THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

GERALDINE SANTANGINI Plaintiff, vs. BHAGVATI KRUPA, INC. t/a SUBWAY Defendant.	:	PHILADELPHIA COUNTY COURT OF COMMON PLEAS JANUARY TERM, 2015 NO. 0067

OPINION

Patrick, J.

DATE: July 14, 2016

Plaintiff/Appellant, Geraldine Santangini, filed an appeal from this Court's Order dated January 12, 2016, granting Defendant's Motion for Summary Judgment. This Court now submits the following Opinion in support of its ruling and in accordance with the requirements of Rule 1925(a) of the Pennsylvania Rules of Appellate Procedure. For the reasons set forth below, this Court's decision should be affirmed.

PROCEDURAL/FACTUAL HISTORY

On September 20, 2013, Plaintiff, Geraldine Santangini, entered the Subway restaurant located at 106 S. 16th Street in Philadelphia. After completing her purchase, Plaintiff walked to the self-serve soda fountain and filled her drink. Plaintiff turned toward the exit door; she was holding a sandwich and cookie in her left hand, a drink in her right hand, and had a handbag over her shoulder. Plaintiff took a step and fell down two steps leading to the exit. Plaintiff sustained injuries as a result of her fall.

On April 23, 2015, Plaintiff filed a Complaint against Defendant Bhagvati Krupa, Inc., t/a Subway, alleging that the Subway restaurant was defectively designed. Plaintiff contended that Defendant's negligence and carelessness consisted of:

> (a) Creating a hazardous and dangerous condition by having an unguarded ledge directly next to the self-service beverage;
> (b) Creating an overcrowded condition by improper design or overcrowding equipment into the available areas;
> (c) Failing to warn Plaintiff of the dangerous condition by signs or other safety warnings;
> (d) Failing to protect the Plaintiff and other business invitees by barricades, cones, barriers, retractable belts, stanchion rope, railings, fence and eye-catching paint or other safety devices;
> (e) Creating a large visual wall display consisting of signs attracting the attention of the business invitee Plaintiff diverting their attention from the surrounding areas;
> (f) Allowing the dangerous and unsafe condition to exist during business hours when business invitees would be present;
> (g) Placing a self-service area right next to a steep step drop off;
> (h) Designing the restaurant with a step drop off instead of a ramp or gradual incline;
> (i) Placing equipment in a way to disorient the patron business invitee;
> (j) Failing to keep the premises reasonably safe for use by Plaintiff as a business invitee; and
> (k) Breach of duty of care to Plaintiff, a business invitee.

On October 16, 2015, Defendant filed a Motion for Summary Judgment claiming that the Plaintiff failed to set forth facts sufficient to impose liability. According to the Defendant, expert testimony was required to establish that the Subway restaurant was defectively designed. Plaintiff failed to produce an expert prior to the discovery and expert deadlines set forth in the Case Management Order. Accordingly, Plaintiff could not make out a prima facie case of negligence against the Defendant.

On November 18, 2015, Plaintiff filed an Answer to Defendant's Motion for Summary Judgment. Plaintiff argued that an expert was not necessary to establish negligence. According to the Plaintiff, "the determination of whether the overcrowding [of] a small service area with equipment and the placement of a self-service beverage machine directly next to and perpendicular

to a steep drop off created a dangerous condition is clearly within the knowledge and common sense of a layperson." Moreover, Plaintiff argued that "[a] jury determination in this case that the machine placement near the two level restaurant signage which drew patrons eyes away from the danger and the unusual diagonal stairway in the small restaurant facility created a dangerous condition would not be mere conjecture on the part of the jury."

On January 12, 2016, this Court granted the Defendant's Motion for Summary Judgment. Plaintiff filed a Notice of Appeal on February 10, 2016. On February 11, 2016, this Court ordered Plaintiff to file a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(b) within twenty-one days. Plaintiff filed a timely Statement of Matters Complained of on Appeal on March 2, 2016.

ISSUES

Plaintiff/Appellant, Geraldine Santangini, raised the following issues in her 1925(b) Statement of Matters Complained of on Appeal:

1. The Court committed error of law and abused its discretion in finding that Plaintiff failed to establish facts sufficient to impose liability in this matter.
2. The Court erred as a matter of law when it granted judgment where the record reveals a genuine issue of material fact as to causation and credibility in this negligence action, issues that should be determined by the jury.
3. The Court committed error of law and abused its discretion in not recognizing a genuine issue of fact existed whether the placement of a self-service beverage machine directly next to a steep drop off was negligent.
4. The Court committed error of law and abused its discretion in determining the issue of negligence and removing it from the province of the jury.
5. The Court erred because the Record (The Complaint, Motion for Summary Judgment, Memo, Answer to Motion and Affidavit of Mrs. Santangini and pictures of the area) reveals many issues that a jury could determine imposes liability on the [D]efendant.
6. The Court erred in not considering the facts contained in the Complaint, Motion, and Affidavit, and pictures, as required by Pa.R.C.P. No. 1035, in the

light most favorable to the Plaintiff, the non-moving party who was a Business Invitee entitled to the very highest standard of care from the landowner, under the law.

7. The Court's finding of a lack of factual basis for liability without notice or hearing when the issue before the Court was Defendant's claim that expert opinion was required was contrary to the law and deprived the Plaintiff of Procedural Due Process.

STANDARD OF REVIEW

The Superior Court of Pennsylvania's scope of review of an order granting summary judgment is plenary. *Petrina v. Allied Glove Corp.*, 46 A.3d 795, 797–798 (Pa.Super.2012). The Superior Court may disturb the order of the trial court only where it is established that the court committed an error of law or abused its discretion.

In reviewing a trial court's grant of summary judgment, the Superior Court applies the same standard as the trial court, reviewing all the evidence of record to determine whether there exists a genuine issue of material fact. The Superior Court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Only where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to a judgment as a matter of law will summary judgment be entered. All doubts as to the existence of a genuine issue of a material fact must be resolved against the moving party. *JP Morgan Chase Bank, N.A. v. Murray,* 63 A.3d 1258, 1261-62 (Pa.Super.2013) (quoting *Murphy v. Duquesne Univ. of the Holy Ghost,* 565 Pa. 571, 777 A.2d 418, 429 (2001)).

DISCUSSION

On appeal, Plaintiff claims that this Court erred in granting the Defendant's Motion for Summary Judgment. Plaintiff's claim must fail. Expert testimony is required to prove Plaintiff's claim that the Subway restaurant was defectively designed. Since Plaintiff failed to produce an expert prior to the discovery and expert deadlines set forth in the Case Management Order, Plaintiff could not establish a prima facie case against the Defendant. Accordingly, summary judgment was proper.

The determination of whether expert evidence is required turns on whether the issue of negligence in the particular case is one which is sufficiently clear so as to be determinable by laypersons or concluded as a matter of law. *Storm v. Golden*, 538 A.2d 61, 64 (1988). "If all the primary facts can be accurately described to a jury and if the jury is as capable of comprehending and understanding such facts and drawing correct conclusions from them as are witnesses possessed of special training, experience or observation, then there is no need for the testimony of an expert." *Reardon v. Meehan*, 424 Pa. 460, 227 A.2d 667, 670 (1967). This is precisely what our Supreme Court found in *McKenzie v. Cost Brothers, Inc.*, 409 A.2d 362 (1979).

In *McKenzie*, a workman at a construction site was installing a 900 pound, precast concrete block, known as a lintel. The workman was unable to complete the installation by the end of the workday on Friday; he intended to complete the installation the following Monday. "The lintel was not left in the flush position, but rather supported by a brick. No mortar was placed to secure the lintel to the brick nor to seal the void between the lintel and the wall." *Id.* at 363-64. Moreover, no warnings were given. *Id.* at 365. On Saturday, the Plaintiff, who was a bricklayer at the construction site, "stepped on the unstable lintel and fell, incurring serious injury." *Id.* at 364. The Supreme Court concluded that expert testimony was not required to establish industry custom.

The Court explained: "Nothing complex is involved in the present case. One does not need evidence of industry custom and practice to determine that a properly affixed warning, giving notice of the lintel's unstable condition would have affected the outcome." *Id.* at 366. Since the issue of negligence was clear, expert testimony was not needed.

If, on the other hand, the subject matter of the inquiry is one involving special skills and training not common to the ordinary layperson, expert testimony becomes necessary. *Brandon v. Ryder Truck Rental, Inc.*, 34 A.3d 104, 108 (Pa.Super.2011). Numerous cases have expounded on when expert testimony is indispensable. *Young v. Pennsylvania Dept. of Trans.*, 560 Pa. 373, 744 A.2d 1276 (2000) (citation omitted). In one such case, *Tennis v. Fedorwicz*, 592 A.2d 116 (1991), the Commonwealth Court of Pennsylvania held that expert testimony was necessary to prove negligent design.

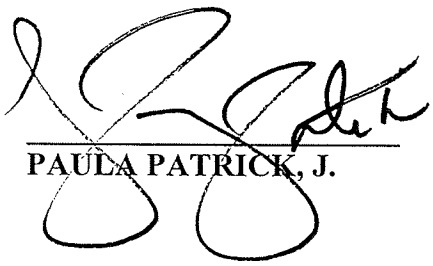
In *Tennis*, Plaintiff was injured in a motor vehicle accident. Plaintiff filed suit against Old Lycoming Township and the Department of Transportation ("Department") alleging that the road where the accident occurred was negligently designed. *Id.* at 116. The Department filed a Motion for Summary Judgment, contending that expert testimony was necessary to support Plaintiff's claim. The trial court granted the Department's Motion, concluding that "there were too many factors for lay persons to make a reasoned decision regarding the safety of the intersection." *Id.* at 117. Among the factors the trial court cited were "the curves and grade of the road, the angle at which the roads intersect, safe stopping distance, material composition of the roadway and the effect of the hillside upon the line of sight for both vehicles." *Id.* The Commonwealth Court agreed, finding that the testimony of an expert was indispensable for proving that the road was negligently designed.

Similarly, here, expert testimony was indispensable for proving Plaintiff's claims against the Defendant. As mentioned above, Plaintiff claimed, in relevant part, that the Defendant's negligence and carelessness consisted of (1) creating a hazardous and dangerous condition by having an unguarded ledge directly next to the self-service beverage; (2) creating an overcrowded condition by improper design or overcrowding equipment into available areas; (3) placing a self-service area right next to a steep step drop off; (4) designing the restaurant with a step drop off instead of a ramp or gradual incline; and (5) placing equipment in a way to disorient the patron business invitee. Like *Tennis*, too many variables existed for a layperson to make a reasoned decision regarding the safety of the Subway restaurant; thus, explication by an expert is needed. Since Plaintiff failed to produce an expert prior to the discovery and expert deadlines, Plaintiff could not establish that the Subway restaurant was defectively designed. Without establishing that a defect existed, Plaintiff could not prove that Defendant knew of the defect. Accordingly, summary judgment was proper.

CONCLUSION

For all the foregoing reasons, this Court respectfully requests that its judgment be affirmed in its entirety.

BY THE COURT:



PAULA PATRICK, J.