SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1745-20

GLADYS BEDNARKO,

Plaintiff-Appellant,

v.

BEN'S BAGEL BARN, LLC,
and TRB ASSOCIATES,
a partnership,

Defendants-Respondents.

Argued April 26, 2022 – Decided June 8, 2022

Before Judges Currier, DeAlmeida, and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-5555-19.

Gregory D. Shaffer argued the cause for appellant (Brandon J. Broderick, LLC, attorneys; Gregory D. Shaffer, on the brief).

Evert W. Van Kampen argued the cause for respondent Ben's Bagel Barn, LLC (Law Offices of Linda S. Baumann, attorneys; Evert W. Van Kampen, on the brief).

Gerald Kaplan argued the cause for respondent TRB Associates (Methfessel & Werbel, attorneys; Nabila Saeed, of counsel and on the brief).

PER CURIAM

Plaintiff appeals from the March 1, 2021 orders granting defendants summary judgment. We affirm.

Plaintiff was injured as she walked out of Ben's Bagel Barn. She said she pushed open the door, stepped out with her left foot, and turned to the right. She let go of the door after she placed her left foot on the landing. According to plaintiff, the door closed "very fast," striking and injuring the back of her right foot. Plaintiff stated she pushed the door open only far enough to step outside but did not fully open it.

The owner of the Bagel Barn testified there were no reports regarding any problems with the door prior to this incident. She did state that sometimes, when there was a heavy wind, the door would open very widely and contact a rail located outside on the landing. To prevent any damage to the glass door, the owner had covered the rail in that area with some towels. A representative of TRB Associates, the owner of the property, stated he visits the property every few weeks and never had any issues using the door. He further testified that the tenant—Bagel Barn—had never informed him of any problems with the door.

Plaintiff asserted in her complaint that defendants negligently maintained the door and, alternatively, that defendants were negligent under a theory of res ipsa loquitur. Plaintiff also served an expert report from an engineer who inspected the door nearly two years after the accident. The expert tested the door and concluded it closed quicker—approximately two seconds—than the standards set under the Americans with Disabilities Act, 36 C.F.R. § 1191. In addition, the door closer mechanisms on the two entrance/exit doors were from two different manufacturers.[1]

Defendants moved for summary judgment, contending plaintiff had not established the existence of a dangerous condition of which defendants had actual or constructive notice. Therefore, plaintiff could not demonstrate defendants breached their duty to her and could not support her claim of negligence.

In an oral decision, the trial court granted defendants' motions. The court concluded plaintiff had not demonstrated defendants had actual or constructive notice of any dangerous condition regarding the door. The court rejected plaintiff's argument that the towels attached to the railing were notice of a

[1] The entrance/exit to the store had two identical doors. One door was always locked and not used to enter or exit the store.

problem with the door because the store owner stated the towels were in place "in the event the door swung open too fast because of the wind." The court stated: "There [was] no evidence [the towels] have any connection to the door closing too fast on . . . plaintiff."

The court also rejected plaintiff's assertion of res ipsa loquitur, finding plaintiff had not established the door was within defendants' exclusive control. As did every other user of the door, plaintiff pulled open the door to walk in. Then when she exited, she pushed the door to walk out. Therefore, she could not show the injury was not a result of her own act or neglect, as required under the doctrine.

On appeal, plaintiff renews the arguments made before the trial court in asserting the court erred in granting defendants summary judgment.

Our review of a ruling on summary judgment is de novo, applying the same legal standard as the trial court. Green v. Monmouth Univ., 237 N.J. 516, 529 (2019). Thus, we consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995).

Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). "If there is no genuine issue of material fact, we must then 'decide whether the trial court correctly interpreted the law.'" DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (citations omitted). We review issues of law de novo and accord no deference to the trial judge's conclusions on issues of law. Nicholas v. Mynster, 213 N.J. 463, 478 (2013).

Applying these standards, we are satisfied the court properly granted summary judgment.

The duty of care a business owner owes to an invitee is well-established:

> Business owners owe to invitees a duty of reasonable or due care to provide a safe environment for doing that which is within the scope of the invitation. The duty of due care requires a business owner to discover and eliminate dangerous conditions, to maintain the premises in safe condition, and to avoid creating conditions that would render the premises unsafe.
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> [Nisivoccia v. Glass Gardens, Inc., 175 N.J. 559, 563 (2003) (citations omitted).]

An injured plaintiff must ordinarily prove "that the defendant had actual or constructive knowledge of the dangerous condition that caused the accident." Ibid.

Plaintiff did not establish either actual or constructive knowledge against either defendant. There were no reports of any issues with the door. Plaintiff herself used the door to get into the store. Plaintiff's argument that defendants were on notice of an issue because of the towels attached to a railing lacks merit. The store owner explained the purpose of the towels. On a windy day, the door sometimes opened wide and contacted an outside railing. There was no evidence of any issue with the door closing.

Plaintiff also has not established sufficient evidence to satisfy an application of the res ipsa loquitur doctrine. To be accorded an inference of negligence, plaintiff must show "(a) the occurrence itself ordinarily bespeaks negligence; (b) the instrumentality was within the defendant's exclusive control; and (c) there is no indication in the circumstances that the injury was the result of the plaintiff's own voluntary act or neglect." Jerista v. Murray, 185 N.J. 175, 191-91 (2005) (quoting Buckelew v. Grossbard, 87 N.J. 512, 525 (1981)).

As the trial court found, plaintiff cannot satisfy the third element. She conceded she did not fully open the door as she left the store, but pushed it open

"[j]ust far enough" to step one foot out. A reasonable jury could find plaintiff caused or contributed to the happening of the accident.

As plaintiff has not established the existence of a dangerous condition or that defendants had actual or constructive notice of it, she cannot demonstrate defendants breached their duty to her.

Affirmed.