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

SARAH SPENCER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 2015 M1 300035
	)	
DADY MART FOOD & LIQUOR, INC., a Domestic Corporation.	)	
	)	
Defendant.	)	

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

NOW COMES the Plaintiff, SARAH SPENCER, by and through her attorneys, HELLER AND RICHMOND, LTD., and in response to Defendant, DADY MART FOOD & LIQUOR, INC.'s Motion for Summary Judgment, states as follows:

I. Statement of Relevant Facts

Plaintiff, SARAH SPENCER, was injured on June 21, 2014, while she was leaving Defendant, DADY MART FOOD & LIQUOR, INC.'S premise, as result of a dangerous condition which existed in the foyer of the premise. *Plaintiff's Comp.* ¶5, hereinafter referred to as *Compl.* As SPENCER was exiting DADY MART FOOD & LIQUOR, INC., the inner door of the foyer abruptly slammed shut, catching Plaintiff's foot in the door. *Compl.* at ¶5. This caused Plaintiff to fall to ground on her right side, causing her injury. *Compl.* at ¶5.

During the deposition of Plaintiff, SARAH SPENCER, she testified that the door had a dangerous condition, that it "slam[med] back too quick," "it has a jerking and something...," that it was "hard to push, also hard to open." *Dep. of Spencer*, p. 45 lines 1-2 & 7-8. Plaintiff testified that the door "don't ever catch." *Id.* at p. 45, line 12. She also testified that there was

nothing slippery on the floor and that the floor was not wet. *Id.* at p. 45, lines 22-24; p. 46, lines 1-3. SPENCER testified that she was carrying one bag of her purchases in her left hand as she exited the store. *Id.* at p. 42, line 24, p. 43, lines 1-24. Plaintiff testified that as she was exiting the store, she tried to open the door by pushing it. *Id.* at 51, lines 7-10. She was able to open it partially, such that she could exit the premise sideways. *Id.* at 52, lines 8-18. Plaintiff testified that she was unable to hold the door open because the door was too strong. *Id.* at 52, lines 20-24. She testified that the door slammed on her right foot, causing her to fall. *Id.* at p. 45, lines 13-21.

During the deposition of Laverne Smith, Ms. Smith testified that the dangerous condition of the door had been in its present condition "going back twelve years." *Deposition of Smith*, p. 20, lines 20-21. She testified that she did not report the condition because "it wasn't nothing—it wasn't major where [she] fell or anything, so [she] kind of just looked over it." *Id.* p. 21, lines 6-8. Ms. Smith testified that after she started going to the store, she just knew to move quickly, so that the door did not slam on her. *Id.* p. 21, lines 8-12.

Defendant knew, or should have known of the dangerous condition of the door; specifically, that the door was carelessly and negligently maintained. *Compl.* at ¶2 & ¶4. Defendant has not proffered any evidence of inspection logs or logs of routine maintenance performed to the door. During the deposition of Defendant, DADY MART FOOD & LIQUOR'S owner, Nororaldeen Abdelrahman, stated that he had a company that he calls to repair the doors, but the company has not come for three or four years. *Dep. of Abdelrahman*, p. 14-15, lines 21-24, 1-14. He stated that he keeps records of any repairs to the door for approximately two years. *Id.* at p 16-17, lines 24, 1. During the deposition of Said Dardas, cashier/manager, he testified that in the fifteen years that he had worked at Dady Mart, the doors had not been repaired, other than maybe the glass. *Dep. of Dardas*, p. 14, lines 2-7 & p. 17, line

24, p. 18, lines 1-3. During the deposition of Denise Ingram, cashier, she testified that the last time someone had worked on the door was within the last three years, but, she did not know what the was for or when it was. *Dep. of Ingram*, p. 33, lines 2-13. There was no company under contract to service the door. *Dep. of Abdelrahman*, p. 15, lines 1-7. Mr. Abdelrahman further testified that although there could have been a video of Ms. Spencer's fall, the computer system automatically writes over the tapes, so he did not retain it.

II. Legal Standard

Summary judgment is proper only where "the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue of as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c). When determining whether a genuine issue of material fact exists, the court must construe all pleadings and attachments strictly against the movant and liberally in favor of the nonmovant. *Hilgart v. 210 Mittel Drive Partnership,* 2012 IL App (2d) 110943, ¶19. If the undisputed material facts could lead reasonable observers to divergent inferences, summary judgment should be denied and the issue decided by the trier of fact. *Forsythe v. Clark*, 224 Ill. 2d 274, 280 (2007). Summary judgment is a drastic means of disposing of litation, and therefore, should only be allowed when the right of the moving party is clear and free from doubt. *Gilmore v. Powers,* 403 Ill. App. 3d 930, 932 (2010).

To establish a claim for premises liability, "the plaintiff must present sufficient factual evidence to establish the existence of a duty of care owed by the defendant to the plaintiff, a breach of that duty, and an injury proximately caused by that breach." *Keating v. 68th & Paxton L.L.C.*, 401 Ill. App. 3d 456, 470 (2010). In order to determine if the defendant owed an obligation of reasonable conduct for the benefit of plaintiff, the court will consider " (1)

foreseeability and (2) likelihood of injury, but also (3) the magnitude of the burden on defendant in guarding against injury and (4) the consequences of placing that burden on defendant." *Lafever v. Kemlite Co.*, 185 Ill. 2d 380, 389 (1998). Plaintiff must establish that the land possessor "(a) knows or by the reasonable exercise of care would discover the condition, and (b) should realize that it involves an unreasonable risk of harm to such invitees, and (c) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and fails to exercise reasonable care to protect them against the danger." *Keating v. 68th & Paxton L.L.C.*, 401 Ill. App. 3d 456, 471 (2010).

III. Argument

Summary judgment should be denied in this case because there exists genuine issues of material fact as to the dangerous condition of the door and the actual or constructive knowledge of the Defendant. Plaintiff, SARAH SPENCER, has sufficiently pleaded that Defendant:

> (a) Improperly operated, managed, maintain and controlled the aforesaid building, and specifically said building, so that as a direct and proximate result thereof, that Plaintiff was injured.
> (b) failed to make a reasonable inspection of the aforesaid premises and said building, when the Defendant knew or should have known, that said inspection was necessary to prevent injury to the Plaintiff and others;
> (c) Failed to warn the Plaintiff of the dangerous condition of said premises and said building, when Defendant knew, or in the exercise of ordinary care should have known, that said warning was necessary to prevent injury to the Plaintiff and others;
> (d) Otherwise carelessly and negligently maintained said building in a dangerous and unsafe condition, although Defendant knew or in the exercise or ordinary care should have known, that said condition would create a dangerous and hazardous condition for persons using the glass partition on the door to the building. *Comp.* ¶4.

While Defendant's 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. In this case, there

exists a genuine issue of material fact as to whether the Defendant had constructive knowledge of the defect.

Defendant knew or should have known that failing to have the door inspected, repaired, or otherwise maintained for a period of several years before the Plaintiffs' injury would create a dangerous situation. In this case, the Plaintiff, SARAH SPENCER, testified as to the specific defect of the door. Additionally, Ms. Smith testified that this condition had been present in the door for a period of twelve years. It is irrelevant that Ms. Smith, a witness, did not report the defect in this time, because she was not required to. Ms. Smith further testified during her deposition that she had even changed her behavior to avoid having the door slam on her.

The testimony of both Plaintiff, SARAH SPENCER, and witness, Ms. Smith, create a genuine issue of material fact, the defect of the door, such that a reasonable jury could draw diverging inferences regard the knowledge of the Defendant's owner and employees, as well as the condition of the door. Moreover, all reasonable inferences should be drawn in favor of the nonmoving party at the summary judgment phase. It is certainly a reasonable inference that can be drawn, based on the deposition testimony of all of the parties, that the condition of the door constituted a defect that Defendant's owner and employees knew or should have known of, such that summary judgment is improper.

Furthermore, this case is distinguishable from the cases cited by Defendant in its motion. In *Kostecki v. Pavlis,* 140 Ill. App. 3d 176 180 (1986), the court determined that the defendant was not liable for plaintiff's injuries because, although the plaintiff had entered the door numerous times, none of the parties, including the plaintiff had observed the dangerous condition prior to the plaintiff's injury. The court determined that it was not reasonably foreseeable where the landlord lacked actual and constructive knowledge of the defective condition where plaintiff

herself, as well as defendants, had never seen the door close in such a manner. *Id.* In contrast to *Kostecki,*, where the defendant had no reason to know of the defect because, at the time of the injury was the first time the defect occurred, here all of the parties agree that the condition of the door remained unchanged. The issues 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. Ms. Smith has testified that the door was in this dangerous condition for twelve years, such that she altered her behavior to avoid injury. Plaintiff has testified that the dangerous condition was that the door hard to open and did not catch, such that it caused her injury. Defendant's owner and employees have testified that the door functioned in the same manner over a period of at least twelve years, but that there was no issue with the door. These disputes could certainly give rise to divergent inferences. Because there remain genuine issues of material fact in this matter, summary judgment is improper and should be denied.

In addition, the defective condition did not arise from the breaking of a glass pane. Unlike in, for example, *Zonta v. Village of Bensenville,* 167 Ill. App. 3d 354, 357 (1988) (summary judgment was proper "where plaintiff offers no hint as to what defect in the glass caused his injury, other than his speculation that the glass might have been too thin"), *Holloway v. Bd. of Trs. Of the Univ. of Ill.*, 45 Ill. Ct. Cl. 255, 258-59 (1991), (summary judgment was granted where claimant "failed to identify a specific defect which proximately caused her injury" and failed to establish that respondent had notice of the defect) and *Britton v. Univ. of Chi. Hosps.*, 382 Ill. App. 3d 1009, 1012 (2008) (summary judgment was proper where plaintiff where plaintiff failed to offer evidence of a condition under the defendant's control which caused the glass in the door to break), Plaintiff in this matter has identified the defect in the door, both in

her Complaint and at her deposition. She has also raised a genuine issue of material fact as to whether the Defendant's owner and employees knew or had constructive knowledge of the condition. Plaintiff's testimony is supported by Ms. Smith's testimony, who also identifies a defect of the door and asserts that the this defect was in existence for a period of at least twelve years.

While a party is required to present some factual basis that would arguably entitled her to judgment, she is not required to prove her case at the summary judgment stage. *Kimbrough v. Jewel Cos.*, 92 Ill. App. 3d 813, 819 (1981). Plaintiff has met her burden, such that summary judgment is improper. Within her complaint, Plaintiff has a raised a factual basis which arguably entitles her to judgment: Defendant failed to properly operate and manage the building, Defendant failed to make a reasonable inspection of the premises, Defendant failed to warn Plaintiff of a dangerous condition, and Defendant acted carelessly and negligently in maintaining the premise, such that in the exercise of ordinary care, Defendant would have known that the condition would create a dangerous condition. The deposition testimony of Plaintiff and Ms. Smith, along with the pleadings, establish that genuine issues of material fact remain, such that summary judgment is improper. Therefore, Defendant's Motion for Summary Judgment should be denied.

Plaintiff, SARAH SPENCER, respectfully requests that this Honorable Court deny Defendant's Motion for Summary Judgment, and any other relief any other relief it deems equitable and just.

Respectfully submitted,