

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



SHARON KEMP,

Plaintiff,

v.

20-CV-3

TARGET CORPORATION,

Defendant.

DECISION AND ORDER

Plaintiff Sharon Kemp commenced this action in the Supreme Court of the State of New York, County of Erie, on October 23, 2019 alleging claims for negligence against Defendant Target Corporation (“Target”). *See* Dkt. 1-1. On January 2, 2020, Target removed the action to this Court based on diversity jurisdiction. *See* Dkt. 1. The Court then referred the case to United States Magistrate Judge H. Kenneth Schoreder, Jr. for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 5.

On July 15, 2022, Target moved for summary judgment. Dkt. 23. Kemp opposed the motion, and Target replied. Dkt. 30, 31. On May 22, 2023, Judge Schroeder issued a Report and Recommendation (“R&R”), recommending that this Court deny Target’s motion. Dkt. 33.

Target objected to the R&R. Dkt. 34. Specifically, Target argued that Judge Schroeder improperly rejected its “three principal arguments,” namely, “that the curb, as explained by architect James Ruggerio, located in front of the Target store

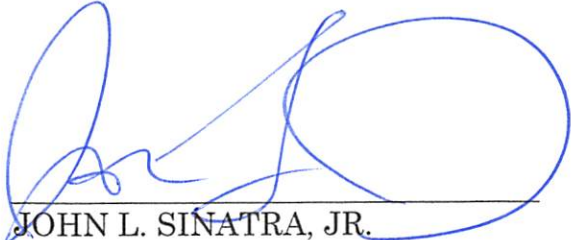
complied with all applicable building codes and, therefore, did not constitute a dangerous condition; that plaintiff's expert's report both failed to meet the disclosure requirements found in Federal Rules of Civil Procedure ("FRCP") Rule 26(a)(2)(B) and failed to create a question of fact that the curb in front of the Target store constituted a dangerous condition; and that the curb in front of the store was an open and obvious condition." *Id.* at 5. Kemp responded to Target's objections, and Target replied. Dkt. 36, 37.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3).

This Court carefully reviewed the R&R, the objections, and the record. Based on its *de novo* review, the Court accepts and adopts Judge Schroeder's recommendation. For the reasons stated above and in the R&R, the Court DENIES Target's motion for summary judgment (Dkt. 23).

SO ORDERED.

Dated: July 7, 2023
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE