

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

JUANA ADAMS

Plaintiff)

)

)

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vs)

WORLD FRESH MARKET, LLC)

)

)

Defendant

CASE NO. SX-10-CV-0000569

ACTION FOR: DAMAGES - CIVIL

**NOTICE OF ENTRY OF
MEMORANDUM OPINION
AND ORDER**

TO: KEVIN F. D'AMOUR, ESQ.
WILFREDO A. GEIGEL, ESQ.
JUDGES OF THE SUPERIOR COURT
MAGISTRATES OF THE SUPERIOR COURT
LAW CLERKS, LAW LIBRARY, RECORD BOOK, IT

Please take notice that on August 19, 2014 a(n) MEMORANDUM
OPINION AND ORDER dated August 18, 2014 was entered by the Clerk in the
above-entitled matter.

Dated: August 19, 2014

Estrella H. George
Acting Clerk of the Court



IRIS D. CINTRON
COURT CLERK II

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JUANA ADAMS,

Plaintiff,

vs.

WORLD FRESH MARKET LLC,

Defendant.

CIVIL NO SX-10-CV-569

ACTION FOR DAMAGES

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Defendant's Motion for Summary Judgment and Memorandum in Support thereof ("Motion"), filed April 28, 2014; Plaintiff's Opposition, filed May 29, 2014; and Defendant's Reply, filed June 23, 2014. For the reasons that follow, Defendant's Motion will be denied.

FACTUAL BACKGROUND

On February 20, 2010, Plaintiff was grocery shopping at the Golden Rock Shopping Center Pueblo Supermarket when she "hit her foot on a warehouse cart which was located in the middle of the aisle, and she tripped and fell to the floor." Complaint, ¶4. In her deposition, Plaintiff stated that she picked up a tomato while shopping in the produce section, started to turn back toward the aisle and, before taking a step, tripped on the warehouse cart. Motion, at 2 (*citing* Adams deposition transcript ("Tr.") 26, lines 1-21). Plaintiff claims that there were no warning signs that made her aware of the "dangerous condition." Complaint, at ¶5. As a direct and proximate result of her fall, Plaintiff sustained injuries and incurred medical costs. *Id.* at ¶6.

By its Motion, Defendant argues that it is entitled to judgment for two reasons: first, the location of the warehouse cart was an "open and obvious" condition and Plaintiff cannot recover

from an injury occasioned by that condition because “[a] person has a duty to look where they are going and see that which is obvious.” Motion, at 5.

Second, Defendant argues that, even if the location of the warehouse cart did not constitute an open and obvious danger, “Defendant did not have notice of the alleged defective condition.” Motion, at 7. Defendant argues that the record lacks sufficient evidence to establish that any of its employees had actual knowledge of the location of the warehouse cart, or that it had been left unattended for a sufficiently long period of time enough to permit a finding of fact that Defendant had constructive notice of an unreasonable risk of harm to its customers. *Id.*

Plaintiff responds to Defendant’s contention that the warehouse cart was an open and obvious danger by stating that this is ultimately an issue for the trier of fact. Opposition, at 18.

Plaintiff further argues that Defendant is obligated to keep its store “in a reasonably safe condition...” (Opposition, at 6). Where the threat of harm to invitees is present, a possessor of land has a duty to provide “...a warning adequate to enable visitors to avoid the harm or otherwise protect them against it.” Opposition, at 7 (*citing* RESTATEMENT (SECOND) OF TORTS § 344 (1965)).

Plaintiff claims that Defendant “...utterly failed to inspect or maintain its premises and had actual or constructive knowledge that the merchandise cart... posed a hazard to invitees because Pueblo admitted that the shopping cart was on the floor...” Opposition, at 9. Defendant failed to keep the store safe for Plaintiff, its business invitee, by failing to have a cleaning person on duty to regularly inspect the aisles or by using the store’s video surveillance system to monitor the premises to assure that they were safe. *Id.* at 9-10; 13.

DISCUSSION

A moving party will prevail on a motion for summary judgment where the record shows that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a), applicable pursuant to Super. Ct. R. 7; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). The Court must determine whether there exists a dispute as to a material fact, the determination of which will affect the outcome of the action under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Such a dispute is genuine if the evidence is such that a reasonable trier of fact could return a verdict for the nonmoving party. *Id.* In analyzing the evidence, the Court must consider the pleadings and full factual record, drawing all justifiable inferences in favor of the nonmoving party, to determine whether the movant has met its burden of showing that there is no unresolved genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

A party opposing a motion for summary judgment may not rest upon the allegations or denials within its pleadings, but must set forth specific facts showing that there is a genuine issue for trial, such that the jury or judge as fact finder could reasonably find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248. The non-moving party asserting that a fact is genuinely disputed must support the assertion by “citing to particular parts of materials in the record...” Fed. R. Civ. P. 56(c)(1)(A). *See also Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008), citing Rule 56(e) prior to its 2010 amendment. “As to materiality, only those facts that ‘might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.’” *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248).

I. Genuine issues of material fact exist with regard to whether the warehouse cart constituted an open and obvious danger of which Plaintiff should have been aware.

Defendant argues that because the warehouse cart was an open and obvious danger, Plaintiff cannot recover on her negligence count. The Supreme Court of the Virgin Islands has examined allegations of injury caused by a supposed open and obvious condition on land, holding that if there are facts in dispute as to whether Plaintiff properly perceived the dangerous condition, summary judgment may be properly denied. “The fact that Appellant disputed the characterization of the door as a known or obvious danger, and she had a plausible and cogent basis upon which the disputed fact could be advanced, was a sufficient basis for the trial court to recognize that this case was an inappropriate candidate for summary judgment.” *Sealey-Christian v. Sunny Isle Shopping Center*, 52 V.I. 410, 427 (V.I. 2009).

The Supreme Court distinguished *Sealey-Christian* from another case Defendant cites in support of its position that certain obvious common sense dangers are Plaintiff’s responsibility to avoid. Reply, at 3 (citing *Ambrose v. National Foods Discount*, 42 V.I. 229 (D.V.I.2000)). In *Ambrose*, “the court granted summary judgment where it found the boxes in defendant’s aisle to be a known or obvious danger to the plaintiff who was familiar with the store (and its practice of stacking boxes in the aisles). Unlike Appellant, the plaintiff in *Ambrose* successfully walked past the boxes three times before tripping on one of the boxes the fourth time.” *Sealey-Christian*, 52 V.I. at 427.

In this case, Plaintiff cannot recall whether she noticed the warehouse cart when she approached the tomato section of the produce aisle. Motion, at 2; Tr. 26, lines 21-25. However,

Plaintiff stated that “if I had seen the cart I would obviously have avoided it.” Opposition, Exhibit 1, ¶ 6.

While Defendant argues that the warehouse cart was an open and obvious danger, this finding is more appropriately left for a jury to resolve. A genuine issue of material fact exists as to whether a reasonable person under similar circumstances exercising reasonable care would have been looking where she was going and would have seen and avoided the cart in the aisle. This issue must be determined by a weighing of evidence —the function of the jury, not the Court on a motion for summary judgment.

II. Genuine issues of material fact exist with regard to whether Defendant had constructive notice of a dangerous condition, giving rise to a duty to protect invitees.

Defendant argues that, based on the facts in the record, a jury would be unable to conclude that Defendant had constructive notice of the existence of a dangerous condition in its premises: namely, an unattended warehouse cart in the shopping aisle of the produce section of its store.

Pursuant to RESTATEMENT (SECOND) OF TORTS §343, as interpreted by courts in the Virgin Islands, if there is sufficient evidence that “the condition existed long enough before the injury that the possessor should have discovered it in the exercise of reasonable care,” the injured party may be able to prevail on a constructive notice theory. *Perez v. Ritz-Carlton (Virgin Islands) Inc.* 2013 WL 4442434, at *3 (V.I. August 14, 2013); *Williams v. United Corp.*, 50 V.I. 191, 195 (V.I. 2008)(“the substance had been on the floor long enough that Plaza should have discovered it.”)

Drawing all justifiable inferences in favor of the nonmoving party, the Court finds the existence of at least several material facts in dispute. These include: how long the warehouse cart was left unattended; whether any of Defendant’s employees saw the warehouse cart; whether there

should have been warning signs placed to make shoppers aware of the unattended warehouse cart; and whether Defendant adequately trained its employees to inspect, observe and remedy hazards to customers, such as warehouse carts unattended in shopping aisles.

Disputed issues of material fact preclude entry of judgment in favor of Defendant at this stage. Granting Plaintiff the benefit of all reasonable inferences to be drawn from the record, a jury could find Defendant liable pursuant to RESTATEMENT (SECOND) OF TORTS §343, as having at least constructive knowledge of an existing dangerous condition, of which Plaintiff was unaware, that resulted in injury to Plaintiff.

Since the Court cannot “weigh the evidence and determine the truth of the matter” (*Anderson*, 477 U.S. at 248), disputed genuine issues of material fact must be presented to a jury. It will be left to the finder of fact to determine whether a dangerous condition existed which involved an unreasonable risk of harm to Plaintiff, of which Defendant was or should have been aware, and of which Plaintiff was unaware; whether Defendant should have expected that Plaintiff would not discover or realize the danger, and whether Defendant failed to exercise reasonable care to protect Plaintiff against the danger.

CONCLUSION

There are genuine issues of material fact that prevent entry of judgment as a matter of law at this juncture. Examining the facts in the record in the light most favorable to the nonmoving party, the question of whether the warehouse cart was an open and obvious danger which Plaintiff should have avoided is more appropriately left for a jury’s determination.

Similarly, whether the warehouse cart, left unattended for an unknown amount of time, constituted an unreasonable risk of harm of which Defendant was or should have been aware is also a question for a jury and not for this Court to decide.

In light of the foregoing, it is hereby

ORDERED that Defendant's Motion for Summary Judgment is DENIED.

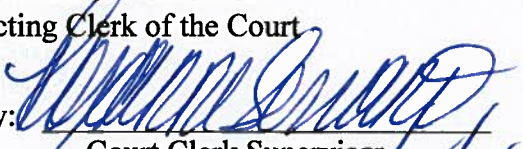
DATED: August 18, 2014.



DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By: 

Court Clerk Supervisor
