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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT
PRECEDENTIAL AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

WALTER KNOX, *Plaintiff/Appellant*,

v.

STAPLES THE OFFICE SUPERSTORE LLC, *Defendant/Appellee*.

No. 1 CA-CV 16-0043
FILED 2-23-2017

Appeal from the Superior Court in Maricopa County
No. CV2014-009573
The Honorable Douglas Gerlach, Judge

REVERSED

COUNSEL

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By Michael W. Herzog
Counsel for Defendant/Appellee

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MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Paul J. McMurdie joined.

T H O M P S O N, Judge:

¶1 Plaintiff Walter Knox appeals the superior court’s summary judgment for defendant Staples the Office Superstore, LLC (Staples), on his negligence claim. For the following reasons, we reverse the grant of summary judgment.

FACTUAL AND PROCEDURAL HISTORY

¶2 Knox tripped and fell on an A-frame, or “sandwich board,” sign that was lying flat on the floor of the entrance to a Staples store. The sign had been displayed outside the store, but due to windy conditions, an employee brought it inside the store and placed it against the wall near the store entrance. Shortly thereafter, Staples’s employees heard a loud crash near the entrance and immediately went to investigate. They found Knox lying on the floor near the sign.

¶3 Knox filed this action alleging Staples’ failure to maintain its premises in a reasonably safe condition caused him damage. Staples moved for summary judgment, arguing that Knox had failed to show that Staples created the dangerous condition by placing the sign in the walkway or that it had notice of the hazard for a sufficient amount of time that it should have, in the exercise of reasonable diligence, remedied it. The superior court granted the motion, ruling that Knox had not presented any evidence to establish a material question of fact regarding whether Staples knew or should have known about the dangerous condition. Knox timely appealed.

DISCUSSION

¶4 The trial court shall grant summary judgment when “there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.” Ariz. R. Civ. P. 56(a). Summary judgment “should be granted if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the

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proponent of the claim or defense.” *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). If the evidence would allow a jury to resolve a material issue in favor of either party, summary judgment is improper. *United Bank of Ariz. v. Allyn*, 167 Ariz. 191, 195, 805 P.2d 1012, 1016 (App. 1990).

¶5 A business owner “is not an insurer of the safety of a business invitee, but only owes a duty to exercise reasonable care to his invitees.” *Walker v. Montgomery Ward & Co.*, 20 Ariz. App. 255, 258, 511 P.2d 699, 702 (1973). Thus, the mere occurrence of a fall on business premises does not establish that the proprietor was negligent. *Id.* Rather, under Arizona law, Knox was required to prove one of three circumstances to prevail on his claim: (1) that Staples caused the dangerous condition, (2) that Staples had actual knowledge of the dangerous condition, or (3) that the dangerous condition had existed for such a length of time that Staples would have discovered and remedied it if it had been exercising ordinary care. *Preuss v. Sambo’s of Arizona, Inc.*, 130 Ariz. 288, 289, 635 P.2d 1210, 1211 (1981).

¶6 Knox argues Staples, when it leaned the sign against the wall near the entrance of the store during windy weather, caused the dangerous condition that led to his injury. Knox argues that Staples should have anticipated that the wind would topple the sign and create a hazard for customers.

¶7 The facts demonstrate that the time between the sign being leaned against the wall and the sign falling was short, possibly under ten minutes, and there is no evidence in the record of any other cause for the fall of the sign, other than the wind. The store manager testified that the sign had previously fallen during windy weather and the wind could have “absolutely” knocked the signage over. For these reasons, we agree that a reasonable jury could conclude that by placing the sign against the wall Staples created a dangerous condition which resulted in an injury to Knox.

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CONCLUSION

¶8 For the foregoing reasons, we reverse. Knox is entitled to an award of costs on appeal upon his compliance with Arizona Rule of Civil Appellate Procedure 21.



AMY M. WOOD • Clerk of the Court
FILED: AA