IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO.: 50-2023-CA-016728
DIVISION:AJ

DORA CARINI,
Plaintiff,
v.

1515 ASSOCIATES, LTD, and PENN
FLORIDA CAPITAL CORP.,
Defendants.
_____/

ORDER GRANTING DEFENDANTS' MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE comes before the Court on Defendants', PENN FLORIDA CAPITAL CORP and 1515 ASSOCIATES, LTD., Motion for Final Summary Judgment filed on May 7, 2025 [Docket Identification No. 83]. The Court has heard argument from the parties' counsels via hearing on October 3, 2025, reviewed Defendants' Motion and Reply, Plaintiff DORA CARINI's Response in Opposition, the deposition transcripts provided, the parties' attached exhibits, and the applicable law, including Fla. R. Civ. P. 1.510, and is otherwise duly informed on the premises.

Undisputed Facts

This premises liability action concerns a trip and fall incident that occurred on Defendants' premises, specifically the first floor of a parking garage attached to an office building. Plaintiff drove to the parking garage on December 8, 2021 because her daughter Marina Monroy worked for one of the building's tenants and the pair were going to drive together to attend a parade on another property, Mizner Park, later that evening. Plaintiff never entered the office building. Plaintiff testified that she tripped over a crack and fell while walking to her daughter's truck. Plaintiff then filed the instant lawsuit on December 18, 2023 alleging claims of negligence against Defendant 1515 Associates, Ltd. (Count I) and Defendant Penn Florida Capital Corp. (Count II).

Summary of Arguments

Plaintiff admits she was not a business invitee on Defendants' premises at the time of her fall but asserts she was an invitee because she was a social guest of Ms. Monroy, an employee of one of Defendants' commercial tenants on the property. Plaintiff asserts Defendants had actual or constructive notice of the crack, which combined with inadequate lighting in the parking garage created a foreseeable risk of injury to people traversing the area.

Defendants counter that they had no notice of the crack, and the testimony relied on by Plaintiff is inadmissible under Florida's Rules of Evidence or otherwise does not support such a finding of notice. Defendants argue Plaintiff's claims rest on speculation, inadmissible testimony, and the impermissible stacking of inferences. Defendants further argue that they owed Plaintiff a lesser duty of care because she was not an invitee at the time of her fall, submitting that Plaintiff entered the parking garage solely for her own convenience (personal travel to another property) and can only be deemed, at best, an uninvited licensee.

Legal Standard

Under Florida Rule of Civil Procedure 1.510(a), summary judgment is proper where "the movant shows there is no dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(c)(1)(A) requires that Plaintiff as the non-movant "must support the assertion [that a fact is genuinely disputed] by citing to particular parts of materials in the record." The burden on the movant "may be discharged by 'showing' – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party's case." *Id*. at 325. *See also Wease v. Ocwen Loan Servicing, LLC*, 915 F.3d 987, 997 (5th Cir. 2019) ("A movant for summary judgment need not set forth evidence when the nonmovant bears the burden of persuasion at trial."). Under Florida's summary judgment standard this Court "may consider

only that evidence which can be reduced to an admissible form." *Rowell v. BellSouth Corp*., 433 F.3d 794, 800 (11th Cir. 2005). "Mere speculation or inference of negligence is insufficient to defeat summary judgment." *Vermeulen v. Worldwide Holidays, Inc*., 922 So. 2d 271 (Fla. 3d DCA 2006).

Analysis

In order to prove a claim for negligence, a plaintiff must establish four elements: (1) the existence of a duty recognized by law requiring the defendant to conform to a certain standard of conduct; (2) a breach by the defendant to perform that duty; (3) a causal connection between the breach and injury to the plaintiff; and (4) loss or damages to the plaintiff. *Bartsch v. Costell*, 170 So. 3d 83, 86 (Fla. 4th DCA 2015). A premises liability claim is a negligence claim with the added elements of possession/control of the premises and notice of the dangerous condition. *Oliver v. Winn-Dixie Stores, Inc*., 291 So. 3d 126, 128 (Fla. 4th DCA 2020).

A landowner's duty is contingent upon the plaintiff's status upon the land, which falls within one of three classifications: an invitee, a licensee, or a trespasser. *Arp v. Waterway East Association, Inc.*, 217 So. 3d 117, 120 (Fla. 4th DCA 2017). The status of an entrant must be gleaned from the relationship between the two and where facts are not disputed, it is appropriate for a court to fix the status as a matter of law. *Zipkin v. Rubin Construction Company*, 418 So. 2d 1040, 1043 (Fla. 4th DCA 1982). Defendants argue Plaintiff must be deemed specifically an uninvited licensee, which is a "category of licensees who are uninvited, that is, persons who choose to come upon the premises solely for their own convenience without invitation either expressed or reasonably implied under the circumstances." *Wood v. Camp*, 284 So. 2d 691, 695 (Fla. 1973).

Defendant argues that even assuming a heightened duty was owed to Plaintiff as an invitee, summary judgment is proper because there is insufficient evidence to prove notice. In arguing

notice, Plaintiff relies solely on the testimony of Defendants' operations manager Jesus Taveras, who first discovered the crack several days after Plaintiff's incident. Plaintiff submits her burden to prove notice is met because Mr. Taveras testified the crack appeared to have existed for "awhile" and did not appear "brand new." Plaintiff further relies on testimony from Mr. Taveras that another individual, specifically a porter named "JoJo," may have been able to see the crack prior to the incident because he worked in the general area.

Summary judgment evidence must be able to "be presented in a form that would be admissible in evidence." *See* Fla. R. Civ. P. 1.510(c)(2). The Court finds that it cannot consider this testimony from Mr. Taveras because it would be deemed inadmissible at trial. His opinion about the assumed age of the crack clearly requires "specialized knowledge, skill, experience, or training" which is prohibited as admissible lay opinion under Fla. Stat. § 90.701. Likewise, Mr. Taveras' testimony about the crack existing for "awhile" or what a third party "could have" seen prior to the incident is inadmissible under Fla. Stat. § 90.604 because he "may not testify to a matter unless evidence is introduced which is sufficient to support a finding that [Taveras] has personal knowledge of the matter." The record evidence shows Mr. Taveras did not have personal knowledge of the condition of the crack *as it existed on December 8, 2021* when Plaintiff had her incident and therefore cannot testify regarding the condition at that time.

Even if Jesus Taveras' testimony were deemed admissible, Defendants correctly point out that the crack would have aged in the *intervening* several days *between* Plaintiff's incident and his initial discovery of it. There is no evidence that any characteristics of the crack which led Taveras to believe it was not "brand new" were present when the incident occurred, therefore constructive notice cannot be implied against Defendants. The jury would have to impermissibly stack inferences to conclude: (1) the aging characteristics of the crack were formed long enough before

the incident to impute constructive notice; and (2) the crack did not age in the next several days prior to Taveras' discovery of it. Stacking of inferences is prohibited at the summary judgment stage. *See Cohen v. Arvin*, 878 So. 2d 403, 405 (Fla. 4th DCA 2004)*; Stanley v. Marceaux*, 991 So. 2d 938, 940 (Fla. 4th DCA 2008).

None of the other factors typically used to establish constructive notice of a dangerous condition are found in the record evidence before the Court. Plaintiff has not submitted any evidence of prior incidents on Defendants' premises, nor any evidence that cracks in the parking garage "occurred with regularity and was therefore foreseeable" as outlined by the Supreme Court in *Owens v. Publix Supermarkets, Inc*., 802 So. 2d 315, 320 (Fla. 2001). On the contrary, the cited testimonies establish that Defendants had not received any prior complaints related to tripping hazards or lighting deficiencies in the parking garage. Based upon the undisputed record evidence, there is no genuine issue of material fact as Defendants did not have actual or constructive notice of the crack at issue and under *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) and Fla. R. Civ. P. 1.510 summary judgment in Defendants' favor is proper.

Although it is not necessary to rule on Plaintiff's status given the aforesaid conclusion of law, the Court further observes that Defendants' cited cases establish that Plaintiff was an uninvited licensee as a matter of law and therefore only owed a duty to avoid willful and wanton harm to her. Although Plaintiff was allegedly invited to the parking garage by Ms. Monroy, the sole purpose of the invitation was so Ms. Monroy could assist Plaintiff in navigating off-premises to the parade. While Plaintiff argues this was not a shortcut, the Court fails to see how Plaintiff's actions were materially different than those of the plaintiff in *Arp v. Waterway E. Ass'n, Inc*. in that her motive was to get from Point A (home) to Point C (parade), by first traveling to Point B (parking garage).

Lastly, the Court notes Plaintiff's actions were near-identical to the plaintiff in *Beasley v. Wells Fargo, N.A*., 2022 WL 17819168 (11th Cir. 2022) wherein a plaintiff parked in a Wells Fargo bank parking lot for the purpose of visiting a bar off-premises, then later returned and was shot and injured in the same parking lot. The Eleventh Circuit Court of Appeal deemed the *Beasley* plaintiff an uninvited licensee because he used the Wells Fargo parking lot for his own convenience without an express or reasonably implied invitation from the owner. *Id*. at *5. Plaintiff's "own related-travel purpose" would deem her an uninvited licensee as well. *See Porto v. Carlyle Plaza, Inc*., 971 So. 2d 940, 941-42 (Fla. 3d DCA 2007).

It is, hereby, **ORDERED AND ADJUDGED** that:

A. Defendants' Motion for Final Summary Judgment, filed May 7, 2025, is GRANTED.

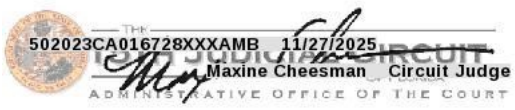
B. Final Judgment is hereby entered for Defendants 1515 Associates, Ltd., and Penn Florida Capital Corp. and against Plaintiff Dora Carini.

C. Counts I and II of Plaintiff's Complaint are hereby DISMISSED with prejudice.

D. The Court reserves jurisdiction to consider any timely-filed motions to tax costs and/or attorney's fees.

E. Plaintiff shall take nothing by this action and Defendants shall go hence without day.

DONE and ORDERED in West Palm Beach, Palm Beach County, Florida.



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Maxine Cheesman
Circuit Judge

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