the business. The rule prevents a business owner from providing an unreasonable way to enter or leave a business and avoiding liability because the dangerous condition was covered by a natural accumulation of ice. Rather, liability will be imposed when a dangerous condition is exacerbated by the natural accumulation of snow, ice, or water, thus rendering the accumulation of snow, ice, or water unnatural. See *McLean v. Rockford Country Club*, 352 Ill. App. 3d 229, 233-34 (2004) (although a landowner is not responsible for injuries caused by the natural accumulation of snow or ice, "a property owner may be held liable for such injuries if the accumulation of ice or snow becomes unnatural due to the design or construction of the premises."); see also *Selby v. Danville Pepsi-Cola Bottling Co., Inc.*, 169 Ill. App. 3d 427, 431, 434-35 (1988) (the defendant was not liable when the plaintiff slipped in a sloped icy parking

lot, as nothing indicated that the slope was defective or defectively designed in such a way that the slope aggravated or caused an unnatural accumulation of ice).

¶ 20 Plaintiff relies on *Richter* to argue that defendant's duty to provide her with a reasonably safe means of ingress to and egress from South Side Saw was not abrogated by the natural accumulation of ice in the parking lot. The problem with plaintiff's view is that here, as in *Richter*, nothing indicates that the means of ingress and egress that defendant provided to his customers, irrespective of the ice, was unsafe in any way. That is, as noted, nothing indicated that the slope was dangerous or that some other defect, like cracks or potholes in the blacktop, rendered accessing South Side Saw unreasonable. Because plaintiff does not claim in any way that the slope was dangerous, she has not established that defendant owed her a duty to remove or warn her about the natural accumulation in the parking lot. *Branson*, 196 Ill. App. 3d at 1094. Plaintiff's mere allegation that she fell in an area where a slope existed is insufficient to impose liability. *Selby*, 169 Ill. App. 3d at 435.

¶ 21 For these reasons, the judgment of the circuit court of Stephenson County is affirmed.

¶ 22 Affirmed.