FIRST DIVISION
September 26, 2016

No. 1-16-0003

**IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

ANITRA D. BENSON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 14 L 9781
	)	
LIONCREST HOMEOWNERS ASSOCIATION,	)	Honorable
	)	Daniel T. Gillespie,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Connors and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's grant of summary judgment in favor of defendant Lioncrest is affirmed where no evidence was presented showing how the ice patch that caused plaintiff to slip had formed, and therefore plaintiff did not establish Lioncrest's duty to remove the ice from the property. Also, plaintiff's claims alleging Lioncrest's negligence in maintaining the property are contradicted by the record.

¶ 2 Plaintiff, Anitra D. Benson, appeals the order of the circuit court granting defendant, Lioncrest Homeowners Association's (Lioncrest) motion for summary judgment on plaintiff's

complaint alleging negligence and breach of contract. On appeal, plaintiff contends that the trial court erred in granting summary judgment where 1) the immunity provided by the Illinois Snow and Ice Removal Act (Act) (745 ILCS 75/0.01 *et seq*. (West 2012)) does not apply because Lioncrest is neither an owner or resident of residential property, and the sidewalk where she fell does not abut residential property; and 2) the Act does not immunize Lioncrest from its contractual obligation to maintain its premises to prevent unnatural accumulations of ice and snow. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 The trial court granted summary judgment in favor of Lioncrest on December 11, 2015. Plaintiff filed a notice of appeal on December 24, 2015. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 5 BACKGROUND

¶ 6 In March 2013, plaintiff owned a townhome at the Lioncrest Condominium complex in Richton Park, Illinois. She resided there with her significant other, Mark Reed. The condominium complex had a homeowner's association (Lioncrest) which, pursuant to the declaration of covenants, conditions and restrictions, collected assessments to "be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties and in particular for the improvement and maintenance of the Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the homes situated upon the Properties." The declaration also provided that a fee simple title to the Common Area was conveyed to Lioncrest "free and clear of all encumbrances and liens, prior to the conveyance of the first lot." The "Common Area" was

defined as "all real property owned by the Association for the common use and enjoyment of the members of the Association."

¶ 7 On the morning of March 4, 2013, around 7:50-7:55 am, plaintiff walked out of the front door of her townhome and headed to the train station to go to work. After exiting her townhome, she "went down the couple of steps that [she had] and walked down the short walkway" and then she "made a left and started heading down the sidewalk" when she slipped on a patch of ice and fell. Plaintiff did not see the patch of ice before stepping on it. A neighbor who heard plaintiff screaming after the fall alerted Mark, who attended to plaintiff and took her to the hospital. Plaintiff suffered a fractured ankle and required hardware surgically implanted in her ankle, and physical therapy.

¶ 8 Plaintiff filed a two-count complaint against Lioncrest, alleging that 1) Lioncrest breached its duty to maintain its property in a reasonably safe condition, and breached its "duty to reasonably perform snow and ice control on its walks and parking lots" and "to not create or aggravate an unnatural accumulation of snow and ice on its walks; and 2) Lioncrest breached its contractual duty to maintain its walks and parking lots "by creating or aggravating an unnatural accumulation of ice on its walks; by failing to remove the ice located on its walks; and by failing to trim bushes to prevent an obstruction of its walks."

¶ 9 At her deposition, plaintiff was asked if "there was something lacking in terms of maintenance's practices in terms of snow and ice removal" and she responded that she "was not aware of all of their practices[.]" She stated that she knew there were "some things that should have been done" but she was "not sure as to whether they were done and specifically whether they were done that day." Plaintiff was also shown a photograph of her townhome and was asked about "a shrub, bush, ornamental tree" in front of her unit. When asked whether she ever

trimmed the tree, plaintiff answered, "no" and that she had not seen anyone trim the tree. She stated that it was her neighbor's tree and she was not sure whose obligation it was to trim the tree. Plaintiff was not aware of the landscaping company hired to care for the complex's property trimming the shrubs or trees on the property. When asked whether she "ever [had] trouble navigating around that tree so as to avoid injury" plaintiff answered, "No." Plaintiff stated that it was not snowing the morning of March 4, 2013. She acknowledged that she had no idea how long the patch of ice she slipped on had been on the sidewalk, nor did she know whether it developed overnight, or was present the day before.

¶ 10 In his deposition, Mark stated that on the morning of March 4, 2013, there had been no significant snowfall. He used to work with the maintenance crew and if there was snow or a freeze the night before, they would go around the complex the next morning looking for trash and ice. If there was ice on the sidewalk, they would put salt on it. He stated that salt had not been put on the ice the morning plaintiff fell. When asked whether it was apparent to him that plaintiff fell because she stepped on the ice and "not due to any defect in the condition of the sidewalk," Mark answered, "Yes." He acknowledged that patches of ice on the sidewalk normally occurred during the winter and that he did not know how or why the patches of ice formed.

¶ 11 William Nalls testified that he was the maintenance supervisor for Lioncrest in 2013. He stated that in the winter, maintenance would pick up paper on the ground and put salt on ice patches. After salting on the first day, they would return the next day because the salt would have melted the snow and ice, which would then freeze overnight. On the morning of March 4, 2013, Nalls was at the complex when he heard that someone had fallen. He and others from maintenance went to the area and saw plaintiff on the ground trying to get up. Nalls noticed

that there was ice on the ground where plaintiff had fallen, although the ground surrounding the patch of ice was dry. He described the patch as a thin sheet of ice the size of a book. After plaintiff was taken from the area, Nalls himself put salt on the patch of ice. He stated that the ice patch "probably came from melted salt—melted down snow" but he did not know for sure where it came from. Nalls testified that he was not aware of any complaints about water pooling in the area where plaintiff fell, nor was he aware of any violations regarding the condition of the sidewalk. The sidewalks were part of the common area of the complex, and Lioncrest hired contractors to repair the sidewalks. The maintenance crew repaired the stoops and walkways to the units. Nalls was not aware of the sidewalks being repaired prior to plaintiff's fall.

¶ 12 Lioncrest filed a motion for summary judgment, arguing that the Act applies to immunize it from liability for injuries caused by snow or ice removal efforts unless its conduct was willful and wanton, and plaintiff did not allege willful and wanton conduct. The trial court granted the motion for summary judgment and plaintiff filed this timely appeal.

¶ 13 ANALYSIS

¶ 14 On appeal, plaintiff challenges the trial court's grant of summary judgment in favor of Lioncrest, arguing that the Act's immunity does not apply because Lioncrest is not an owner as defined by the Act, nor did the sidewalk upon which plaintiff fell "abut" residential property. Plaintiff also questions the trial court's application of the Act to her complaint when she alleged negligent conduct and breach of contract apart from Lioncrest's snow removal efforts. We note that the record does not contain any transcripts or certified bystander's reports of the proceedings in which the trial court granted summary judgment in favor of Lioncrest. As the appellant, plaintiff has the burden to provide a sufficiently complete record to support any claim of error,

and in the absence of a complete record on appeal, we presume that the order entered by the trial court conforms with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Furthermore, any doubts that may arise concerning the trial court's rulings will be resolved against plaintiff as the appellant. *Urban Sites of Chicago, LLC v. Crown Castle USA*, 2012 IL App (1st) 111880, ¶ 21. Notwithstanding this presumption, this court may affirm the trial court's entry of summary judgment on any basis supported in the record, regardless of whether "the trial court relied on that basis or its reasoning was correct." *Freedberg v. Ohio National Insurance Co.*, 2012 IL App (1st) 110938, ¶ 26.

¶ 15 Summary judgment is proper where the pleadings, affidavits, depositions, admissions, and exhibits on file show that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012). "The purpose of summary judgment is not to try a question of fact, but to determine whether one exists" that precludes entry of judgment as a matter of law. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 421 (2002). We review the trial court's grant of summary judgment *de novo*. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163 (2007).

¶ 16 Plaintiff's complaint alleged negligence and breach of contract. To prevail on her negligence claim, plaintiff must prove that Lioncrest breached a duty owed to her, and the breach proximately caused her injuries. *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 294 (2000). Whether a duty exists is a question of law for the court to determine. *Bajwa v. Metropolitan Life Insurance Co.*, 208 Ill. 2d 414, 421 (2004).

¶ 17 Under common law, property owners have no duty to remove natural accumulations of ice and snow from its premises. *McBride v. Taxman Corp.*, 327 Ill. App. 3d 992, 996 (2002). However, a property owner may be liable for injuries that occur from an artificial or unnatural

accumulation of snow or ice, or an accumulation aggravated by the owner. *Id*. Therefore, to survive summary judgment, plaintiff must sufficiently show that the unnatural accumulation of snow or ice was caused by the property owner. *Tzakis v. Dominick's Finer Foods, Inc.*, 356 Ill. App 3d 740, 746 (2005). At a minimum, plaintiff must sufficiently allege an identifiable cause of the ice formation. *Rush v. Simon & Mazian, Inc.*, 159 Ill. App. 3d 1081, 1084 (1987).

¶ 18 Here, plaintiff alleged in her complaint that Lioncrest failed to remove the ice from the sidewalk. However, in her deposition she did not state where the ice came from, but instead acknowledged that she had no idea how long the patch of ice had been on the sidewalk, nor did she know whether it developed overnight, or was present the day before. Testimony showed that there had been no snowfall for a few days when plaintiff fell. Her partner Mark, who had worked on the maintenance crew at the complex, stated that patches of ice on the sidewalk normally occurred during the winter and that he did not know how or why the patches of ice formed. Nalls, the maintenance supervisor at the complex, testified that the ice patch "probably came from melted salt—melted down snow" but he did not know for sure where it came from. He further testified that he was not aware of any complaints about water pooling in the area where plaintiff fell. Since plaintiff did not identify how the ice patch was formed, she failed to meet her burden of showing that the accumulation of ice was unnatural or aggravated by Lioncrest. Therefore, plaintiff failed to establish that Lioncrest had a duty to remove the ice from the property. The trial court properly granted of summary judgment in favor of Lioncrest. See *Rush*, 159 Ill. App. 3d at 1084 (no genuine issue of material fact exists where plaintiff failed to identify how the ice was formed).

¶ 19 Plaintiff also argued that Lioncrest is liable based on its agreement by contract to maintain the property. Specifically, plaintiff alleged that Lioncrest's negligent maintenance of

the sidewalk caused it to become uneven and sloped, allowing water to pool and form an unnatural accumulation of ice. She also alleged that Lioncrest negligently allowed an overgrown bush to overhang the sidewalk, causing a partial obstruction that forced pedestrians to walk on the ice-covered portion of the sidewalk. Since these allegations do not refer to snow or ice removal, but instead are based on Lioncrest's contractual agreement to maintain the premises, plaintiff argues that summary judgment on these claims was improper, citing *Murphy-Hylton v. Lieberman Management Services, Inc.*, 2015 IL App (1st) 142804.

¶ 20 Although plaintiff made these allegations in her complaint, her claims are contradicted by the record. Plaintiff did not testify that the sidewalk was defective or somehow caused the ice to form, and when asked whether it was apparent to him that plaintiff fell because she stepped on the ice and "not due to any defect in the condition of the sidewalk," her partner Mark answered, "Yes." Nalls testified that he was not aware of any violations regarding the condition of the sidewalk, nor was he aware of the sidewalks being repaired prior to plaintiff's fall. Regarding the tree allegedly overhanging the sidewalk, when asked whether she "ever [had] trouble navigating around that tree so as to avoid injury" plaintiff answered, "No." "[A]lthough the nonmoving party is not required to prove [her] case in response to a motion for summary judgment, [she] must present a factual basis that would arguably entitle [her] to judgment." *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d at 432. Plaintiff may not rely solely on the allegations of her complaint to oppose a motion for summary judgment. *Forsberg v. Edward Hospital & Health Services*, 389 Ill. App. 3d 434, 441 (2009). Accordingly, we affirm the trial court's grant of summary judgment in favor of Lioncrest.

¶ 21 Due to our disposition of plaintiff's appeal, we need not consider whether the Act immunizes Lioncrest from liability for the allegations in plaintiff's complaint.

¶ 22 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 23 Affirmed.