STATE OF LOUISIANA

COURT OF APPEAL, FIRST CIRCUIT

SHANNON M. RODRIGUE NO. 2016 CW 0924

VERSUS

THE BATON ROUGE RIVER CENTER D/B/A RIVERSIDE PERFORMING CENTROPLEX, DEF INSURANCE COMPANY AND THE CITY OF BATON ROUGE

SEP 22 2016

In Re: SMG and Federal Insurance Company, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 553645.

BEFORE: WHIPPLE, C.J., WELCH, CRAIN, THERIOT AND HOLDRIDGE, JJ.

WRIT GRANTED. The district court's July 14, 2016 Judgment which denied the motion for summary judgment filed by SMG and Federal Insurance Company is reversed. As to plaintiff's remaining claims for negligence, she has the burden of proving negligence on the part of the defendant, SMG, by a preponderance of the evidence. **Hanks v. Entergy Corp.**, 2006-477 (La. 12/18/06), 944 So.2d 564, 578. Most negligence cases are resolved by employing the duty-risk analysis, which entails five separate elements: (1) whether the defendant had a duty to conform his conduct to a specific standard (the duty element); (2) whether the defendant's conduct failed to conform to the appropriate standard (the breach element); (3) whether the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element); (4) whether the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of liability or scope of protection element); and (5) whether the plaintiff was damaged (the damages element). **Id.** at 579. In a negligence case, the risk must be both foreseeable and unreasonable. Failure to take a particular precaution to guard against injury to another in connection with a risk constitutes negligence only when it appears such a precaution would have been undertaken under the circumstances by a reasonably prudent individual. Finally, where a risk is obvious, there is no duty to warn or protect against it. **Moory v. Allstate Ins. Co.**, 2004-0319 (La. App. 1st Cir. 2/11/05), 906 So.2d 474, 478, writ denied, 2005-0668 (La. 4/29/05), 901 So.2d 1076. Defendants, SMG and Federal Insurance Company, have pointed to the absence of factual support for the elements of plaintiff's remaining negligence claims, particularly a lack of evidence that shows SMG had a duty, assumed or actual, to ensure that the lighting in the stairwell was adequate or that SMG knew or should have known of the alleged inadequate lighting in the stairwell. Plaintiff failed to produce factual support sufficient to establish she will be able to satisfy her evidentiary burden of proof at trial. Moreover, under Louisiana law, a defendant generally does not have a duty to protect against an open and obvious hazard. In order to be considered open and obvious, a hazard should be one that is open and obvious to all, i.e. everyone who may potentially encounter it. **Broussard v. State ex rel. Office of**

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State Buildings, 2012-1238 (La. 4/5/13), 113 So.3d 175. The alleged deficiency herein, the lack of sufficient lighting in the stairway, constituted an open and obvious hazard, and accordingly, SMG did not have a duty to protect against it. Judgment is rendered in favor of defendants, SMG and Federal Insurance Company, and against plaintiff, Shannon M. Rodrigue, dismissing plaintiff's claims against defendants, SMG and Federal Insurance Company, with prejudice.

WJC
JEW

Theriot, J., concurs and would grant the writ.

Whipple, C.J., dissents for the reasons assigned by J. Holdridge and, further, on the basis that the factual determinations that must be made herein regarding the defendants' breach of duty and knowledge render this case inappropriate for resolution on summary judgment.

Holdridge, J., respectfully dissents. The majority opinion misrepresents the holding in **Broussard v. State ex rel. Office of State Buildings**, 2012-1238 (La 4/5/13) 113 So.3d 175. A stairway which has insufficient lighting is an unreasonably dangerous condition which in this case may have caused or contributed to the plaintiff's injuries. Whether the condition was open and obvious to the plaintiff is only relevant in determining the percentage of fault, if any, that may be attributed to the plaintiff. See **Broussard.** To hold otherwise would allow all building owners, with stairways with insufficient or no lighting, to be absolved of any and all liability by arguing that the insufficient or lack of lighting (which was an unreasonably dangerous condition which building owner created) is an open and obvious condition which prevents any recovery by the plaintiff. If this is in fact the state of the law, no building stairway will ever have any lighting since the lack of lighting is a bar to recovery by the plaintiff.

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Elizabeth D. Nauta
DEPUTY CLERK OF COURT
FOR THE COURT