

No. 15-3405

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BARBARA OSMOLAK,)	Appeal from the Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 2012 L 10819
)	
MACY’S RETAIL HOLDINGS, INC. d/b/a MACY’S)	
and MACY’S OAK BROOK FURNITURE GALLERY,)	Honorable John P. Callahan, Jr.
MACY’S CORPORATE SYSTEM, INC., MACY’S)	and James P. Flannery, Jr.,
SYSTEMS AND TECHNOLOGY, INC.,)	Judges Presiding.
)	
Defendants-Appellees,)	
)	
(CAPITAL BUILDING SERVICES GROUP, INC.,)	
)	
Defendant).)	
)	

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 **Held:** We reverse the circuit court’s order sustaining the defendant’s objections to the plaintiff’s interrogatories and vacate the court’s order granting summary judgment to the defendants.

¶ 2 Plaintiff Barbara Osmolak appeals from an order of the circuit court of Cook County granting summary judgment in favor of defendants Macy’s Retail Holdings, Inc., Macy’s

Corporate System, Inc., Macy's Systems and Technology, Inc. (collectively "Macy's"), on her two-count complaint seeking damages for injuries she sustained when she tripped and fell on a floor mat in one of Macy's stores. Osmolak also appeals an order of the circuit court sustaining Macy's' objection to a discovery request seeking information about other incidents at other Macy's stores involving the same type of floor mat. We reverse in part, vacate in part, and remand for further proceedings.

¶ 3

BACKGROUND

¶ 4 Osmolak's amended complaint alleged that on March 25, 2011, she went to a Macy's furniture store in Oak Brook, Illinois, with her brother Robert Osmolak.¹ Osmolak alleged that Macy's had a duty to exercise reasonable care for her safety, that "there was a dangerous condition in the form of a negligently installed, secured and/or maintained floor covering on the floor near the entry/exit doors" and that Macy's "created [the] dangerous condition *** by installing and/or maintaining the rug in such a manner that the floor covering posed an unrecognizable hazard to Plaintiff." She further claimed that Macy's knew or should have known about the dangerous condition, and she alleged that Macy's breached its duty of care to her by, *inter alia*, "install[ing] and/or maintain[ing] the floor covering in an unreasonably unsafe and unsecure manner" and "fail[ing] to make reasonable inspection of the Property when Macy's *** knew, or in the exercise of ordinary care should have known, that said inspection was necessary to prevent injury to the Plaintiff."

¶ 5 On August 19, 2013, Osmolak propounded interrogatories to Macy's. Interrogatory 10 stated "[i]dentify all other Macy's locations that had the same or similar type of rug that is the subject of Plaintiff's incident on or before March 25, 2011." Interrogatory 11 stated "[i]dentify

¹ Because plaintiff and her brother share the same last name, we depart from convention and refer to Robert Osmolak simply as "Robert."

each instance in which Macy's has had a trip and/or fall incident involving the same or similar type of rug that is the subject of Plaintiff's incident on or before March 25, 2011." Macy's objected to both interrogatories on the grounds that they were vague, unduly burdensome, and overbroad; and that they were not "reasonably calculated" to lead to the discovery of relevant or admissible information. The court sustained both objections.

¶ 6 In her deposition, Osmolak testified that around 8:30 p.m. on March 25, 2011, she went to a Macy's furniture store in Oak Brook, Illinois, with her brother Robert. Around 9 p.m., the store manager, Michael Hallmon, announced that the store was closing, so Osmolak and Robert began walking toward the exit, which consisted of a bank of four doors. Osmolak was walking toward one of the center doors. However, as she neared the doors, she heard Hallmon directing people to exit through the far right door. According to Osmolak, she then turned to her right to go through the right-side door, at which point she fell. At that point in the deposition, Macy's attorney asked Osmolak if she knew what caused her to fall, leading to the following colloquy:

"Q. Do you know what happened to cause you to fall?

A. At the time, no, but I guess my—I felt myself catch on something. I didn't even know what was happening. All of a sudden I was just going down.

Q. So you said you felt yourself catch on something?

A. Well, I was walking and all of a sudden I fell. I didn't slip or slide.

Q. Do you know what your foot caught on?

A. I guess it might have been a carpet, a rug. I don't know.

Q. I don't want you to guess. I want you to tell me—

MR. MENDOZA [Plaintiff's counsel]: Tell her what you felt before you fell.

A. I felt my left foot stop—or I felt something catch, and then the next thing I knew I was head first on the floor.”

¶ 7 In his deposition, Robert testified that he witnessed Osmolak fall. In addition, he stated that immediately after she fell, Osmolak was “sprawled diagonally” and “the front third of her shoe was underneath the floor mat.” Elaborating, Robert testified:

“I can still recall this. It’s vivid. The front third of her shoe was underneath the floor mat. Her foot—the back of her foot was out of the shoe, but her toes were still in the shoe. And the shoe itself was—the front of the shoe was wedged between—underneath the floormat, whatever you call it.”

¶ 8 Hallmon testified that he witnessed Osmolak’s accident but “wasn’t looking exactly at her when she fell.” He clarified, however, that he did not know whether Osmolak’s feet were on the floor mat or the floor at the time he saw her fall. Hallmon testified that he did not recall seeing the floor mat “raised” before Osmolak fell, but he did see a raised area in the floor mat after the incident. Afterwards, Hallmon “pulled the rug up because it was sticking and just smooth [*sic*] it back down.”

¶ 9 Macy’s moved for summary judgment, arguing that it was entitled to judgment as a matter of law because Osmolak failed to show that the floor mat was defective and that any defect caused her to fall. The court granted Macy’s motion, stating:

“Ultimately in this particular case, there’s really no definitive evidence of anybody witnessing the claim what actually caused her to fall. There’s no evidence that the rug had any defects. The plaintiffs failed to present any substantive evidence as to any defect to the mat prior to the fall, and there’s no evidence of any defect actually caused her to fall or trip on the floor mat.”

¶ 10 Osmolak filed a motion to reconsider, which the court denied on October 5, 2015. This appeal followed.

¶ 11 ANALYSIS

¶ 12 Because it is dispositive, we begin by considering Osmolak’s argument that the circuit court erred by sustaining Macy’s objections to interrogatories 10 and 11. The circuit court retains vast discretion on matters pertaining to discovery, and we will not disturb its judgment over such matters unless the court’s decision constitutes an abuse of discretion. *Norskog v. Pfiel*, 197 Ill. 2d 60, 70 (2001). As stated, Macy’s objected to interrogatories 10 and 11 on the grounds that they were vague, overbroad, unduly burdensome and irrelevant. The circuit court sustained the objections in a written order that contains no explanation for the ruling. For the reasons that follow, we find that decision was an abuse of discretion.

¶ 13 First, the interrogatories were plainly directed towards relevant information. “[A] party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action.” Ill. Sup. Ct. R. 201(b)(1) (eff. July 1, 2002). Interrogatories 10 and 11 were germane to the issue of notice, which is a central issue in Osmolak’s case. In general, a plaintiff “must prove a defendant’s actual or constructive notice of a dangerous condition in order to establish liability.” *Caburnay v. Norwegian American Hospital*, 2011 IL

App (1st) 101740, ¶ 45. The notice requirement may be excused, but only in cases where the defendant actually created the dangerous condition. *Id.*

¶ 14 *Caburnay* illustrates the point. There, the plaintiff sued the defendant for negligence after he stepped on a floor mat, fell, and sustained serious injuries. *Id.* ¶¶ 3-4. The plaintiff alleged that the defendant “ ‘improperly placed the floor mat so that it was subject to become hazardous, movement, wrinkles and folds.’ ” *Id.* ¶ 6. We explained that the plaintiff could “avoid the notice requirement only if he can establish that the mat was negligently placed in front of the elevator by Norwegian.” *Id.* ¶ 45. We further explained that “[a] plaintiff can establish negligent use of a floor mat if he can show that those mats are defective or negligently installed.” *Id.* ¶ 47.

¶ 15 In arguing for summary judgment, Macy’s suggested that Osmolak failed to carry her evidentiary burden with respect to the issue of notice by failing to produce evidence of “prior trips and falls.” In the same sentence, Macy’s conceded that, if there had been prior trips, “perhaps Macy’s would be on notice that whatever type of edging that this rug had was a dangerous condition.” In support of its argument, Macy’s noted that three of its employees were deposed and variously testified that the mat that Osmolak tripped on was in good condition and was still used at the store, and that there have been no other reported incidents involving the mat at the store Osmolak visited. The discovery which was denied might have confirmed that Macy’s had no notice that the floor mat was dangerous. But it is also possible that Macy’s responses might show that it had knowledge of prior trip-and-fall incidents involving the same or similar mats.

¶ 16 Second, interrogatories 10 and 11 were not vague. The phrase “same or similar type of rug” is not ambiguous. Whether the interrogatories are overbroad or unduly burdensome

presents a closer call. In addressing such a concern, however, the circuit court could in its discretion limit the temporal or geographic scope of the interrogatories. In that way, Osmolak's right to discovery would not be infringed, and Macy's would not be subjected to abusive discovery requests. In sum, we reverse the court's order sustaining Macy's objections to interrogatories 10 and 11.

¶ 17 That leaves us with the court's summary judgment order. In light of our ruling on the evidentiary issue, it is clear that the court granted summary judgment to Macy's without permitting Osmolak the ability to realize the full measure of discovery to which she was entitled. Accordingly, we vacate the circuit court's order awarding summary judgment to Macy's and remand for further proceedings. See *Hanes v. Orr & Associates*, 53 Ill. App. 3d 72, 74 (1977) (vacating award of summary judgment against the plaintiff where the court's summary judgment order was entered after the court improperly precluded the plaintiff from deposing one of the defendants).

¶ 18 **CONCLUSION**

¶ 19 Based on the foregoing, we reverse the circuit court order sustaining Macy's objection to interrogatories 10 and 11. We vacate the court's order awarding summary judgment to Macy's and remand for further proceedings.

¶ 20 Reversed in part; vacated in part; remanded.