IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

MYONG JA THOMPSON,	)	
Plaintiff,	)	
	)	
v.	)	**CIVIL ACTION FILE**
	)	**NO. 22-C-07461-S1**
THE SALVATION ARMY,	)	
Defendant.	)	
_____	)	

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The above-styled matter came before this Court on Defendant's Motion for Summary Judgment. The Court held a hearing on April 10, 2024, whereby counsel for all parties appeared. Accordingly, after hearing argument, reviewing the entire record and applicable Georgia law, the Court hereby **FINDS** and **ORDERS** as follows:

FACTUAL OVERVIEW

On January 7, 2022, Plaintiff visited The Salvation Army ("TSA") store located at 3825 Venture Drive, Duluth, Georgia. She arrived at TSA between 1 and 2PM. Upon entering the premises, Plaintiff retrieved a shopping cart from the cart corral and proceeded to shop for about thirty to forty minutes. There wasn't any debris or trash near the shopping cart corral when Plaintiff entered the premises and retrieved a shopping cart.

As Plaintiff was retrieving items from her shopping cart in the shopping cart corral, after shopping, she fell, and she speculates that she slipped and fell on something plastic. However, after the fall, Plaintiff did not look at the floor to assess what allegedly caused her to fall – and was generally unaware of the size, shape, and color of the alleged hazardous condition that contributed to her fall. Plaintiff's position that she slipped on a

piece of plastic solely relies on how the alleged substance felt underneath her shoe. According to Plaintiff's deposition testimony, she "fell on a plastic thing – something with plastic." (Plaintiff depo at p.49). After she fell, she did not look at the floor (Id. at p.55). Her belief that it was plastic is based on how it felt under her shoe – but she cannot say how big it was or its color, because she pushed up the cart and couldn't see the floor. (Id. at p.57).

LEGAL ANALYSIS

In any motion for summary judgment, the Court is required to view the pleadings and evidence in the light most favorable to the non-moving party**,** it must accept the credibility of the evidence upon which the non-moving party relies, it must afford that evidence as much weight as it reasonably can bear, and to the extent that the moving party points to conflicting evidence, it must discredit that evidence for purposes of the motion." Johnson v. Omondi, 294 Ga. 74, 84-85 (2013) (Blackwell, J., concurring). "In order to prevail on a motion for summary judgment under O.C.G.A. § 9-11-56, the moving party must show that there exists no genuine issue of material fact, and that the undisputed facts, viewed in the light most favorable to the nonmoving party, demand judgment as a matter of law." Benton v. Benton, 280 Ga. 468, 470 (2006). "The movant has this burden even as to issues upon which the opposing party would have the trial burden." Williams v. Chick-fil-A, Inc., 274 Ga. App. 169, 169 (2005).

The moving party "must demonstrate by reference to evidence in the record that there is an absence of evidence to support at least one essential element of the non-moving party's case." BBB Serv. Co., Inc. v. Glass, 228 Ga.App. 423, 436 (1997). "In other words,

summary judgment is appropriate when the court, viewing all the facts and reasonable inferences from those facts in a light most favorable to the non-moving party, concludes that the evidence does not create a triable issue as to each essential element of the case." Id. Thus, it is well established that "[s]ummary judgments should only be granted where, construing all inferences against the movant, it yet appears without dispute that the case can have but a single outcome." Chatmon v. Church's Fried Chicken, 133 Ga. App. 326, 327 (1974). Routine issues of negligence, contributory negligence and lack of ordinary care are generally not susceptible of summary adjudication, but should be resolved by a jury at trial. Robinson v. Kroger Co., 268 Ga. 735, 739 (1997). The trial court can conclude as a matter of law that the facts do or do not show negligence on the part of the Defendant or the Plaintiff only where the evidence is plain, plausible and undisputable. Id.

Moreover, "the pleadings of the opposing party must be taken as true, unless by the admissions, depositions or other material introduced it appears beyond controversy otherwise. There is a duty on the party opposing a motion for summary judgment to present relevant evidence in rebuttal of the movant's evidence but there is no duty upon an opposite party to produce evidence unless the movant successfully pierces the allegations of the petition by competent evidence to show that no fact issue exists." Sapp v. ABC Credit & Inv. Co., 243 Ga. 151, 155 (1979). When the evidence of the moving party suffers from internal inconsistencies, these conflicts must be resolved against that party unless a reasonable explanation is offered; and even then, "[t]he reasonable explanation does not act to exclude the existence of an issue of fact, if such is raised by the party's contradictory

statements themselves, or by other evidence presented by the opposite party." Gentile v. Miller, Stevenson & Steinichen, 257 Ga. 583 (1987).

In a premises liability case, summary judgment is appropriate if the plaintiff fails to establish that a hazardous condition caused the fall and/or if the plaintiff fails to produce evidence establishing that the owner or occupier of the premises had superior knowledge of an alleged hazardous condition. Christopher v. Donna's Country Store, 236 Ga. App. 219, 220 (1999); Bird v. Kmart Corp., 229 Ga. App. 630, 631 (1997). Under Georgia law, "[a]n owner or occupier of land has a legal duty, enforceable by lawsuit, to exercise ordinary care to keep and maintain its premises and the approaches in a condition that does not pose an unreasonable risk of foreseeable harm to the invited public." American Multi–Cinema, Inc. v. Brown, 285 Ga. 442 (2009); see O.C.G.A. § 51–3–1 ("Where an owner or occupier of land, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe."). Nevertheless, a property owner/occupier "is not an insurer of the safety of its invitees. The mere occurrence of an injury does not create a presumption of negligence." (Citation and punctuation omitted.) Kennestone Hosp., Inc. v. Harris, 285 Ga. App. 393, 394 (2007).

A plaintiff's "mere speculation about causation is not enough to prevent summary judgment." Taylor v. Murphy Oil USA, Inc., Civil Action No. 7:20-CV-252 (HL), 2022 U.S. Dist. LEXIS 142203, at *6-7 (M.D. Ga. Aug. 9, 2022). "Where the plaintiff does not know of a cause or cannot prove the cause, there can be no recovery because an essential element of negligence cannot be proven." Id. "A mere possibility of causation is not enough

and when the matter remains one of pure speculation or conjecture and the probabilities are at best evenly balanced it is appropriate for the court to grant summary judgment for the defendant. Paul v. Aramark Healthcare Support Servs., No. 1:15-CV-189-MHC, 2016 U.S. Dist. LEXIS 186113, at *21-22 (N.D. Ga. June 2, 2016).

When viewed in this light, the Court is satisfied that Defendant has met its burden and is entitled to summary judgment. Here, Plaintiff cannot establish a hazardous condition existed on the premises as she is unable to identify any particular characteristic of the alleged condition that caused her to fall. She testified that she did not see the condition, nor did she know the size or shape of the hazardous condition. She assumed she slipped on something plastic based on how it felt underneath her shoe. She further explains that she speculates that it was a plastic item because it was slippery. Again, Plaintiff did not see this alleged item that caused her to fall and she can only speculate for the reason she fell. Proof of an injury, without more, is not enough to establish a proprietor's liability. Ford v. Bank of Am. Corp., 277 Ga. App. 708, 709 (2006). Thus, TSA is entitled to Summary Judgment because Plaintiff is unable to prove that she fell due to a hazardous condition existing on the premises. Moreover, Plaintiff has failed to come forward with any evidence showing TSA had actual knowledge of the mysterious "plastic" item. So the Court must turn to TSA's constructive knowledge of the alleged hazard, if any.

In order to establish constructive knowledge, Plaintiff can either show that a store employee was in the immediate vicinity of the hazard and could have easily seen the substance and corrected it prior to the fall; or that the foreign substance remained on the floor long enough that an ordinarily diligent store employee would have discovered the

substance. Fred's Stores of Tennessee, Inc. v. Davenport, 307 Ga. App. 58, 59 (2010); Food Lion, Inc. v. Walker, 290 Ga. App. 574, 576 (2008). Plaintiff claims she could not see the mysterious plastic item on the floor, and she had previously traversed the subject area shortly before the fall and confirmed that there was nothing on the floor. Plaintiff was much closer to the mysterious plastic item than any TSA employee. Plaintiff claims she did not see the "plastic" item and she was much closer to it than any TSA employee, then it is clear that no TSA employee could have easily seen the item and cleaned it up. Plaintiff has failed to show the "plastic" item on the ground was readily observable to a TSA employee. See Brown v. Host/Taco Joint Venture, 305 Ga. App. 248, 250 (2010); Mucyo v. Publix Super Markets, Inc., 301 Ga. App. 599, 600 (2009).

To establish constructive knowledge based on the lack of reasonable care in inspecting the premises, the plaintiff must present evidence showing how long the hazard was there; without such proof, it is not possible to determine whether it was reasonable for the defendant to discover the hazard. Drew v. Istar Financial, Inc., 291 Ga. App. 323, 326-27 (2008). However, a plaintiff does not carry this burden unless the defendant shows that it had a reasonable inspection procedure and that such inspection procedure was performed on the date of the accident. Gibson v. Halpern Enterprises, 288 Ga. App. 790, 792 (2007). Under Georgia law, an owner is normally permitted "a reasonable time after notice of a hazardous condition to exercise care in correcting such condition." Pickering Corp. v. Goodwin, 243 Ga. App. 831 (2000). Defendant disputes that any hazard existed and Plaintiff can proffer no evidence that she or some other person notified Defendant of any easily seen hazard at any point prior to her slip. TSA had a reasonable inspection

procedure, as indicated in the sworn affidavit of its employee Donata Orogun – who testified it was the practice and procedure for employees to inspect the store as part of the opening process and that employees were responsible for cleaning and maintenance of the store during the hours it was open. See Defendant's response to Plaintiff's Interrogatories at 9. Donata Orogun further testified that when she went to see Plaintiff after she fell, that she didn't notice any debris or other objects on the floor near Plaintiff. See Affidavit of Donata Orogun ¶ 4. Furthermore, by Plaintiff's own admission, there was no "plastic" item on the ground when she entered the store and she confirmed she was in the store for a short period of time before checking out and then retracing her steps to exit the store. Therefore, it is clear that the "plastic" item was not on the ground for a very long time and that the alleged hazard would not have been discovered by a reasonable inspection procedure. Kroger Co. v. Williams, 274 Ga. App. 177, 179 (2005).

In the absence of any evidence that the area where Plaintiff fell was unusually dangerous or that Defendant's inspection was unreasonable, Plaintiff cannot establish that Defendant had superior knowledge, as a matter of law. Guesses or speculation which raise merely a conjecture or possibility are not sufficient to create even an inference of fact for consideration on summary judgment. A plaintiff must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendants was a cause in fact of the result. See Tuggle v. Helms, 231 Ga. App. 899, 902-903(2) (1998); see also McQuaig v. Tarrant, 269 Ga. App. 236, 238 (2004). In the absence of such evidence, Defendant is entitled to summary judgment. Under the applicable case law and the facts and evidence proffered in this action the Court is satisfied that this is one

of those cases where the non-existence of liability is plain, palpable, and indisputable, warranting summary judgment. Sutton v. Justiss, 290 Ga. App. 565, 566 (2008).

CONCLUSION

THEREFORE, for the above and forgoing reasons, Defendant's Motion for Summary Judgment is **HEREBY GRANTED**.

SO ORDERED, this 22nd day of April, 2024.

Judge Emily J. Brantley
State Court of Gwinnett County

Copies to:
All Counsel/Parties of Record
C:\ADMIN ORDERS\GWINNETT\MSJ.doc