Affirmed and Memorandum Opinion filed January 28, 2010.

In The

Fourteenth Court of Appeals

NO. 14-08-00353-CV

KIMBERLY SILAS, Appellant

V.

ST. LUKE'S EPISCOPAL PROPERTIES CORPORATION AND THE WOMEN'S SPECIALISTS OF HOUSTON, PLLC, Appellees

---

On Appeal from the 234th District Court
Harris County, Texas
Trial Court Cause No. 2006-30785

MEMORANDUM OPINION

Kimberly Silas appeals from the trial court's order granting no-evidence summary judgment in favor of St. Luke's Episcopal Properties Corporation and The Women's Specialists of Houston, PLLC (collectively "Defendants"). Because the dispositive issues are clearly settled in law, we issue this memorandum opinion and affirm. *See* Tex. R. App. P. 47.4.

I. BACKGROUND

In May 2004, Silas was employed by LabCorp and was working at an office leased by Women's Specialists. St. Luke's owned the property where the office was located. Silas alleged that she entered a bathroom at the office and "a metal air conditioning grate fell from the ceiling and struck her violently on her right wrist, right arm and right shoulder, causing severe and painful injuries . . . ." Silas filed suit, claiming that her injuries were caused by the Defendants' negligence. Silas brought her claim against St. Luke's under the doctrine of res ipsa loquitur, alleging that the instrumentality causing her injuries was under the direct control and management of St. Luke's and the character of her accident was such that it would not ordinarily occur absent negligence. Silas pleaded in the alternative the same res ipsa loquitur theory against Women's Specialists.

The Defendants filed separate no-evidence motions for summary judgment arguing in pertinent part that Silas's claim was for premises liability and there was no evidence they had actual or constructive knowledge of any unreasonably dangerous condition. Each Defendant also argued there was no evidence to support it had control of the grate, an element of Silas's res ipsa loquitur theory. In her responses to the Defendants' motions, Silas argued her claims were based in general negligence, not premises liability. She admitted that she possessed no evidence that either Defendant had actual or constructive knowledge of the grate's condition, and conceded that if "this is a premises liability case, [she] cannot ever prevail on that theory." Instead, Silas argued this is a "textbook" res ipsa loquitur case. She asked for a declaratory judgment regarding which Defendant had control of the grate or, if declaratory judgment was not possible, for the jury to make such determination. Following a hearing on their motions, the Defendants filed a joint reply to Silas's response in which they further argued there was no evidence to support res ipsa loquitur. On January 7, 2008, the trial court granted the Defendants' motions, "because there is no evidence that the Defendants had actual or constructive knowledge" or notice of any condition.

II. ANALYSIS

In a single issue, Silas argues that the trial court erred in finding that no evidence supported her claim because the doctrine of res ipsa loquitur defeated the Defendants' motions.

In a no-evidence motion for summary judgment, the movant "must state the elements as to which there is no evidence." Tex. R. Civ. P. 166a(i). If the movant has identified specific elements she claims lack evidence, we must determine *de novo* whether the non-movant has produced more than a scintilla of probative evidence to raise a genuine issue of material fact. *Clearview Props., L.P. v. Prop. Tex. SC One Corp.*, 287 S.W.3d 132, 137 (Tex. App.—Houston [14th Dist.] 2009, pet. denied).

Silas alleged she sustained injury when a metal grate fell from the ceiling and struck her. The trial court implicitly found, and we agree, that this allegation is grounded in a premises liability theory of recovery. *See State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006) ("A negligent activity claim requires that the claimant's injury result from a contemporaneous activity itself rather than from a condition created on the premises by the activity; whereas a premises defect claim is based on the property itself being unsafe."). One of the essential elements of proof for premises liability is "actual or constructive knowledge of some condition on the premises by the owner/operator." *See Lowe's Home Ctrs., Inc. v. GSW Mktg., Inc.*, 293 S.W.3d 283, 288 (Tex. App.—Houston [14th Dist.] 2009, pet. denied). The trial court granted summary judgment because Silas presented no evidence supporting this element. Silas conceded that she did not present any evidence bearing on the Defendants' knowledge of the premises's condition. Instead, she contends res ipsa loquitur defeats Defendants' challenge.

The doctrine of res ipsa loquitur permits a trier of fact to base an inference of negligence on circumstantial evidence of negligence. *See Lampasas v. Spring Ctr., Inc.*, 988 S.W.2d 428, 435 (Tex. App.—Houston [14th Dist.] 1999, no pet.). However, the doctrine does not permit an inference that the defendant had actual and constructive

knowledge of a condition on the premises. *See Parks v. Steak & Ale of Tex., Inc.*, No. 01-04-00080, 2006 WL 66428, at *2–3 (Tex. App.—Houston [1st Dist.] Jan. 12, 2006, pet. denied) (mem. op.) (recognizing that the doctrine of res ipsa loquitur does not satisfy plaintiff's burden to supply evidence of defendant's knowledge of dangerous condition in premises-liability case); *Aaron v. Magic Johnson Theatres*, No. 01-04-00426-CV, 2005 WL 2470116, at *5 (Tex. App.—Houston [1st Dist.] Oct. 6, 2005, no pet.) (mem. op.). Because Silas presented no evidence supporting the claim that Defendants had knowledge of a defective condition on their premises, Defendants were entitled to judgment as a matter of law.

We overrule Silas's sole issue and affirm the judgment of the trial court.

/s/ Charles W. Seymore
Justice

Panel consists of Chief Justice Hedges and Justices Seymore and Sullivan.