

**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. )

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CIRCUIT COURT OF COOK COUNTY ILLINOIS  
MUNICIPAL DEPARTMENT - FIRST DISTRICT

**735 ILCS 5/2-1005(b) MOTION OF DEFENDANT, DADY MART FOOD & LIQUOR, INC.  
FOR SUMMARY JUDGMENT AGAINST PLAINTIFF, SARAH SPENCER**

Defendant, DADY MART FOOD & LIQUOR, INC., pursuant to 735 ILCS 5/2-1005(b), moves this honorable court for summary judgment on SARAH SPENCER’s Complaint at Law. Under plaintiff’s Complaint, SARAH SPENCER has not factually established DADY MART FOOD & LIQUOR, INC.’s inner door was defective, that DADY MART FOOD & LIQUOR, INC. had actual or constructive notice of any defective door, or that DADY MART FOOD & LIQUOR, INC. was otherwise a proximate cause of the SPENCER’s doorway fall.

**I.  
THE PARTIES**

The Plaintiff is SARAH SPENCER (hereinafter ‘SPENCER’). On **June 21, 2014 at 8:00 p.m.**, SPENCER was a business invitee of the Defendant, DADY MART FOOD & LIQUOR, INC. (hereafter ‘DADY MART’). DADY MART is a mini-mart. DADY MART maintained the building and entrance doors located at 833 E. 79<sup>th</sup> Street, Chicago, Illinois, where Plaintiff claims to have fallen.

**II.  
BACKGROUND**

On **January 7, 2015**, SPENCER filed a premises liability Complaint at Law against DADY MART. (Exhibit ‘A’). On **March 10, 2015**, DADY MART answered the Complaint. (Exhibit ‘B’).

**III.  
STATEMENT OF FACTS**

**A. Deposition of Sarah Spencer**

On **June 26, 2015**, SPENCER was deposed. (Exhibit ‘C’, Deposition of Sarah Spencer, with deposition sub-exhibits 1-10). On **June 21, 2014**, SPENCER went to DADY MART to get her grandchild

junk food. (*Id.* at pg. 38). It was her first time at DADY MART. (*Id.*). SPENCER received no warnings from anyone DADY MART's inner was defective. (*Id.*). SPENCER entered DADY MART through two sets of doors. (*Id.* at pg. 39). Upon entry to the store, she did not notice any problem with either doors. (*Id.* at pgs. 39-40). SPENCER entered DADY MART with her daughter-in-law, Laverne Smith. (*Id.* at pg. 40). SPENCER said Smith had no trouble with the doors. (*Id.*). SPENCER entered the store and bought potato chips, cookies, and a beer. (*Id.* at pg. 42). SPENCER put the items she purchased in a bag. (*Id.* at pg. 43). While exiting DADY MART, SPENCER carried the bag in her left hand. (*Id.*).

SPENCER's fall occurred at 8:00 p.m. on **June 21, 2014**. (*Id.* at pg. 44). SPENCER said, the dangerous condition at DADY MART was the door. (*Id.*). This was an inner door, inside the store, before the second door that exits to the street. (*Id.*). SPENCER said, the door was dangerous because it slams back too quick. (*Id.* at pg. 45). SPENCER said, the door slammed on her right foot and this was the only cause of her fall. (*Id.*).

While exiting DADY MART, SPENCER pushed the inner door open with her right hand. (*Id.* at pg. 51). SPENCER opened the door wide enough so she could get through the door sideways. (*Id.* at pg. 52). With her right hand, SPENCER was holding the inner door open when it began to close on her. (*Id.* at pg. 53). The door was too strong; it closed on her right ankle. (*Id.* at pgs. 53-54). Nothing obstructed SPENCER's view. (*Id.* at pg. 58).

SPENCER said, Laverne Smith **did not** hold the inner door open for SPENCER. (*Id.* at pg. 60). Before SPENCER fell, Laverne Smith let the inner door close completely before SPENCER tried to open the door. (*Id.*). SPENCER said, Laverne Smith already exited the inner door before SPENCER fell. (*Id.*).

SPENCER did not notice Laverne Smith having problems with the inner door. (*Id.* at pg. 61). SPENCER does not know if anyone from DADY MART saw her fall. (*Id.* at pg. 70). The night of the fall was the first and only time SPENCER was at DADY MART. (*Id.*). Nobody told her any door was dangerous. (*Id.*). SPENCER does not know when the door first became dangerous. (*Id.*). Before her **June 21, 2014** fall, SPENCER does not know if anyone else was having problems with the door. (*Id.* at pgs. 70-71). Prior to her **June 21, 2014**, fall SPENCER had no knowledge anyone from DADY MART knew of any dangerous condition with the door. (*Id.* at pg. 72).

SPENCER agreed her **June 17, 2015** amended responses to interrogatories were accurate. (*Id.* at pg. 75); (Exhibit 'D', Plaintiff's Amended Response to Defendant's Interrogatories). SPENCER could not

identify the inner door defect or when the defect came into existence; she never knew the door was slamming before the **June 21, 2014** fall. (Exhibit 'D', Response No. 7). SPENCER had no knowledge of any door complaints before the **June 21, 2014** incident and had no knowledge anyone from DADY MART knew any door was not operating properly or slamming shut. (Exhibit 'D', Response No. 10). SPENCER had no knowledge anyone from DADY MART knew of any dangerous inner door condition before she fell. (Exhibit 'C', pg. 71).

### **B. Deposition of Nooraldeen Abdelrahman**

On **June 26, 2015**, Nooraldeen Abdelrahman, owner of DADY MART, was deposed. (Nooraldeen Abdelrahman sometimes goes by the name 'Nick'). (Exhibit 'E', Deposition of Nooraldeen Abdelrahman). Abdelrahman has owned DADY MART for 30 years. (*Id.* at pg. 6). On **June 21, 2014**, Abdelrahman was in the store when SPENCER claims she fell. (*Id.* at pg. 7). Abdelrahman did not know SPENCER fell. (*Id.*). The fall occurred in the evening. (*Id.*). On **June 21, 2014**, DADY MART's store cashier employee, Denise Ingram, was present. (*Id.* at pg. 7-8). Said Dardas, was also present at the store. (*Id.*). Abdelrahman did not know if Ingram and Dardas saw SPENCER's fall. (*Id.* at pg. 9). 30 days prior to SPENCER's **June 21, 2014** fall, Abdelrahman did not have any doors repaired. (*Id.* at pg. 14). For the past 3 to 4 years, Abdelrahman did not have any problems with the doors. (*Id.* at pg. 15). Abdelrahman received no complaints from anyone the doors were broken. (*Id.*). Abdelrahman first learned about SPENCER's **June 21, 2014** fall when he received an attorney's lien letter, after the fall. (*Id.* at pg. 16). Before SPENCER's **June 21, 2014** fall, Abdelrahman had no knowledge of any dangerous condition involving any door in DADY MART. (*Id.* at pg. 17). Before SPENCER's **June 21, 2014** fall, Abdelrahman had no knowledge of any doors' malfunctioning. (*Id.*). Before SPENCER's **June 21, 2014** fall, Abdelrahman had no knowledge of any doors' defect. (*Id.*). Before SPENCER's **June 21, 2014** fall, Abdelrahman had no knowledge any door closed too quickly. (*Id.*). Before SPENCER's **June 21, 2014** fall, Abdelrahman was never given notice of any problems with the doors to DADY MART. (*Id.* at pgs. 17-18). Before SPENCER's **June 21, 2014** fall, Abdelrahman never warned anyone about any problem with the doors to DADY MART. (*Id.* at pg. 18).

### **C. Deposition of Said Dardas**

On **July 9, 2015**, Said Dardas, DADY MART's employee was deposed. (Exhibit 'F', Deposition of Said Dardas). For 15 years, Dardas has been employed at DADY MART (*Id.* at pg. 8). DADY MART's owner is Nooraldeen Abdelrahman. (*Id.* at pg. 12). There are two sets of doors into DADY MART and

Dardas never had any problems with any of the doors. (*Id.* at pgs. 16-18). Dardas knew of no prior accidents at DADY MART. (*Id.* at pg. 20). The first Dardas learned of SPENCER's fall was when Dardas was told by Abdelrahman. (*Id.* at pg. 20-21). Dardas has never used any lubricants on any door hinges. (*Id.* at pg. 26). Dardas has never made calls to have the doors fixed. (*Id.* at pg. 26). Those present at DADY MART on **June 21, 2014** were Abdelrahman, Dardas and Denise Ingram. (*Id.* at pg. 28). To Dardas' knowledge, the door closed properly; if it closed too fast, the glass would break. (*Id.* at pg. 33). Dardas was told by Abdelrahman about the lawsuit, but Dardas does not know how SPENCER fell. (*Id.* at pg. 34). Dardas never received any complaints about the door. (*Id.* at pg. 35). Before SPENCER's **June 21, 2014** fall, he knew of no complaints about the door. (*Id.* at pg. 36). Before SPENCER's **June 21, 2014** fall, Dardas never had any problems with the DADY MART's doors; he never had any problems with either the outer or the inner door. (*Id.* at pg. 37). To his knowledge, the doors did not need repairs. (*Id.* at pg. 42). Dardas has never done any repairs to any of the doors. (*Id.* at pg. 43).

#### **D. Deposition of Denise Ingram**

On **July 9, 2015**, Denise Ingram, DADY MART's employee was deposed. (Exhibit 'G', Deposition of Denise Ingram). Ingram has worked for DADY MART for 4.5 years. (*Id.* at pg. 8). Since the store opened, Said Dardas worked at DADY MART. (*Id.*). Ingram may have worked on **June 21, 2014**; she recalled no complaints of SPENCER's fall at DADY MART. (*Id.* at pg. 13). Nooraldeen Abdelrahman runs DADY MART. (*Id.* at pg. 13). DADY MART has two sets of doors. (*Id.* at pg. 17). Coming into DADY MART, the outer door is pulled open to step into the store, into a little walkway. (*Id.*). Then the inner door opens to go in. (*Id.* at pg. 18). The doors are glass doors. (*Id.* at pg. 20). The door closes as it should and the door never knocked Denise Ingram in the back or in her foot. (*Id.* at pg. 22). DADY MART is a mini-mart. (*Id.* at pg. 24). The first time Ingram heard about SPENCER's fall was when Abdelrahman asked her. (*Id.*). Ingram did not know about SPENCER's **June 21, 2014** fall. (*Id.*). At no time has Ingram ever had issues with the door. (*Id.* at pg. 25). Abdelrahman does the maintenance and repairs at DADY MART. (*Id.* at pgs. 27, 29). Ingram has never had to call Abdelrahman about the doors not working properly. (*Id.* at pg. 34). Ingram never talked to SPENCER about the fall and does not know it occurred. (*Id.* at pg. 35). Before **June 21, 2014**, Ingram had no knowledge of any problems with the entry door to DADY MART. (*Id.* at pg. 41). Before **June 21, 2014**, Ingram had no knowledge of any door defect of malfunctioning. (*Id.* at pg. 41).

### **E. Deposition of Laverne Smith**

On **July 9, 2015**, Laverne Smith, SPENCER's daughter-in-law was deposed. (Exhibit 'H', Deposition of Laverne Smith). Smith was familiar with DADY MART located at 833 East 79<sup>th</sup> Street, Chicago. (*Id.* at pg. 8). Since **2001**, she has been going to DADY MART. (*Id.* at pg. 9). Smith went to DADY MART on **June 21, 2014**. (*Id.*). Smith and SPENCER entered DADY MARTY when it was dark, at 7:00 or 8:00 p.m. (*Id.*). Smith and SPENCER went to DADY MART to get Smith's daughter some snacks. (*Id.*).

On **June 21, 2014**, entering DADY MART, Smith entered two front doors. (*Id.* at pg. 11). Smith pulled open the outer door, held it for SPENCER. (*Id.* at pg. 12). Smith pushed open the second (inner door). (*Id.* at pg. 11). The outer door opens onto the street; the inner door opens into the store. (*Id.* at pgs. 13-15). There is a distance of 4 to 5 feet between the doors. (*Id.* at pg. 18). Prior to SPENCER's **June 21, 2014** fall, Smith said the inner door slams very fast or it gets stuck. (*Id.* at pg. 20). Smith said it has been that way for 12 years. (*Id.*). Smith never said anything to any DADY MART employee about the doors. (*Id.* at pg. 21). Smith said, the door problem was "nothing"; it wasn't major. (*Id.*). The doors never posed a danger to Smith, keeping her out of the store. (*Id.*). Smith does not know what caused the inner door to slam shut or get stuck. (*Id.*). She never saw DADY MART employee working on the door. (*Id.* at pg. 22).

On **June 21, 2014**, it was SPENCER's first time at DADY MART. Before going into DADY MART on **June 21, 2014**, Smith never warned SPENCER about the door. (*Id.* at pg. 22). On **June 21, 2014**, while entering DADY MART, SPENCER did not have any problems with the door. (*Id.*). On **June 21, 2014**, the door was operating as always and Smith was not concerned the door will slam shut or cause any problems on their way back out from DADY MART. (*Id.* at pg. 23). After entering the store that evening, the inner door slammed behind Smith, but this was of no concern to Smith. (*Id.*). Smith said nothing to any DADY MART employee about the door. (*Id.* at pg. 24). After entering DADY MART, Smith never said anything to SPENCER about the door. (*Id.*). SPENCER left DADY MART carrying a bag in her right hand. (*Id.* at pg. 25). Smith left DADY MART before SPENCER. (*Id.*). The cashier said nothing about the door. (*Id.* at pg. 26). Before **June 21, 2014**, nobody warned Smith about the DADY MART doors. (*Id.*). Leaving the store, Smith pulled the inner doors inward. (*Id.* at pg. 27). The space between the two doors was not slippery (*Id.*). There were no obstructions and SPENCER was not distracted. (*Id.* at pg. 28).

Leaving the store, Smith pulled the inner door open. (*Id.* at pg. 29). Spencer then looked back and made sure SPENCER was holding the inner door before Smith let the inner door go. (*Id.*). SPENCER was coming out the inner door, holding the bag in her right hand and holding the inner door with her left hand. (*Id.*). Smith was still holding the inner door and looking at SPENCER. (*Id.*). SPENCER then grabbed the inner door and Smith let go of the inner door. (*Id.*). Smith said, SPENCER was holding the inner door as SPENCER was walking out the inner door. (*Id.* at pgs. 29-30). Before SPENCER could take her second step, SPENCER let the inner door close. (*Id.* at pg. 30). SPENCER was not holding the inner door when it snapped shut. (*Id.*). SPENCER took a step and let the inner door go. (*Id.*). The inner door closed on SPENCER's right foot. (*Id.*). There were no other witnesses. (*Id.* at pg. 33). Smith had no knowledge anyone complained to anyone at DADY MART about the door. (*Id.* at pg. 51). Smith still frequents DADY MART, but to this day Smith never said anything about the doors. (*Id.* at pg. 37).

**IV.**  
**STANDARD FOR SUMMARY JUDGMENT**  
**BASED ON PREMISES LIABILITY**

A grant of summary judgment is appropriate if the pleadings, depositions, admissions, and affidavits on file, liberally construed in favor of the nonmoving party, show that no genuine issue of material fact exists and that the moving party is entitled to a judgment as a matter of law. *Kostecki v. Pavlis*, 140 Ill. App. 3d 176, 488 N.E.2d 644 (1<sup>st</sup> Dist. 1986) (summary judgment granted where plaintiff failed to establish defendants had knowledge of defective door closing mechanism); *Zonta v. Village of Bensenville*, 167 Ill. App. 3d 354, 521 N.E.2d 274 (2<sup>nd</sup> Dist. 1988) (summary judgment appropriate where plaintiff failed to establish specific dangerous condition of door); *Holloway v. The Board of Trustees of the University of Illinois*, 45 Ill. Ct. Cl. 255 (1992) (summary judgment affirmed where plaintiff failed to establish specific door defect and defendant's knowledge of defect); *Anglin v. Oros*, 257 Ill. App. 3d 213, 628 N.E.2d 873 (1<sup>st</sup> Dist. 1993) (summary judgment affirmed where no evidence defendant had notice door was broken); *Britton v. University of Chicago Hospitals*, 382 Ill App. 3d 1009, 889 N.E.2d 706 (1<sup>st</sup> Dist. 2008) (summary judgment appropriate where plaintiff unable to establish door defect and whether defendant aware of condition of door); *Cale v. Ulta Salon, Cosmetics & Fragrances*, 2012 WL 6962877 (Ill App. 1<sup>st</sup> Dist. 2012) (summary judgment granted where plaintiff unable to show unsafe condition of defendant's entry door; 735 ILCS 5/2-1005(b). Unsupported complaint allegations do not create fact issues. *Kimborough v. Jewel*

*Companies*, 92 Ill. App. 3d 813, 416 N.E.2d 328 (1<sup>st</sup> Dist. 1981).

A defendant moving for summary judgment bears the initial burden of proof. *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624; 872 N.E.2d 431, 437 (2007). The defendant may meet his burden of proof either by affirmatively showing that some element of the case must be resolved in his favor or by establishing “that there is an absence of evidence to support the nonmoving party’s case.” *Nedzvekas*, 374 Ill. App. 3d at 624, 872 N.E.2d at 437 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). In other words, there is no evidence to support the plaintiff’s complaint.

Under premises liability, to survive a motion for summary judgment plaintiff must show DADY MART’s inner door condition posed an unreasonable risk of harm; that DADY MART had actual or constructive knowledge of condition of the inner door; that DADY MART did not exercise reasonable care to reduce or eliminate the risk; and that DADY MART’s failure to use such care proximately caused SPENCER’s injuries. *Genaust v. Illinois Power Co. et al.*, 62 Ill.2d 456, 343 N.E.2d 465 (1976). (applying RESTATEMENT (SECOND) OF TORTS §343 (1965))

## V.

### ARGUMENT

#### A. UNDER PREMISES LIABILITY OF PLAINTIFF’S COMPLAINT, DADY MART IS ENTITLED TO SUMMARY JUDGMENT AS PLAINTIFF HAS NOT ESTABLISHED THE ELEMENTS OF A PREMISES CLAIM

In Plaintiff’s Complaint at Law, Plaintiff has not established facts identifying the specific defect in DADY MART’s inner door or how long the defect was in existence. (Exhibit ‘A’, par. 5). Here, SPENCER’s Complaint at Law does not expressively allege DADY MART had notice the inner door was hard to open, closed too quickly, or other facts to show DADY MART should be aware of any hazards with the inner door. Complaint at Law, ¶5, which reads:

5. That on the aforementioned date and as a result of the aforesaid acts of the Defendant, the Plaintiff was injured due to the fact when she was leaving the store her daughter-in-law Lavern Smith walked out first, and pulled the door to open. Then door slammed shut and caught Plaintiff’s right foot causing her to fall to the ground on right side.

No material facts are alleged how DADY MART knew or should have known the inner door was closing too quickly.

When a plaintiff alleges she was injured by a condition on the defendant’s property, Illinois courts decide the duty test by referencing RESTATEMENT (SECOND) OF TORTS §343 (1965). *LaFever v. Kemlite Co.*,

185 Ill.2d 380, 389, 706 N.E.2d 441 (Ill.1998). Section 343 of the RESTATEMENT (SECOND) OF TORTS provides:

A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only 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 invitees, and
- (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
- (c) fails to exercise reasonable care to protect them against the danger.

(Exhibit 'A', par. 5). SPENCER has not established the normal operation of the inner door posed an unreasonable risk of harm to DADY MART's customers. (Exhibit 'C' pgs. 51-60; Exhibit 'H', pgs. 21, 29-30). Plaintiff has not established there was any specific defect in the inner door that SPENCER says closed on her right foot. (Exhibit 'D', Response No. 4). Plaintiff has not presented any evidence DADY MART's inner door was broken, in disrepair, or installed improperly. (Exhibit 'H', pg. 21). There is no evidence DADY MART's inner door maintenance was defective. (Exhibit 'C', pg. 81; Exhibit 'D, Response No. 4). Here, SPENCER first entered DADY MART using the inner door, without any problems. While exiting DADY MART, SPENCER was using the same inner doors. SPENCER, by herself, pushed open the inner door, and was holding the inner door when it began to close.

With a bag in her left hand, SPENCER said, she pushed the inner door open with her right hand. (Exhibit 'C', pg. 51). SPENCER was holding the door open when it began to close; the inner door was too strong and it closed on her right ankle. *Id.* SPENCER's testimony does not establish any defect in the inner door. For that matter, Smith said, Smith held the inner door for SPENCER, SPENCER then grabbed the inner door with her left hand, but SPENCER let go of the door and it closed on SPENCER. (Exhibit 'H', pgs. 29-30). Smith's passing the inner door to SPENCER does not establish any specific defect in the inner door for which DADY MART is responsible. Again, exiting the store, SPENCER said, SPENCER pushed the inner door outward. (Exhibit 'C', pg. 51); however, Smith said, exiting the store, the inner door opens into the store. (Exhibit 'H', pg. 29). SPENCER and Smith's deposition accounts are conflicting and do not establish the inner door had any specific defect nor posed a reasonable risk of harm. *Zonta v. Village of Bensenville*, 167 Ill. App. 3d 354, 521 N.E.2d 274 (2<sup>nd</sup> Dist. 1988); *Holloway v. The Board of Trustees of the University*

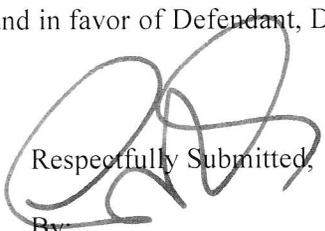
of Illinois, 45 Ill. Ct. Cl. 255 (1992); *Britton v. University of Chicago Hospitals*, 382 Ill App. 3d 1009, 889 N.E.2d 706 (1<sup>st</sup> Dist. 2008).

Plaintiff has not only failed to establish a specific defect in the inner door, but also failed to prove DADY MART knew of any inner door defect. Plaintiff has not established DADY MART created any defect in the inner door or that DADY MART knew or reasonably should have known the inner door was either hard to open or closed too quickly. Plaintiff presented no evidence of prior complaints or claims of injuries regarding the DADY MART's inner door. (Exhibit 'D', Responses No. 4 and 10). Witnesses Abdelrahman, Dardas, and Ingram had no knowledge of any problem with the inner door. (Exhibit 'E', pg. 19; Exhibit 'F', pg. 16; Exhibit 'G' pg. 41). Again, to maintain a premises liability claim against DADY MART, SPENCER must establish DADY MART knew the inner door caused an unreasonable risk of harm to DADY MART's customers or that DADY MART would have discovered the condition by the exercise of due care. *See Genaust v. Illinois Power Co. et al.*, 62 Ill.2d 456, 343 N.E.2d 465 (1976). Notice of, either actual or constructive knowledge is an essential element of a premises liability claim.

A review of the testimony in this case fails to show DADY MART knew or should have known of any hazardous condition of the inner door. (Exhibit 'C' pgs. 70-71; Exhibit 'D', Responses Nos. 3-8; Exhibit 'E', pg. 17; Exhibit 'F', pg. 33; Exhibit G, pgs, 25, 41).

DADY MART FOOD & LIQUOR, INC. respectfully requests a summary judgment be entered against SARAH SPENCER on Plaintiff's Complaint and in favor of Defendant, DADY MART FOOD & LIQUOR, INC.

Respectfully Submitted,

By: 

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