IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

VALERI J. ALCANTARA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N18C-06-147 ALR
	)	
THE CAVALIER GROUP, INC. and CAPANO MANAGEMENT CO.,	)	
	)	
	)	
Defendants.	)	

Submitted: July 2, 2019
Decided: August 23, 2019

Upon Defendants' Motion for Summary Judgment
DENIED

ORDER

Upon consideration of the motion for summary judgment filed by Defendants, The Cavalier Group, Inc. and Capano Management Company ("Defendants"); the response thereto filed by Plaintiff Valeri J. Alcantara ("Plaintiff"); the facts, arguments, and legal authorities set forth by the parties; the Superior Court Civil Rules; statutory and decisional law; and the entire record in this case, the Court hereby finds as follows:

1. On August 31, 2015, Plaintiff and Defendants entered into a lease for the rental of an apartment at Cavalier Country Club Apartments. Defendant Cavalier Group, Inc., owns the property in question and the property is managed by Defendant Capano Management Company.

2. Plaintiff filed a civil lawsuit against Defendants alleging that, on December 27, 2016, Plaintiff was injured when she slipped on mulch and fell while using the outdoor concrete stairs leading to the building where Plaintiff's apartment is located. According to Plaintiff, there was a considerable amount of mulch on the stairs at the time of the alleged incident. Plaintiff's boyfriend also noticed the mulch on the stairs, witnessed Plaintiff's fall, and took photographs of the condition of the stairs the night of the incident. Plaintiff asserts that she had previously complained to Defendants about mulch and debris on the stairs.

3. Plaintiff contends that Defendants owed Plaintiff the duty to exercise reasonable care to keep the premises safe for her as a tenant and business invitee, including making safe any dangerous condition which Defendants knew about or should have discovered upon a reasonable inspection of the premises. Plaintiff further asserts that Defendants had actual, constructive, or imputed knowledge of the existence of the mulch on the stairway prior to Plaintiff's fall. Plaintiff contends that Defendants' breach of their duty of care is a direct and proximate cause of Plaintiff's injuries and damages.

4. Defendants filed a motion for summary judgment, arguing that Plaintiff failed to set forth a *prima facie* case of negligence. Specifically, Defendants claim they owe no duty to warn Plaintiff of open and obvious dangers on its property, and that Plaintiff has failed to show that Defendants had actual notice of any unsafe

condition or could have discovered the unsafe condition through reasonable inspection. In addition, Defendants argue that Plaintiff failed to identify necessary experts to testify in support of Plaintiff's claims.

5. Delaware Superior Court Civil Rule 56 permits granting summary judgment upon a showing "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."[1] The moving party bears the initial burden of proof and, once that is met, the burden shifts to the non-moving party to show that a material issue of fact exists.[2] At the motion for summary judgment phase, the Court must view the facts "in the light most favorable to the non-moving party."[3] Negligence claims are particularly resistant to resolution through summary judgment.[4] Summary judgment is only appropriate if the plaintiff's claims lack evidentiary support such that no reasonable jury could find in their favor.[5]

6. To prevail in a negligence action under Delaware law, the plaintiff must prove, by a preponderance of the evidence, that a defendant's negligent act or omission breached a duty of care owed to the plaintiff in a way that proximately

[1] Super. Ct. Civ. R. 56.
[2] *Moore v. Sizemore*, 405 A.2d 679, 680-81 (Del. 1979).
[3] *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).
[4] *Ebersole v. Lowengrub*, 180 A.2d 467, 468 (Del. 1962).
[5] *Hecksher v. Fairwinds Baptist Church, Inc.*, 115 A.3d 1187, 1200-05 (Del. 2015); *Edmisten v. Greyhound Lines, Inc.*, 2012 WL 3264925, at *2 (Del. Aug. 13, 2012).

caused the plaintiff's injury.[6] "As an initial matter, liability in negligence will first depend upon whether the defendant was under a legal obligation, or duty, 'to protect the plaintiff from the risk of harm which caused his injuries.'"[7] The determination of whether a duty exists is a question of law to be decided by the trial judge.[8] If the Court finds that the defendant owed no duty to the plaintiff, the defendant is entitled to summary judgment as a matter of law.[9]

7. The type of duty a landowner owes to an individual depends upon the individual's status on the land.[10] Here, the parties agree that, as a tenant, Plaintiff is a business invitee with relation to Defendants. A business invitee is "a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land."[11] A landowner has a duty to keep the premises reasonably safe for business invitees.[12] In addition, a landowner has a "duty to warn a business invitee about a condition that poses an unreasonable risk of harm if the landowner knows or should have known of that condition."[13] However, there is no duty to warn business invitees of an "open and obvious danger"

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[6] *Foreman v. Two Farms, Inc.*, 2018 WL 3949294, at *2 (Del. Super. Aug. 16, 2018).
[7] *Helm v. 206 Mass. Avenue, LLC*, 107 A.3d 1074, 1079 (Del. 2014).
[8] *Id.*
[9] *Id.* at 1078.
[10] *Ambrosio v. Drummond*, 2017 WL 1437314, at *2 (Del. Super. Apr. 21, 2017).
[11] *Id.*
[12] *Foreman*, 2018 WL 3949294, at *2.
[13] *Id.*

which has been described as a condition that creates a risk of harm that is visible, well known, or discernable by casual inspection to those of ordinary intelligence.[14] Except in "very clear cases," whether a dangerous condition exists and whether the danger was apparent to the plaintiff are questions for the jury.[15]

8. Given Plaintiff's status as a business invitee, Defendants argue there was no duty to warn Plaintiff of the mulch on the stairs because it constituted an open and obvious danger. Defendants also assert that Plaintiff has failed to show that Defendants had actual notice of an unsafe condition or could have discovered the unsafe condition through reasonable inspection of the premises.

9. Viewing the facts in a light most favorable to Plaintiff, several issues of material fact remain. First, the condition of mulch is not a "very clear case" of an open and obvious danger that would warrant removing the matter from consideration by a jury. An example of an open and obvious dangerous condition was the tripping hazard created by placement of a space heater in the center of a room as presented in *Jones v. Clyde Spinelli, LLC*.[16] In *Jones*, the Court found that the landowner had no duty to warn the plaintiff of the space heater because the risk of harm should be obvious to a person of ordinary care and prudence.[17] The Court also emphasized

[14] *Id.*
[15] *Foreman*, 2018 WL 3949294, at *2.
[16] 2016 WL 3752409, at *3 (Del. Super. July 8, 2016).
[17] *Id.*

that the plaintiff in *Jones* actually acknowledged noticing the space heater prior to falling over it.[18] *Jones* is distinguishable from the facts presented here. Although Plaintiff concedes noticing the mulch on the stairs prior to the alleged incident, Plaintiff contends that she was unable to appreciate how wet and slippery the mulch was by appearance. A reasonable jury could find that the slipperiness of mulch is not immediately apparent and that Defendants were not relieved of their duty to warn business invitees such as Plaintiff of a known danger.

10. Additionally, there is an issue of material fact as to whether Defendants knew or should have known of the alleged dangerous condition. Although Defendants deny having actual notice, Plaintiff maintains that she complained about the debris on the stairs prior to the alleged incident. *Boulden v. Centercap Associates, LLC.*, a case involving a customer who alleged injuries after falling on wet leaves on a sidewalk outside of a restaurant, is instructive.[19] In *Boulden*, the landowner argued there was no breach of its duty to keep the premises safe for business invitees because there was no evidence it had actual notice of the dangerous condition.[20] Nevertheless, the Court denied summary judgment to the landowner because a jury might determine that the condition of wet leaves could have been

[18] *Id.*
[19] *Boulden v. Centercap Associates, LLC*, 2014 WL 3047947, at *2 (Del. Super. June 12, 2014).
[20] *Id.*

discovered by a reasonable inspection of the premises.[21] Likewise, here, a jury could determine that, even if Defendants did not have actual knowledge of the mulch and debris on the stairs, the dangerous condition could have been discovered by a reasonable inspection of the premises.

11. Even if the mulch was an open and obvious danger or if there was no way in which Defendants could have discovered the dangerous condition by a reasonable inspection of the premises, neither of these possibilities relieve Defendants of the landowner's duty to keep its premises reasonably safe for business invitees.[22]

12. Viewing the facts in a light most favorable to Plaintiff, summary judgment for Defendants is not appropriate.

13. Despite the parties' agreement that Plaintiff is a business invitee, it must be acknowledged that Plaintiff and Defendants have a relationship as landlord and tenant, a status that raises independent legal obligations. "A landlord's duties to their tenants arise from the Delaware Landlord Tenant Code, the lease between the two parties, and common law."[23] Generally, under Delaware law, a landlord owes a duty of ordinary care and must exercise reasonable care to maintain common areas

[21] *Id.*
[22] *Helm*, 107 A.3d at 1082; *Foreman*, 2018 WL 3949294, at *3.
[23] *Ambrosio*, 2017 WL 1437314, at *3.

in a safe condition for the use of tenants.[24] Given the landlord-tenant relationship between the parties, Plaintiff has pled sufficient facts to establish that Defendants had a duty to maintain the stairs in a safe condition. A reasonable jury could find that Defendants' failure to clear the stairs of mulch and debris constituted a breach and was the proximate cause of Plaintiff's injuries.

14. Defendants further contend that Plaintiff has not identified any experts to testify regarding whether the mulch presented an unreasonable danger and whether Defendants had an obligation to protect Plaintiff from the alleged danger. However, expert testimony is not always required in a negligence action. The Delaware Supreme Court has recognized a "distinction between matters which are within the common knowledge of lay persons and matters which depend on expert skill and training."[25] "When the facts can be adequately presented to the jury and those facts are of a kind which the jury can readily understand and draw the correct inferences, expert testimony is normally inadmissible."[26] For example, in *Frieman v. Evans*, the Court barred an expert's testimony because the jury could see the conditions of a sidewalk in disrepair and determine the landowner's duties without

[24] *Id. See also Boulden v. Centercap Assocs., LLC*, 2014 WL 3047947, at * 1, (Del. Super. June 12, 2014) (citing *Wilmington Country Club v. Cowee*, 747 A.2d 1087, 1092 (Del. 2000); *DiOssi v. Maroney*, 548 A.2d 1361, 1366 (Del. 1988).
[25] *Money v. Manville Corp. Asbestos Disease Compensation Trust Fund*, 596 A.2d 1372, 1376 (Del. 1991).
[26] *Frieman v. Evans*, 1997 WL 719318, at *2 (Del. Super. Aug. 19, 1997).

the aid of expert testimony.[27] Here, the jury will be presented pictures and hear testimony describing the condition of the mulch on the stairway. The facts of this case are well within the common knowledge and understanding of a lay witness[28] and the jury. Accordingly, expert testimony is not necessary.

15. Viewing the facts in a light most favorable to Plaintiff, a *prima facie* case of negligence has been established. As a matter of law, Defendants had a duty of ordinary care to maintain the premises in a reasonably safe condition for business invitees and tenants such as Plaintiff. Moreover, there are genuine issues of material fact as to whether the mulch presented an open and obvious danger; whether Defendants knew or could have discovered the unsafe condition through reasonable inspection; and whether Defendants had actual notice. A reasonable jury could find that Defendants' failure to keep the stairway clear of mulch and debris constituted a breach of the duty of care and that breach proximately caused Plaintiff's injuries. Accordingly, Defendants are not entitled to judgment as a matter of law.

NOW, THEREFORE, this 23rd day of August, 2019, Defendants' Motion for Summary Judgment is hereby DENIED.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli

[27] *Id.*
[28] D.R.E. 701.