[Cite as *Shipp v. Ohio State Univ. Med Ctr.*, 2005-Ohio-6313.]

IN THE COURT OF CLAIMS OF OHIO
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BARBARA SHIPP, et al.	:	
Plaintiffs	:	CASE NO. 2003-04490 Judge J. Craig Wright
v.	:	DECISION
OHIO STATE UNIVERSITY MEDICAL CENTER	:	
Defendant	:	

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{¶ 1} On September 14, 2005, defendant filed a motion for summary judgment. Plaintiff responded to defendant's motion on October 4, 2005. The matter is now before the court for non-oral hearing.

{¶ 2} Civ.R. 56(C) states, in part, as follows:

{¶ 3} "*** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show 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. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. ***" See, also, *Gilbert v. Summit County*, 104 Ohio St.3d

660, 661, 2004-Ohio-7108; citing, *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327.

{¶ 4} Many of the facts of this case were established in the connected action filed in the Franklin County Court of Common Pleas and are not disputed. Plaintiffs' case arises out of an incident that occurred on April 4, 2001. On that day, plaintiff, Barbara Shipp,[1] accompanied her husband, John Shipp, to his appointment with Dr. Anjana Samadder. Dr. Samadder was employed by the practice group DMF Ohio, Inc. (DMF). When plaintiff sat down on a chair in the office waiting room, it collapsed, allegedly causing her injury. The office where the incident occurred is in a building owned by defendant. However, defendant leased the building to Vascular Services, Inc., who in turn subleased it to DMF for use one day per week.

{¶ 5} Plaintiff argues that defendant, as owner and landlord of the building, is liable for any injury caused by the accident. Generally, in order for plaintiff to prevail upon her claim of negligence, she must prove by a preponderance of the evidence that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77.

{¶ 6} Plaintiff was clearly a business invitee in this case as she was a visitor rightfully on the premises of another for a purpose that benefitted the possessor. *Scheibel v. Lipton* (1951), 156 Ohio St. 308. "An owner or occupier of the premises ordinarily owes its business invitees a duty of ordinary care in maintaining the premises in a reasonably safe condition and has the duty to warn its invitees of latent or hidden dangers." *Haynes v.*

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[1]The term "plaintiff" shall be used hereinafter in reference to Barbara Shipp.

Mussawir, Franklin App. No. 04AP-110, 2005-Ohio-2428, quoting *Klauss v. Glassman*, Cuyahoga App. No. 84799, 2005-Ohio-1306; which cited *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203. However, a landowner is not an insurer of an invitee's safety. Id. When negligence is asserted based upon the alleged existence of a defect or hazard, actual or constructive notice of the defect is an essential element in perfecting the claim that the owner or occupier of the premises failed to comply with the requirement of reasonable care. *Murphy v. K-Mart* (Mar. 24, 1998), Franklin App. No. 97APE08-1129, citing *Heckert v. Patrick* (1984), 15 Ohio St.3d 402.

{¶ 7} Plaintiff has provided no evidence upon which it may be reasonably inferred that defendant either knew or should have known about any defect in the chair. To the contrary, in answering interrogatories plaintiff conceded that "[t]o look at the chair, you could not tell the chair was defective." (Defendant's Exhibit C, Pg. 2.)

{¶ 8} Furthermore, as stated above, defendant is the landlord of the premises where the incident occurred. Defendant maintains no presence on the premises. Article 7 of the lease agreement between defendant and Vascular Services states in pertinent part: "Tenant shall, at Tenant's own cost and expense, keep the Premises, *including all improvements, fixtures, and furnishings therein*, in good order, repair, and condition at all times during the Lease Term. ***." (Emphasis added.)

{¶ 9} Upon review of the motion for summary judgment, and construing the evidence in plaintiffs' favor, the court finds that the only reasonable conclusions to be drawn from the evidence are that plaintiff was a business invitee, that defendant did not have notice of the defect in the chair and that Vascular Services was responsible for the condition, maintenance, and repair of the chair

under the terms of the lease agreement. Consequently, there are no genuine issues of material fact and defendant is entitled to judgment as a matter of law. Defendant's motion for summary judgment shall be granted.

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Plaintiffs	:	CASE NO. 2003-04490 Judge J. Craig Wright
v.	:	JUDGMENT ENTRY
OHIO STATE UNIVERSITY MEDICAL CENTER	:	
Defendant	:	

: : : : : : : : : : : : : : : : :

A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

_____
J. CRAIG WRIGHT
Judge

Entry cc:

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