

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL DIVISION

CAROLYN V. HARBISON,
Plaintiff,

v.

No. CI-09-09612

JPS GETTY, INC. t/d/b/a MILLERSVILLE
MART, JAGTAR SINGH, DHARAM PAL
and SUKVINDOR S. LONGIA,
Defendants.

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LANCASTER, PA.

OPINION

BY: KNISELY, J.

December 22, 2011

Before the Court is Defendants' Motion for Summary Judgment filed pursuant to Pa.R.C.P. No. 1035.2. At this time, each party has been given a full and fair opportunity to supplement the record, Plaintiff has filed a response in opposition to the motion, and each party has argued their respective positions at oral argument. This matter has not been certified for trial. For the following reasons, Defendants' motion will be granted.

BACKGROUND

The following facts are not in dispute. On September 27, 2007, Plaintiff visited Millersville Mart (the "Mart") convenience store located at 437 North George Street, Millersville, Lancaster County, to purchase a personal item. Prior to the alleged accident, Plaintiff visited the Mart on numerous prior occasions. On the day of the incident, Plaintiff alleged that she parked her car at the side of the Mart, and walked up two steps to reach the concrete apron surrounding the store. Plaintiff then proceeded along the apron to the front of the store. As Plaintiff was about to enter the Mart, she noticed a woman with a walker exiting, and

attempted to hold the door open for the woman. Without looking down, Plaintiff stepped backward when opening the door. Plaintiff assumed there were two steps down off the apron before the pavement; however, the second step at the side of the store did not continue around to the front of the Mart. Regardless, Plaintiff fell onto the pavement before reaching the first step.

On December 14, 2009, Plaintiff filed the instant civil action against Defendants. Plaintiff alleges the steps to the Mart constituted a dangerous or hazardous condition and Defendants knew or should have known the steps were dangerous.

DISCUSSION

Under Rule 1035.2 of the Pennsylvania Rules of Civil Procedure, any party may move for summary judgment as a matter of law. Pa.R.C.P. 1035.2. Pursuant to Rule 1035.2, a motion for summary judgment may be based on either of two types of evidentiary records:

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa.R.C.P. No. 1035.2. “[I]f a defendant is the moving party, he may make the showing necessary to support the entrance of summary judgment by pointing to materials which indicate that the plaintiff is unable to satisfy an element of his cause of action.” *Godlewski v. Pars Mfg. Co.*, 408 Pa.Super. 425, 431, 597 A.2d 106, 109 (1991)(citations omitted).

Here, Defendants motion is based on subparagraph (2) of Rule 1035.2. Defendants argue that Plaintiff has failed to present a *prima facie* claim of negligence against Defendants. This Court agrees.

In order for liability to be imposed upon a defendant in a negligence action, the plaintiff must establish four elements: (1) the existence of a duty or obligation recognized by law; (2) a failure on the part of the defendant to conform to that duty; (3) a causal connection between the defendant's breach and the resulting injury; and, (4) actual loss or damage suffered by the complainant. *T.A. v. Allen*, 447 Pa.Super. 302, 306, 669 A.2d 360, 362 (1995). The duty of care that a possessor of land is required to exercise for someone who enters his property depends upon whether the person entering is a trespasser, licensee, or invitee. *Carrender v. Fitterer*, 503 Pa. 178, 185, 469 A.2d 120, 123 (1983). In the instant case, both parties agree that Plaintiff was a business invitee.

Possessors of land owe an invitee a duty to protect them from foreseeable harm. *Id.* A possessor of land is subject to liability for a physical condition on his property if he:

- (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitee, and
- (b) should expect that the invitee will not discover or realize the danger, or will fail to protect themselves against it, and (c) fails to exercise reasonable care to protect him against the danger.

Restatement (Second) of Torts § 343. However, “a possessor of land is not liable to his invitees for any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate harm despite such knowledge or obviousness.” *Id.* at § 343A.

Although the determination of whether a danger was known or obvious is typically a question of fact for the jury, “the question may be decided by the court where reasonable minds could not differ as to the conclusion.” *Carrender*, 469 A.2d at 186. A danger is deemed obvious when the condition and risk are apparent and would be recognized by a reasonable man, in the position of the invitee, exercising normal perception, intelligence, and judgment. *Id.* at 185.

Moreover, "it is the duty of a person to look where he is walking and see that which is obvious."

Lewis v. Duquesne Inclined Plane Co., 346 Pa. 43, 44, 28 A.2d 925, 926 (1942).

Conditions that Pennsylvania courts have determined to be known or obvious, resulting in no liability on the part of the defendant for the plaintiff's injuries, include hazards such as clearly visible patches of ice. *Carrender, supra*, at 186-87. Additionally, in *Villano v. Sec. Sav. Assoc.*, the Pennsylvania Superior Court found that uneven steps were an obvious condition that the defendant was not required to protect the plaintiff against. 268 Pa. Super. 67, 407 A.2d 440 (1979). In *Villano*, the plaintiff tripped and fell when attempting to walk up a set of sloped steps to a bank. *Id.* at 441. The height of the first step differed from one end to the other by approximately three inches. *Id.* The defendant, who admitted he was not looking down, claims his view of his side of the steps was obscured by a bank pillar, and, as a result, he looked at the other side of the step to gauge its height and tripped. *Id.* at 71, 442-43. The Superior Court found that the uneven steps were a danger that should have been obvious or known to the plaintiff, and that the bank was not responsible for his injuries. *Id.* at 73, 443.

In the case at bar, the danger caused by the uneven steps at the Millersville Mart should have been known or obvious to Plaintiff. Thus, Defendants are not responsible for her injuries. The fact that the second concrete step from the side of the store did not continue around to the front would have been obvious to anyone exercising normal perception, intelligence, and judgment. Additionally, Plaintiff admitted during her deposition that she was not looking down when she stepped backward. Plaintiff had a duty look where she was walking and see that which was obvious. *See Lewis, supra*, at 926. Finally, as the Superior Court held in *Villano*, uneven concrete steps are a danger that should have been known or obvious. As a result, Plaintiff has not made out a *prima facie* case for negligence against Defendants.

Accordingly, the Court enters the following:

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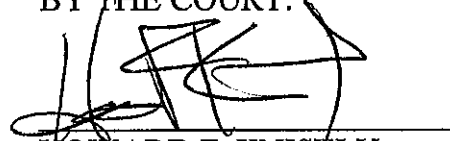
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ORDER

AND NOW, this 22nd day of December, 2011, upon consideration of the Motion for Summary Judgment filed by Defendants, Plaintiff's response, and the positions advanced at oral argument, it is ordered that Defendant's Motion for Summary Judgment is granted.

NOTICE OF ENTRY OF ORDER OR DECREE
PURSUANT TO PA. R.C.P. NO: 236
NOTIFICATION - THE ATTACHED DOCUMENT
HAS BEEN FILED IN THIS CASE
PROTHONOTARY OF LANCASTER CO., PA
DATE: 12-28-11 *gfg*

BY THE COURT:



HOWARD F. KNISELY
JUDGE

Attest:

Copies to:

~~Adam~~ L. Seiferth, Esq., 1011 Mumma Rd., Ste 201, Lemoyne, PA 17043
Gabriella Hasham Farhat, Esq., 128 N. Lime St., Lancaster, PA 17602