IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT - FIRST DISTRICT

SARAH SPENCER,	)	
	)	
Plaintiff,	)	
v.	)	2015-M1-300035
	)	
DADY MART FOOD & LIQUOR, INC., a Domestic Corporation,	)	
	)	
	)	
Defendant.	)	

REPLY OF DEFENDANT, DADY MART FOOD & LIQUOR, INC., TO PLAINTIFF, SARAH SPENCER'S RESPONSE TO DADY MART FOOD & LIQUOR, INC.'S SUMMARY JUDGMENT MOTION

Defendant, DADY MART FOOD & LIQUOR, INC. (hereafter, 'DADY MART'), replies to Plaintiff's Response to DADY MART's Summary Judgment Motion as follows:

SPENCER's premises liability argument fails because no evidence has been presented DADY MART knew or should have known of any door problem created an unreasonable risk of harm to DADY MART customers. *See* RESTATEMENT (SECOND) OF TORTS § 343, at 215–16 (1965) (no liability may be imposed in the absence of actual or constructive knowledge of the unsafe condition). SPENCER said nothing to DADY MART about the door. Smith never said anything to DADY MART the door created an unreasonable risk of harm because the problem "was nothing." (Exhibit H, pg. 21). If the problem was insignificant and it was not reported to DADY MART, DADY MART did not breach any duty to SPENCER under RESTATEMENT (SECOND) OF TORTS §343.

SPENCER's deposition testimony is SPENCER pushed the inner door open and she was holding the [inner] door open when it began to close. (Exhibit C, pg. 51). SPENCER's daughter-in-law, Smith said, Smith held the inner door for SPENCER. Then SPENCER says she grabbed the inner door and she let it go and it closed on her. When SPENCER was deposed, she never said the inner door slammed shut on her; SPENCER said because of the apparent 'strength of the door' it closed on her while she was holding it. (Exhibit C, pg. 53). Plaintiff never offered evidence establishing how door was controlled, its size, actual weight or other sufficient evidence establishing a dangerous defect, or why the defect should have been discovered by DADY MART. *Cale v. Ulta Salon, Cosmetics & Fragrances*, 2012 WL 6962877 (Ill App. 1st Dist. 2012). No facts are plead any specific defect in the door provided constructive notice to DADY MART door repairs were required. (Exhibit A, ¶¶ 4-5) Here, Smith said the way the inner operated "was nothing" and "wasn't major." (Exhibit H, pg. 21). Given this testimony, neither SPENCER nor Smith have established there was any unreasonable risk of harm in using the door. Here, no facts have been established DADY MART should realize the unreasonable risk of harm. (Exhibit

C pg. 51; Smith pg. 22; Exhibit D, pg. 8; RESTATEMENT (SECOND) OF TORTS §343(a)).

Contrary to the Response (Response, pg. 1), Plaintiff's Complaint ¶ 5 *does not allege as SPENCER was exiting DADY MART, the inner door of the foyer abruptly slammed shut catching Plaintiff's foot in the door.* (Exhibit A, ¶ 5). SPENCER alleges her daughter-in -law, Laverne Smith, walked out first from DADY MART and pulled the door open which slammed shut on SPENCER. (Exhibit A, ¶ 5). This argument not only miscites the Complaint, but it ignores SPENCER's testimony SPENCER allowed the door to close while she was holding it. (Exhibit C, pg. 53).

Plaintiff argues "*Defendant knew or should have known of the dangerous condition of the door; specifically, that the door was carelessly and negligently maintained.* (Response, pg. 3). SPENCER's deposition testimony is Plaintiff used the door on only one occasion, had no difficulty entering the store, had no contact with any DADY MART employees about the door, knew of no pre-existing door problems and never complained to DADY MART. (Exhibit C, pgs. 38, 41, 70, 71). Neither the Response nor the Complaint raise evidentiary facts DADY MART should have known any problem with any door involved an unreasonable risk of harm. *Kimborough v. Jewel Companies*, 92 Ill. App. 3d 813, 416 N.E.2d 328 (1st Dist. 1981); RESTATEMENT (SECOND) OF TORTS § 343 (1965); Exhibit D, Answers 3-11).

Plaintiff attempts to use Defendant's lack of maintenance logs and occurrence video to speculate Defendant breached a duty to Plaintiff. (Response, pp. 2-3). Plaintiff speculates inspection and maintenance logs and/or the occurrence video would establish Plaintiff's claim under RESTATEMENT (SECOND) OF TORTS § 343(a). This argument is not based on material facts, but speculation and is insufficient to overcome a motion for summary judgment based on uncontroverted facts. *Certified Mechanical Contractors, Inc. v. Wight & Co., Inc.*, 162 Ill. App. 3d 391, 402 (2nd Dist. 1987) [holding unfounded inferences and presumptions are insufficient to overcome a summary judgment motion based on admissible facts.] Again, Mr. Abdelrahman and his employees each testified DADY MART had no notice of any door problem, they never observed a problem with the door, no one ever reported a door problem to DADY MART, and daily inspections of the door never revealed any door problem. (*See* Exhibits E, pgs. 15, 17-18; Exhibit F, pgs.16-18, 26, 27, 33, 35-37, 42; Exhibit G, pgs. 25, 34, 41-42).

In support of Plaintiff's RESPONSE, II. LEGAL STANDARD, Plaintiff cites *Hilgart v. 210 Mittel Drive Partnership*, 2012 IL App (2d) 110943. In *Hilgart*, the Court affirmed summary judgment for defendants holding defendant partners were immune from negligence liability under the Workers' Compensation Act and the doctrine of lessor immunity. *Id.* The holding in *Higart* does not support Plaintiff's argument. Plaintiff cites *Forsythe v.*

Clark, 224 Ill. 2d 274 (2007). In *Forsythe,* the Court held the defendant corporation was not protected under the Worker's Compensation Act where the direct participant theory of liability applies and remanded the case to the circuit court for further proceedings. *Id.* Plaintiff also cites *Gilmore v. Powers*, 403 Ill. App. 3d 930 (2010). In *Gilmore*, the Court affirmed summary judgment for defendants holding an Evanston City Code Ordinance intended to benefit the municipality did not create a duty for defendant home owners to maintain an adjacent public walkway in front of the home. *Id.* Plaintiff cites *Keating v. 68th & Paxton L.L.C.*, 401 Ill. App. 3d 486 (2010). Affirming application of RESTATEMENT (SECOND) OF TORTS § 343(a) to premises claims, the *Keating* Court affirmed summary judgment for defendant property owner holding by only presenting circumstantial evidence to create speculative inference of causation, the plaintiff did not establish a material issue of fact. *Id.*

At RESPONSE, III. ARGUMENT, Plaintiff argues the Complaint raises fact issues to defeat Defendant's 735 ILCS 5/2-1005(b) summary judgment motion. (Response, pg. 4). Plaintiff pleads no facts showing a history of door defects that would give Defendant reason to know the door closed as it did on the loss date. (Exhibit A, ¶¶ 4-5). Not one witness in this case established either the door was unreasonably dangerous or DADY MART knew or should have known the door was unreasonably dangerous. (Exhibit C, pgs. 70-72; Exhibit D, Answers 3-10; Exhibit E, pgs. 15, 17-18; Exhibit F, pgs. 16-18, 33, 35-37; Exhibit G, pgs. 13, 25, 41; Exhibit H, pgs. 20-24, 37, 51).

At RESPONSE, III. ARGUMENT, Plaintiff responds, "*while Defendant owner and employees have testified that they lacked actual knowledge of any defect to the door, actual knowledge is not required for Plaintiff to recover.*" (Response, pg. 4). Illinois courts interpreted RESTATEMENT (SECOND) OF TORTS § 343(a) to mean that there is no liability for landowners for *dangerous or defective conditions on the premises* in the absence of the landowner's *actual or constructive knowledge* of these conditions. *LaFever v. Kemlite Co.*, 185 Ill.2d 380, 389, 706 N.E.2d 441 (Ill.1998); *Keating v. 68th & Paxton L.L.C.*, 401 Ill. App. 3d 456 (1st Dist. 2010). If plaintiff does not show actual knowledge of the dangerous condition, then plaintiff must establish material facts establishing constructive knowledge. *Id.* Plaintiff has never proven constructive knowledge of any unreasonably dangerous condition. Again, the only person claiming a problem with the inner door was Laverne Smith. After SPENCER and Smith entered DADY MART on June 21, 2014, Smith says the inner door slammed behind her; however, she said nothing to DADY MART about the door. (Exhibit H, pg . 23-24). Smith was also unable to confirm anybody

from DADY MART ever overheard complaints about door problems. (*Id.*, pg. 50). Smith was unable to establish any other customers made any complaints to DADY MART about any dangerous door. (*Id.*, pg. 51). Given the testimony of SPENCER and Smith, Plaintiff has also failed to allege material facts how or why DADY MART failed to exercise reasonable care to protect SPENCER from the unreasonably dangerous door. RESTATEMENT (SECOND) OF TORTS § 343(c).

Additionally, at RESPONSE, III. ARGUMENT, Plaintiff argues, *"Ms. Smith testified that this condition had been presented in the door for a period of twelve years. It is irrelevant that Ms. Smith, a witness did not report te defect in this time, because she was not required to."* (Response, pg. 5). Arguing the door was in the same condition for 12 years does not establish an unreasonably dangerous or defective condition on the premises and does not establish DADY MART's actual or constructive knowledge of the condition. RESTATEMENT (SECOND) OF TORTS § 343(a) and (c). Plaintiff has offered no facts establishing why DADY MART should know of any unreasonably dangerous condition, how DADY MART would have acquired such knowledge nor any definitive communication to DADY MART such as to establish a duty under RESTATEMENT (SECOND) OF TORTS § 343(a). DADY MART witnesses all testified they used the door daily and encountered no problems with the inner door.

At RESPONSE, III. ARGUMENT, Plaintiff argues, *"the issue that remains in dispute was whether or not the door was defective due to a dangerous condition and whether Defendant's employees had actual or constructive knowledge of the condition."* (Response, pg. 6). The dangerous condition identified by Smith was the door did not close properly, was hard to open, or did not open all the way (Exhibit H, pgs. 20, 51). Smith said, the door condition "was nothing" and did not report any door problem to DADY MART. (*Id.*, pg. 21). SPENCER was only at DADY MART once, had no problems entering the store and knows nothing about the condition of the door before her June 21, 2014 accident. (Exhibit D, Answers 3-10). SPENCER's description of how the inner door opened is irreconsilable to show defect. (Exhibit C, pg. 51; Exhibit H, pg. 29). SPENCER also never testified the dangerous condition was that the door was hard to open and did not catch, such that it caused her injury. (Response, pg. 6). However, the Complaint fails to properly plead these facts. Precedent cited in Defendant's Summary Judgment Motion (Summary Judgment Motion, pg. 6) accurately cites a property owners duties relating to an alleged defect in an entry door. In *Zonta v. Village of Bensenville*, 167 Ill. App. 3d 354, 521 N.E.2d 274 (2nd Dist. 1988), summary judgment was granted because plaintiff was unable to establish a dangerous door defect

which defendant had knowledge. Similarly, in *Kostecki v. Pavlis,* 140 Ill. App. 3d 176, 488 N.E.2d 644 (1st Dist. 1986), summary judgment was appropriate where plaintiff was not able to establish defendants' actual or constructive knowledge of a defect in an apartment door's closure mechanism. Here, SPENCER and Smith have no personal knowledge whether DADY MART was aware of any specific condition affecting the way the inner door closed. They also have never established anyone complained to DADY MART about the condition of the door and are aware of no circumstances where DADY MART overheard complaints by anyone about the door. *Holloway v. The Board of Trustees of the University of Illinois*, 45 Ill. Ct. Cl. 255 (1992).

WHEREFORE, pursuant to 735 ILCS 5/2-1005(b), Defendant, DADY MART, respectfully asks this Honorable Court grant a summary judgment against Plaintiff and in favor of Defendant, DADY MART.

Respectfully Submitted,

By:_____

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