Patricia Farley v. Dignity Health 17-CV-0153

Re: Motion for Summary Judgment

Date: February 15, 2018

This is a personal injury action. Plaintiff Patricia Farley ("Plaintiff") suffered injuries when she fell while walking on Defendant Dignity Health dba Arroyo Grande Community Hospital ("Defendant")'s premises. Plaintiff's complaint alleges one cause of action for negligence.

Plaintiff, accompanied by her grandson, John Farley, visited Defendant's premises on June 9, 2016 for blood tests. At approximately 11:00 a.m., Plaintiff walked from the carpeted waiting room to the registration area, which at the time had linoleum[1]. Plaintiff claims she walked forward and her foot got stuck, causing her to fall. Plaintiff suffered serious injuries to her right knee and femur, and was transported to Marion Regional Medical Center, where she had surgery the same evening.

Defendant moves for summary judgment on the basis that, as a matter of law, Plaintiff failed to establish that (1) a dangerous condition was on the floor for any appreciable amount of time prior to Plaintiff's fall, or that (2) Defendant created or knew of a dangerous condition. In opposing the motion, Plaintiff contends that Defendant created the dangerous condition and failed to inspect the area where the incident occurred.

LEGAL STANDARD ON SUMMARY JUDGMENT

As the moving party, Defendant has the burden to make a prima facie showing that there are no triable issues of material fact and it is entitled to a judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal. 4th 826, 850.) If Defendant meets this burden, the burden shifts to Plaintiff to make a prima facie showing that a triable issue of material fact exists. (*Ibid.*) There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof. (*Ibid.*)

NEGLIGENCE

To establish negligence, Plaintiff must prove duty, breach, causation, and damages. (Rest.2d Torts, § 281; *Nola M. v. University of Southern California* (1993) 16 Cal.App.4th 421, 426.) Plaintiff bears the burden of proof on the essential elements of a negligence claim. (*Ortega v. Kmart Corp.* (*Ortega*) (2001) 26 Cal.4th 1200, 1205.)

Notice of the Dangerous Condition.

[1] The linoleum was replaced with carpet in 2017. (Plaintiff's Separate Statement of Undisputed Material Facts [UMF] 2.)

While a premises owner "is not an insurer of the safety of its patrons," it has a duty to "exercise reasonable care in keeping the premises reasonably safe." (*Moore v. Wal–Mart Stores, Inc.* (2003) 111 Cal.App.4th 472, 476, citing *Ortega, supra,* 26 Cal.4th at p. 1205.) This care is proportionate to the risks involved, and is exercised by making reasonable inspections of the portions of the premises open to customers. (*Ortega, supra,* at p. 1205, citing *Bridgman v. Safeway Stores, Inc.* (1960) 53 Cal.2d 443, 447-448.) Because the owner is not the insurer of the visitor's personal safety, the owner's actual or constructive knowledge of the dangerous condition is a key to establishing its liability. (*Ortega, supra,* at p. 1206, citing *Girvetz v. Boys' Market* (1949) 91 Cal.App.2d 827, 829.) Whether a defective condition existed long enough such that Defendant should have discovered it is a question of fact for the jury. (*Ortega, supra,* at p. 1209.)

The crux of Plaintiff's claim is that she stepped on something "sticky" and then fell. She described the mechanics of her fall at her deposition: "I stood up, walked into the room where they would register me. I slipped and then I stepped on something sticky and I fell forward." (Def. Ex. A, Plf. Dep., p. 36:2-4.) Plaintiff has no knowledge as to how long the sticky substance was on the floor prior to her fall. (UMF 8.) Defendant concludes that, because Plaintiff has no knowledge as to how long the allegedly dangerous condition existed, she therefore has no evidence that Defendant knew or should have known about the dangerous condition in time to remedy it.

In opposition, Plaintiff does not dispute her lack of knowledge as to how long the sticky substance was present on the floor prior to her fall. (UMF 8.) Plaintiff instead focuses on Defendant's cleaning practices and its alleged failure to perform timely sweeps or inspections of the area where Plaintiff fell. While it was Defendant's regular practice to have the lab cleaned between 2:00 p.m. and 5:00 p.m. every day, there is no existing record to show this was actually done the afternoon of June 8, 2016, the day before the incident. (UMF 30.) Even assuming the area was cleaned sometime between 2:00 p.m. and 5:00 p.m. the day prior to the incident, Plaintiff's fall occurred at least 18 hours after the lab was cleaned, and at most 21 hours after the area was cleaned. Either scenario, Plaintiff argues, afforded a reasonably prudent person more than enough time to discover the dangerous condition. (See *Ortega, supra,* 26 Cal.4th at pp. 1206-1207.)

Based on Plaintiff's evidence, there is a triable issue of fact as to whether the dangerous condition "existed long enough so that it would have been discovered and remedied by an owner in the exercise of reasonable care." (*Ortega, supra,* 26 Cal.4th at p. 1213.) This assumes, of course, there was a dangerous condition at all.

The Existence of a Dangerous Condition.

Plaintiff establishes causation by showing that (1) Defendant's breach of its duty to exercise ordinary care was a substantial factor in bringing about Plaintiff's harm, and (2) there is no rule of law to relieve Defendant of liability. (*Ortega, supra,* 26 Cal.4th at p. 1205.) "These are factual questions for the jury to decide, except in cases in which the facts as to causation are undisputed." (*Id.*, citing *Constance B. v. State of California* (1986) 178 Cal.App.3d 200, 207.) To meet her burden of proof, Plaintiff must "introduce evidence which affords a

reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result." (*Ortega, supra*, 26 Cal.4th at pp. 1205–1206.)

Defendants point to Plaintiff's testimony that, after falling, she did not inspect or look at the floor, or feel the floor to see if there was any substance, stickiness, or wetness on the floor. (UMF 15.) Plaintiff's grandson, Mr. Farley, hypothesized that "maybe [Plaintiff] slipped on something." (UMF 16.) Mr. Farley did not inspect or test the floor after her fall. (UMF 24.) Thus, neither Plaintiff nor Mr. Farley saw any substance, sticky or otherwise, on the floor at the time of Plaintiff's fall.

In opposition, Plaintiff points out that the linoleum area where she fell is susceptible to spills because there is juice, coffee, and water available in the adjacent carpeted waiting area. At deposition, Defendant's person most knowledgeable agreed that Defendant's Environmental Services ("EVS") employees are more likely to be summoned to clean spills in areas where there are refreshments. (Plaintiff's UMF 28.) Plaintiff thus infers one or more of these substances spilled onto the linoleum floor before her fall. (Plaintiff's UMF 20.) Plaintiff also notes the testimony of the employee on duty in the lab the morning of Plaintiff's fall, Francisco Leal, who recalled approximately six occasions over a two-year period where he requested EVS clean up a spill in the subject area. (Plaintiff's UMF 21.) Assuming Mr. Leal is not the only employee on duty in the subject area, Plaintiff also raises an inference of other spills Mr. Leal did not personally observe. This is especially the case where, as here, Defendant has no system in place to monitor its premises and ensure spills are cleaned up timely, and instead relies on its front desk staff to alert EVS employees of spills as they occur. (Plaintiff UMF 22, 23.) If the front desk staff, such as Mr. Leal, does not personally observe the spill, there is no guarantee EVS will be alerted or that the spill will be cleaned in a timely manner. (UMF 24.)

Based on these facts, Plaintiff raises a triable issue of fact with respect to the condition of the floor at the time of the fall.

The Court reviewed the declaration of Brad Avrit, submitted by Plaintiff in support of her opposition. In his declaration, Mr. Avrit describes the mechanics of slip and falls where there is "a contaminant such as water." (Avrit Declaration, ¶ 9.) Although Plaintiff never identified water as the substance that caused her fall, Plaintiff's evidence raises a triable issue of fact as to whether there was water (or coffee, or juice) on the floor at the time of her fall. As noted by Mr. Avrit, the presence of such a substance on linoleum[2] is more prone to cause individuals to slip. (Plaintiff's UMF 6.)

Conclusion

Plaintiff raises triable issues of fact with respect to notice and the presence of a dangerous condition. Summary judgment is denied.

Defendant's evidentiary objections are overruled.

[2] That the linoleum has since been replaced with carpet means Plaintiff has no opportunity to test the floor as it appeared at the time of her fall.