IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THELMA JEAN WILLIAMS,	:	CIVIL ACTION
	:	
	:	
Plaintiff,	:	NO. 16-5670
	:	
v.	:	
	:	
JACK WILSON, et al.,	:	
	:	
	:	
Defendants.	:	

MEMORANDUM OPINION

Presently before the Court is a Motion for Summary Judgment filed by Defendants Jack Wilson and Diane Hannah-Wilson ("the Wilsons" or "Defendants") (Doc. No. 16), and Plaintiff Thelma Jean Williams's ("Williams" or "Plaintiff") response in opposition (Doc. No. 17). In this case, Williams asserts a negligence claim against the Wilsons and seeks to recover damages as a result of an alleged fall from the front porch of a home owned by the Wilsons and leased by Williams.[1] For the reasons that follow, this Court will grant Defendants' Motion.

[1] This action was originally filed in the Court of Common Pleas of Philadelphia County, Pennsylvania and subsequently removed to this Court. Doc. No. 1. Upon consent of the parties and by order of the Honorable Mark A. Kearney, the case was referred to the undersigned to conduct all further proceedings including trial, the entry of final judgment, and all post-trial proceedings. Doc. No. 10.

I. STATEMENT OF FACTS[2]

In 2006, the Wilsons purchased a single family dwelling at 1642 Taney Street in Philadelphia, Pennsylvania. Defs.' Mot. at ¶¶ 1, 5. The Wilsons knew Williams as a family acquaintance, and in 2008 they leased the property to Williams. Id. at ¶¶ 5, 7. Williams signed a lease agreement and resided at the property with her husband, Milton Turner. Id. at ¶¶ 5, 8. The house contained a front porch or landing atop approximately four exterior steps that led to the sidewalk below. Id. at ¶ 1; Pl.'s Resp. Ex. B (Doc. No. 17-1), at 47-50. A handrail ran along the top landing down these exterior steps. Defs.' Mot. at ¶¶ 14-15; Pl.'s Resp. Ex. B, at 47-50.

At approximately 1 a.m. on March 9, 2016, Williams was sitting outside in a chair on the landing of her front porch, at the top of the exterior steps. Defs.' Mot. at ¶¶ 1, 27, 28. When Williams got up from her chair, she fell down the steps. Id. at ¶ 28. Although she was sitting outside with a friend, no one witnessed her fall. Id. at ¶¶ 27, 30. Williams testified at her deposition that the handrail along the exterior steps had been loose, and that when she got up from her chair the handrail "was not there." Id. at ¶ 28. Williams claims that at some point prior to her fall, she provided a note to the Wilsons informing them of the loose handrail with one of her rent checks, and that her husband also informed Jack Wilson of the issue. Id. at ¶¶ 25-26. The Wilsons, however, dispute ever being notified or made aware of the alleged loose handrail prior to Williams's fall. Id. at ¶¶ 38, 45-4

[2] The statement of facts is derived from the competing factual statements set forth by the parties in their submissions. In accordance with the standard of review on motions for summary judgment discussed infra in Section II.A, the Court views the facts in the light most favorable to Williams and draws all reasonable inferences in Williams's favor. See Scheidemantle v. Slippery Rock Univ. State Sys. of Higher Educ., 470 F.3d 535, 538 (3d Cir. 2006).

II. DISCUSSION

A. Legal Standard

"A federal court sitting in diversity must apply state substantive law and federal procedural law." Chamberlain v. Giampapa, 210 F.3d 154, 158 (3d Cir. 2000) (citing Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938)). Under the well-established summary judgment standard, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Summary judgment is appropriate when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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.'" Williams v. Wells Fargo Bank, No. 14-2345, 2015 WL 1573745, at *3 (E.D. Pa. Apr. 9, 2015) (quoting Wright v. Corning, 679 F.3d 101, 105 (3d Cir. 2012)).

> [T]he plain language of Rule 56[a] mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is 'entitled to judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of [his or] her case with respect to which [he or] she has the burden of proof.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

"By its very terms, this standard [that there be no genuine issue as to any material fact] provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original). A material fact is one that "might affect the outcome of the

suit under the governing law." Id. at 248.

When ruling on a motion for summary judgment, the court shall consider facts in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. Scheidemantle v. Slippery Rock Univ. State Sys. of Higher Educ., 470 F.3d 535, 538 (3d Cir. 2006). To prevail on summary judgment, however, "the non-moving party must present more than a mere scintilla of evidence; 'there must be evidence on which the jury could reasonably find for the [non-moving party].'" Burton v. Teleflex Inc., 707 F.3d 417, 425 (3d Cir. 2013) (quoting Jakimas v. Hoffmann-La Roche, Inc., 485 F.3d 770, 777 (3d Cir. 2007)); see also Anderson, 477 U.S. at 252. As this case is in federal court on diversity jurisdiction, we will apply Pennsylvania law to this dispute. Erie R.R. Co., 304 U.S. at 78; Sheridan v. NGK Metals Corp., 609 F.3d 239, 253 (3d Cir. 2010).

B. Defendants Are Entitled to Summary Judgment on Williams's Claim for Negligence

The Wilsons argue that they are entitled to summary judgment on Williams's negligence claim because: (1) as out of possession landlords, they are not liable to Williams, their lessee, for physical harm caused by any dangerous condition which came into existence after the lessee took possession of the property; (2) even if traditional negligence principles apply, there was no evidence of notice of the alleged dangerous condition; (3) Williams can only speculate that the condition of the handrail caused her fall and consequently, she fails to establish causation; and (4) the indemnification clause in the lease agreement bars Williams's claim. Defs.' Mot. at 17.

The Wilsons are correct that, generally, landlords out of possession are not liable for harm incurred on the property by the lessee. Sentry Cas. Co. v. Spray Prods. Corp., No. 06-cv-1664, 2008 WL 205229, at *2 (E.D. Pa. Jan. 23, 2008). This rule, however, is subject to certain exceptions and a landlord out of possession may incur liability if: (1) the landlord has reserved

control over a defective portion of the demised premises; (2) the demised premises are so dangerously constructed that the premises are a nuisance per se; (3) the lessor has knowledge of a dangerous condition existing on the demised premises at the time of transferring possession and fails to disclose the condition to the lessee; (4) the landlord leases the property for a purpose involving the admission of the public and he neglects to inspect for or repair dangerous conditions existing on the property before possession is transferred to the lessee; (5) the lessor undertakes to repair the demised premises and negligently makes the repairs; or (6) the lessor fails to make repairs after having been given notice of and a reasonable opportunity to remedy a dangerous condition existing on the leased premises. Henze v. Texaco, Inc., 508 A.2d 1200, 1202 (Pa. Super. Ct. 1986).

Here, although the Wilsons were landlords out of possession, there is evidence that Williams had notified them about a loose handrail prior to her fall and that the Wilsons did not remedy the allegedly dangerous condition on the premises. Specifically, Williams testified that she noticed a problem with the railing about three years ago, Defs.' Mot. at ¶ 15; id. at Ex. B at 25:12-25:24, and that she included a note about the loose railing with one of her rent payments and notified the Wilsons verbally at least two times, id. Ex. B, at 33:10-34:19. Although the Wilsons deny being notified about the railing prior to Williams's alleged fall, id. at ¶¶ 38, 45-46, it is not the province of the court to weigh evidence, or assess credibility, when passing upon a motion for summary judgment. Anderson, 477 U.S. at 255. Deciding whose version of events is correct would require an assessment of the credibility of witnesses and a weighing of evidence at trial. At this juncture, Williams's testimony must be taken as true. Accordingly, I cannot conclude that the Wilsons are entitled to judgment as a matter of law based on their status as landlords out of possession. Moreover, for the reasons explained above, the Wilsons are not

entitled to summary judgment based on their argument that, even if traditional negligence principles are applied, there was no evidence of notice of the alleged dangerous condition. See Defs.' Mot. at 19-20.

Nevertheless, even if Williams can show that the Wilsons negligently breached a duty owed to her and that she was injured, she must still show a link between the breach and the injury. Hamil v. Bashline, 392 A.2d 1280, 1284 (Pa. 1978). The Wilsons argue, however, that Williams has failed to satisfy her burden of proving causation, arguing that she "speculates that the condition of the handrail caused her fall when it is just as likely . . . that the handrail had nothing to do with her fall." Defs.' Mot. at 17, 20-21. This Court agrees.

It is well settled that, under Pennsylvania law, "[t]he mere occurrence of an accident does not establish negligent conduct." Martin v. Evans, 711 A.2d 458, 461 (Pa. 1998). Thus, regardless of whether the defendant breached some duty of care owed to the plaintiff, it is still "incumbent on a plaintiff to establish a causal connection between defendant's conduct and the plaintiff's injury." Hamil, 392 A.2d at 1284. It is the plaintiff's burden to prove that the harm suffered was due to the conduct of the defendant, and that burden must be sustained by a preponderance of the evidence. Id. A plaintiff may prove causation by either direct or circumstantial evidence. Rabadi v. Great Wolf Lodge of the Poconos LLC, No. 3:15-CV-00101, 2016 WL 4238638, at *4 (M.D. Pa. Aug. 9, 2016). Whether the plaintiff has offered sufficient evidence of causation is normally a question of fact for a jury to decide. Id. at *8. "'However, the question must be removed from the jury's consideration when the circumstantial evidence adduced would force the jury to speculate or guess as to whether a particular act by the defendant was the physical cause of the plaintiff[']s injury." Id. (quoting Runfola v. Marmaxx Operating Corp., No. 11-0052, 2013 WL 3305442, at *4 (W.D. Pa. July 1, 2013). "That is to say, the

plaintiff must offer affirmative proof – that is, some quantum of evidence in the record that rises above 'conjecture, guess, or speculation' – that would enable a reasonable person to conclude that the plaintiff's injuries were more likely than not caused by the defendant[]s[']' conduct." Runfola, 2013 WL 3305442, at *4 (citing Galullo v. Fed. Express Corp., 937 F. Supp. 392, 397-98 (E.D. Pa. 1996)).

Here, the only evidence presented by Williams in support of her claim that the handrail caused her fall and injury is the following testimony from her deposition:

> Q. . . . So tell me what happened after you were out there on that landing or top step with Patricia. What happened?
>
> A. I fell. . . . I went down the steps.
>
> Q. I need you to explain what happened.
>
> A. I fell. The chair top rose some type of way. I fell, I tried to grab the railing, there was nothing there, and I landed right in the street, right here. And I must have been laying there. . . .when my son-in-law came out, he said I was laying there, apparently.
>
> Q. All right. You said something about the chair. Did the chair fall?
>
> A. No. The chair never fell. I fell. The chair never fell. It stayed right there. The chair never fell.
>
> Q. Did you get up from the chair and try to walk down?
>
> A. I got up from the chair and tried to walk down, maybe. I don't remember anything except for I fell. You know, I blacked out, they said. I don't remember anything. I don't remember even falling when they got me up.
>
> Q. Did you grab the handrail –
>
> A. I tried –
>
> . . .
>
> Q. Did you grab the handrail before you started to walk down the steps?
>
> A. I always have to use it. My age, you got to use a railing.

Q. Did you do that on this morning?

A. I got up with the chair, and I grabbed for the railing and it wasn't there, so, I fell.

Q. Where was the railing?

A. Apparently – the railing, when I put the chair there, it must have pushed it. I don't know, sir. I don't know. I can't answer that. You need to get somebody else to figure that out.

Q. Had you walked down any step before you fell?

A. I fell down the steps. I didn't walk anywhere. I fell from that top step all the way down here. And when I went to grab, the railing was not there. Maybe because I sat down, pushed the chair. I don't know. I haven't figured that out.

. . .

Q. Were you standing on this top step when you reached for the handrail?

A. Sir, all I remember is the fall. I can't tell you – I can't tell you any details. All I know is I woke up and I was on the ground. So I don't know. I know I was sitting in the chair, toppled over, and I'm on the ground.

Defs.' Mot. Ex. B, at 46:22-50:4.

This testimony, the only evidence Williams relies upon in opposing summary judgment on an issue for which she carries the burden of proof, would require the jury to speculate about what caused her fall and whether the loose handrail was a causative factor. Williams was specifically questioned at her deposition regarding the circumstances and cause of her fall and she was unable to explain with any certainty why or how she fell. Instead, she speculated that her chair may have moved the railing to such an extent that when she went to grab it, it "was not there." Id. at 49:7-49:8. It is unclear from her testimony, however, whether she began to fall before or after she reached for the handrail, and therefore it is purely speculative whether the allegedly loose handrail had anything to do with the cause of her fall in the first instance. Nor does Williams submit any additional evidence which would lend support to her entirely

equivocal testimony that, despite not coming into contact with the railing, it somehow caused her fall and injury. For example, the record does not contain any testimony from her neighbor, who was present at the time of her fall, or from those with whom she lived indicating that the handrail was loose or capable of being dislodged, or that it was in that condition at the time of her fall. Indeed, the pictures of the stairway submitted as exhibits to Williams's response in opposition to summary judgment show that the railing is in place, with no indication that it is or was dislodged, despite Williams's claim that, at least as of the time of her deposition, it remained unfixed. Defs.' Mot. at ¶ 21.

Ultimately, Williams bears the burden of proof to demonstrate that it was more likely than not that the loose handrail caused her injuries. Instead, she cannot say with any certainty why or how she fell, other than when she reached for it, it "was not there." Defs.' Mot. Ex. B at 49:7-49:8. This testimony, the only evidence she relies upon in opposing summary judgment on this issue, would require the jury to speculate about what caused her fall and whether the allegedly loose handrail was a causative factor of her injury. "[W]hile the jury may draw reasonable inferences, it 'may not be permitted to reach its verdict merely on the basis of speculation or conjecture;'" "'there must be evidence upon which logically its conclusion may be based.'" Fitzpatrick v. Natter, 961 A.2d 1229, 1241-42 (Pa. 2008) (quoting Jones v. Treegoob, 249 A.2d 352, 354 (Pa. 1969)); cf. Hamil, 392 A.2d at 1288 n.9 ("A mere possibility of . . . causation is not enough; and when the matter remains one of pure speculation and conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant."). Accordingly, Williams has failed to present sufficient evidence to allow a reasonable jury to infer causation. See Runfola, 2013 WL 3305442, at *4-5; Erb v. Council Rock Sch. Dist., No. 1717 C.D.2008, 2009 WL 9097261, at *3-*4 (Pa. Cmmw. Ct. 2009)

(testimony that lack of a handrail to stop fall led to injuries was insufficient as a matter of law to prove causation); Noiles v. MacDonald, No. 87-1091, 1988 WL 21836, at *2 (E.D. Pa. Mar. 7, 1988) (plaintiff's explanation that "the lack of a graspable handrail was a substantial factor in causing the fall" was insufficient circumstantial proof of causation). The Wilsons, therefore, are entitled to summary judgment on Williams's negligence claim.

Defendants also argue that the lease agreement contains a clause by which Williams agreed to hold Defendants harmless from all claims and that consequently, Williams's negligence claim fails as a matter of law. Defs.' Br. at 18. The lease contains the following provision:

> Lessor shall not be liable for any damage or injury of or to the Lessee, Lessee's family, guests, invitees, agents or employees or to any person entering the Premises or the building of which the Premises are a part or to goods or equipment, or in the structure or equipment of the structure of which the Premises are a part, and Lessee hereby agrees to indemnify, defend and hold Lessor harmless from any and all claims or assertions of every kind.

Defs.' Mot. Ex. C at 3. Williams argues that the indemnification clause is invalid because it "fails to clearly and unequivocally state that the Defendants cannot be found liable to the Plaintiff for their own negligence." Pl.'s Resp. at 20. In Pennsylvania, however, courts have held that exculpatory clauses may bar suits based on negligence even where the language of the clause does not specifically mention negligence at all. See Topp Copy Prods., Inc. v. Singletary, 626 A.2d 98, 99-101 (Pa. 1993) (concluding that an exculpatory clause absolving lessor of "any and all liability" covers negligence even though the word "negligence" does not appear in the clause); see also Schillachi v. Flying Dutchman Motorcycle Club, 751 F. Supp. 1169, 1173-74 (E.D. Pa. 1990); Muller v. Aquatic & Fitness Ctr., No. 1636 EDA 2014, 2015 WL 7430572, at *8-9 (Pa. Super. Ct. Mar. 9, 2015); Zimmer v. Mitchell & Ness, 385 A.2d 437, 440 (Pa. Super. Ct. 1978) (holding that exculpatory clause barred plaintiff's claim and reasoning that general

language in the parties' release, which exempted the defendant from any liability, necessarily included liability from alleged negligence). Accordingly, Williams's negligence claim against Diane Wilson, the Lessor under the lease agreement, is barred by the lease's indemnification provision.

III. CONCLUSION

For the foregoing reasons, the Court will grant Defendants' Motion for Summary Judgment. A separate Order follows.

Date: April 5, 2017

BY THE COURT:

/s/ Marilyn Heffley
MARILYN HEFFLEY
UNITED STATES MAGISTRATE JUDGE