2014 IL App (2d) 121429-U
No. 2-12-1429 & 2-13-0360, cons.
Order filed February 3, 2014



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| BARBARA A. KURZ and ORVILLE KURZ,<br><br>Plaintiffs-Appellants,<br><br>v.<br><br>THE STANLEY WORKS, STANLEY WORKS, STANLEY WORKS, INC., STANLEY ACCESS TECHNOLOGIES LLC, THE STANLEY WORKS ACCESS TECHNOLOGIES PRODUCT GROUP, and/or STANLEY MAGIC-DOOR, INC.,<br><br>Defendants-Appellees. | ) | Appeal from the Circuit Court of Winnebago County.<br><br>No. 09-L-382<br><br>Honorable J. Edward Prochaska, Judge, Presiding. |

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JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Burke and Justice Spence concurred in the judgment.

**ORDER**

¶ 1 *Held*: Trial court erred in holding that statute of repose barred defective-manufacture product liability claims sounding in strict liability, but did not err in granting summary judgment on those claims because the plaintiffs failed to put forward evidence showing that the component product at issue was defective when it left the manufacturer's control. Trial court did not err in entering summary judgment on the product liability claims sounding in negligence.

¶ 2 The plaintiffs, Barbara and Orville Kurz, sued The Stanley Works (under a variety of names, all referred to herein as "Stanley") and others, after an automatic door manufactured by Stanley swung open into Barbara, causing her to fall. Their complaint included product liability

claims against Stanley sounding in strict liability and negligence. The trial court granted summary judgment in favor of Stanley on two grounds: first, that the statute of repose barred the strict liability claims; and second, that there was no genuine question of material fact for a jury to determine. After their motion to reconsider was denied, the plaintiffs appealed. We affirm.

¶ 3 BACKGROUND

¶ 4 The following facts are drawn from the parties' briefs on appeal, and from documents, deposition transcripts, and other exhibits related to the motions for summary judgment in the trial court. Except as noted, they are undisputed.

¶ 5 On May 16, 2009, the plaintiffs were shopping in a Farm & Fleet store in Rockford. After they finished shopping, Orville left the store to bring their car around to the door for Barbara. While he did so, Barbara waited for him in the vestibule of the store. The vestibule had three pairs of automatic doors: one pair on the north side of the vestibule, leading out into the parking lot; one pair on the south side, also leading to the parking lot, and one pair leading from the vestibule into the store. Each set of doors included two automatic swinging doors, one designed for entry and the other designed as an exit. On each set, the right-hand door was designed for passage in the direction of travel and the left-hand door was for people coming the other way.

¶ 6 As she waited in the vestibule, Barbara was standing near the left-hand door of the north side doors. That door was the entrance door from the parking lot into the vestibule, and in its normal operation it swung inward into the vestibule. When Orville pulled up outside, Barbara turned and attempted to leave the vestibule through that door. After she pushed the door open a certain distance, it swung inward, knocking her over. Barbara sustained a broken hip. She spent

over a year in hospitals and nursing homes due to complications that delayed hip replacement surgery, and continues to experience disability related to the injury.

¶ 7 The accident was captured on video by a Farm & Fleet security camera. The video displays a view of the outside of the north side doors and much of the parking lot. Near the beginning of the video, a vehicle can be seen approaching the area near the outside doors. As it stops, Barbara can be seen inside through the glass, moving to the inside of the entrance door and then pushing that door outward. As she pushes the door outward, part of her body can be seen through the opening. The precise distance the door opens is unclear from the video, which is taken from some distance away, and at a downward angle. However, Barbara's pushing causes an opening that appears approximately one-fifth as wide as the door's total width. At that point, the door's motor engages and the door swings inward, knocking Barbara down. Orville can be seen getting out of the car and hurrying into the vestibule through the same door Barbara had attempted to exit. The door swings inward to allow him to enter. This portion of the video is about one minute long.

¶ 8 The automatic door that struck Barbara (Door 106237) was a Magic Swing door manufactured by Stanley. It was installed at the Farm & Fleet store in 1996 by Automatic Entrances of Wisconsin (AEW), the Midwest's largest installer and servicer of Stanley automatic doors. AEW was authorized to offer repair services for Stanley automatic doors. AEW was the sole company that serviced the Stanley doors at the Farm & Fleet store.

¶ 9 The Stanley automatic doors at the Farm & Fleet store had three systems that controlled the doors' movements. The first was the motion sensor, which detected people approaching the door. When the motion sensor detected someone's approach from the front of the door, it signaled the door motor to open the door. The door would then swing open away from the

direction of travel. When the motor was engaged, it controlled the speed of the door, pushing it open at a certain speed, and acting as a brake when the door closed so that it did not slam.

¶ 10 The second system involved the presence sensor, modified by a lockout relay. The presence sensor was aimed at the area normally traversed by a person after he or she had entered the door area and crossed the threshold. If the presence sensor detected a person within the swing radius on the far side of the door, it signaled the motor to hold the door in position: if the door were open, it would stay open; if the door were closed, it would stay closed. Once the presence sensor no longer detected anyone within the swing radius on the far side of the door, it allowed the door motor to operate normally. Whenever the door had been open and then began to shut, a lockout relay would disable the presence sensor for a few seconds, so that the door itself would not set off the presence sensor as it swung shut.

¶ 11 The third system involved a breakout switch. The breakout switch was activated when a person attempted to go the wrong way through the door. It opened a normally-closed circuit, interrupting the power to the door's motor. The door could then be manually opened the wrong way. Once the door returned to its closed position, the switch would close the circuit again, allowing the door to resume its normal automatic functioning.

¶ 12 The purpose of the breakout switch was to allow a person attempting to go the wrong way through an automatic door (*i.e.*, "breaking out" of the door) to pass through safely without having the door swing into him or her. Breakout switches were part of the door system because, although the door was designed for passage in only one direction, it was foreseeable that people occasionally might need to be able to go safely through an automatic door the wrong way, for example in an emergency, or if they mistakenly approached the wrong door. Because the breakout switch interrupted the power to the motor, when the door was in breakout mode the

motor would not respond to signals from the other sensors. The breakout switch should be set to trigger when the door was pushed to negative five degrees: from an initial closed position of zero degrees, this would mean pushing the door the wrong way until the leading edge of the door was two to three inches beyond the door jamb.

¶ 13 The Stanley doors at the Farm & Fleet store utilized Stanley motors, controllers, and breakout switches. However, the motion sensors and presence sensors were manufactured by a different company, BEA, and were integrated into the Stanley door system by AEW during installation. It was normal practice for AEW to install Stanley door systems with non-Stanley sensor components.

¶ 14 Stanley had a protocol for daily safety checks, which it encouraged the purchasers of its automatic doors to perform. (The AEW service invoice form had a space for customers to initial, saying that they had been offered a review of this daily safety check. It was disputed whether AEW technicians actually offered this review when asking customers to sign off on the invoice.) However, this daily safety check did not include a check of the breakout system. As far as the record reflects, Stanley had no recommended procedure for testing the breakout switch.

¶ 15 Glenn Rago testified that he had worked for AEW for 12 years, installing and servicing Stanley automatic doors. He usually did the service calls for the Farm & Fleet store where the accident occurred. On April 27, 2006, about three years before the accident, Rago was called to the Farm & Fleet store because Door 106237 was not working. He found that the door would not open when approached. He determined that the breakout switch (Stanley part 708184) had failed, cutting the power to the door motor. He replaced the switch with a new Stanley breakout switch and tested the door. To test the breakout switch, Rago pushed the door the wrong way to negative five degrees, which he measured by using the width of three fingers, and felt the

resistance of the motor. He completed the safety checks for the door, had store personnel sign his invoice, and left.

¶ 16 Rago testified that he completed a service invoice every time he made a service call. There were no service invoices relating to Door 106237 between April 27, 2006, and the day of the accident.

¶ 17 The breakout switch on Door 106237 was next replaced on July 2, 2009, about seven weeks after the accident. Store personnel testified that the door appeared to be working normally between the day of the accident and July 2, 2009. Rago testified that he was called to the store with a report that the door was not working. He determined that the breakout switch had failed and replaced it. He then tested the door and found it to be working properly. The breakout cam (which sets the trigger point for the breakout switch, and should be calibrated to negative five degrees) did not require adjustment.

¶ 18 Rago testified that Stanley breakout switches contained microcircuits. When a Stanley breakout switch was triggered, it would briefly receive the amount of electricity normally flowing to the motor (110 volts). This could cause the arcing of electricity across the contacts in the microswitch. When asked how he knew that this occurred, Rago said that his belief was based on his experience in dealing with microswitches; he had not observed the arcing directly. He thought that in the past he had taken the cover off a microswitch and had seen evidence of arcing. It was not a Stanley breakout switch. He had never taken apart a Stanley breakout switch, and the contacts for such switches were inside the component and could not be seen without taking the switch apart. Rago considered the arcing to be part of the door's normal operation and did not consider it dangerous, because he believed that any failure of a breakout switch would occur in the open position, thereby disrupting the power to the door motor. When

asked if the arcing could weld the contacts into a closed circuit, he said he did not know. He reiterated that, in his experience, when the breakout switch failed, the door went into manual mode and ceased its automatic functioning.

¶ 19 Both times that Rago replaced the breakout switch in Door 106237 (in 2006 and 2009), he placed the old part in a bag, stapled it to a form, and returned it to AEW. AEW's practice was to discard inoperable parts such as microswitches. Neither of the breakout switches that Rago removed from Door 106237 could be located by the time the plaintiffs filed suit.

¶ 20 Bradley Bechtel, another AEW technician, had been installing and servicing Stanley doors for 24 years. He had removed inoperable breakout switches from Stanley Magic Swing doors in the past. He did not know why they had failed. He believed the voltage throughout the Stanley Magic Swing door operating system, including the breakout switch, was 110 volts.

¶ 21 Jay Walt testified that he was the vice president of AEW and had worked there for 33 years. He had been in sales before becoming a manager and had never installed or serviced Stanley automatic doors, but he understood generally how they worked. He was aware that the breakout cam should be calibrated to trigger at negative five degrees. He had watched the video of the accident, and he would state "with certainty" that Barbara had opened the door the wrong way to greater than five degrees before it began to swing inward into her. Walt interpreted diagrams of the Stanley breakout switch (part 708184) as showing that it was powered through an activating circuit that ran on a lower voltage (24 volts); the motor for the door ran on a higher voltage (110 volts). He was not personally aware of possible arcing in a breakout switch. He initially stated that if a breakout switch failed it would disable the door, but then retracted this statement, saying that the ways in which a breakout switch could fail were beyond his level of expertise.

¶ 22 The plaintiffs filed suit against Farm & Fleet in October 2009. About six months later, they amended their complaint to add as defendants AEW and Stanley. On the same date, Farm & Fleet settled with the plaintiffs for $255,000.

¶ 23 In March 2012, the plaintiffs' expert witness, Warren Davis, issued a report in which he opined that Barbara's injury had been caused by one of the following: the microswitch in the Stanley breakout switch failed, allowing the door motor to operate despite Barbara's actions in breaking out the door; or the breakout cam was improperly calibrated by AEW so that the trigger point for the breakout switch was greater than negative five degrees. As to the first possibility, Davis believed that the arcing described by Rago could cause the contacts in the microswitch to become temporarily welded in the closed position, causing the breakout switch to fail in such a way that the door motor would continue to have power. In that case, if the motion sensor detected the door being pushed into the space in front of the door by someone attempting to go the wrong way through the door, the motion sensor would signal the motor and the motor would swing the door open automatically. Davis was critical of Stanley for (a) designing a breakout system that could fail in such a manner that power continued to flow to the door motor, (b) failing to provide a method for regularly testing the breakout system to ensure it was working properly, and (c) failing to incorporate a redundant safety mechanism to prevent the door motor from operating if the breakout switch failed in the closed position. Davis did not identify any breakout systems containing such a redundant safety mechanism or suggest an alternate design.

¶ 24 In a later deposition, Davis stated that, although miscalibration of the breakout cam by AEW remained a second possible cause of the accident, that possibility was not supported by the evidence, in that Rago reported that he tested the trigger point for the breakout switch after the accident (at the end of the July 2, 2009, service call), and it was properly adjusted at that time.

The service invoice for that date did not reflect any adjustment of the cam. Accordingly, Davis believed that the most likely cause of the accident was a failure of the breakout switch.

¶ 25 In June 2012, the plaintiffs filed a second amended complaint that amended the claims against Stanley. As amended, those claims included the following: count III, a product liability claim by Barbara sounding in strict liability; count IV, a loss-of-consortium claim by Orville based on the same alleged strict liability; count V, a product liability claim by Barbara sounding in negligence, and count VI, a corresponding loss-of-consortium claim by Orville. Shortly thereafter, the plaintiffs voluntarily dismissed their claims against AEW.

¶ 26 In September 2012, Stanley filed two motions for summary judgment. The first motion argued that, as a matter of law, the claims sounding in strict product liability (counts III and IV) were barred by the applicable statute of repose (735 ILCS 5/13-213). The second motion argued that there was no genuine issue of material fact preventing judgment in favor of Stanley on all of the claims. This motion included as exhibits, *inter alia*, affidavits from two Stanley employees, averring that Stanley had manufactured over 26,000 Magic Swing automatic door operators (the component that contained the breakout switch) between April 20, 1999, and December 2008, and that there were "no other reported accidents, incidents, or lawsuits relating to a failure of a breakout switch on a Magic Swing door designed and manufactured by Stanley" from 1992 through the date of the accident in this case.

¶ 27 The motions were briefed and the trial court heard oral arguments on November 26, 2012. The trial court ruled in favor of Stanley on both motions. It began by holding that the strict liability claims in counts III and IV were barred by the statute of repose. It then ruled that, even if the statute of repose did not apply, Stanley was entitled to summary judgment in its favor on these claims, "based on a complete absence of evidence that there was any unreasonably

dangerous condition [in the breakout switch] when it left Stanley's hands." As to the negligence claims (counts V and VI), the trial court found that the plaintiff's theory regarding the failure of the breakout switch in a closed position that allowed the door to continue to operate was merely speculation, as the plaintiffs' expert had not examined the failed breakout switch at issue, had not tested his theory on a breakout switch, and none of the AEW employees who worked with these switches had ever seen this type of failure. Stanley was therefore entitled to summary judgment on these claims as well. The plaintiffs filed a motion for reconsideration, which was heard and denied. These appeals followed. [1]

¶ 28 ANALYSIS

¶ 29 The plaintiffs argue on appeal that the trial court erred in granting both of the motions for summary judgment. We find it helpful to analyze the arguments based on whether they relate to the strict liability claims (counts III and IV) or the negligence claims (counts V and VI).

¶ 30 Counts III and IV: Strict Liability

¶ 31 The trial court granted summary judgment for Stanley on these counts on two bases: the statute of repose, and its finding of no issues of material fact. The standard of review in both of these contexts is *de novo*. *Lee v. John Deere Insurance Co.,* 208 Ill. 2d 38, 43 (2003).

[1] The plaintiffs filed their first appeal (no. 2-12-1249) shortly after the trial court's grant of summary judgment for Stanley. They then filed, in the trial court, their motion for reconsideration. We ordered appeal no. 2-12-1249 stayed until the motion for reconsideration was heard and decided. After that motion was denied, the plaintiffs filed a second appeal (no. 2-13-0360). We ordered the appeals consolidated. Both appeals raise essentially the same issue: did the trial court err in granting summary judgment? Accordingly, we address them together.

¶ 32 The statute of repose applicable to strict product liability claims is section 13-213 of the Code of Civil Procedure (Code) (735 ILCS 5/13-213 (West 2008)). Prior to its amendment by P.A. 89-7 (the Civil Justice Reform Act, which was invalidated in *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997)), this section read, in pertinent part:

> "[N]o product liability action based on the doctrine of strict liability in tort shall be commenced except within the applicable limitations period and, in any event, within 12 years from the date of first sale, lease or delivery *** of any product unit that is claimed to have injured or damaged the plaintiff." 735 ILCS 5/13-213(b) (West 1994).

¶ 33 The plaintiffs' first argument with respect to the statute of repose is that Stanley forfeited the right to raise this defense because it was not pled as an affirmative defense, but instead raised for the first time in Stanley's motion for summary judgment. However, the plaintiffs cite no legal authority to support this argument, and indeed, the authority is to the contrary. See *Cross v. Ainsworth Seed Co.*, 199 Ill. App. 3d 910, 918 (1990); *Chaplin v. Geiser*, 79 Ill. App. 3d 435, 438 (1979). We therefore reject the plaintiffs' forfeiture argument.

¶ 34 The plaintiffs concede that, if Stanley did not forfeit this defense, the statute of repose bars certain portions of their claims in counts III and IV. Specifically, they concede that the allegations relating to defective design of the overall door system and its components are barred, because the door was purchased and installed in 1996 (13 years before the accident), and the design of the door occurred before that point. However, they argue that two of their claims allege that the breakout switch that was in place in the door on the day of the accident was defectively manufactured, and this part was not installed until 2006 when Rago replaced the original breakout switch. The allegations of defective manufacture are contained in count III, ¶ 9(a) & (b), and count IV, ¶ 10(a) & (b).

¶ 35 Stanley responds that these two claims are also barred based on section 13-213(e) of the statute of repose, which states: "Replacement of a component part of a product unit with a substitute part having the same formula or design as the original part shall not be deemed a sale, lease or delivery *** for the purpose of permitting a commencement of a product liability action based on the doctrine of strict liability in tort to recover for injury or damage claimed to have resulted from the *formula or design of such product unit or of the substitute part* when such action would otherwise be barred" by section 13-213(b). (Emphasis added.) 735 ILCS 5/13-213(e) (West 1994). Stanley argues that section 13-213(e) expressly provides that the replacement of a component part (such as the breakout switch) with a substitute part of the same design as the original part does not restart the clock for the purposes of a strict liability claim that would otherwise be barred by the 12-year statute of repose.

¶ 36 Stanley's argument, like the trial court's ruling on this point, overlooks the language italicized above. That language restricts the scope of section 13-213(e) so that it bars only strict liability claims alleging that either the component or the overall product unit was defectively *designed*. This makes sense: if a defective design claim is barred by the statute of repose, the simple fact that some of the original component parts of the unit may have been replaced by new parts of the same design should not extend the statute of repose when the original design is unchanged. However, nothing in section 13-213(e) purports to affect claims that the replacement parts were defectively *manufactured*. In construing a statute, our task is to "ascertain and give effect to the legislature's intent." *Lieb v. Judges' Retirement System of Illinois*, 314 Ill. App. 3d 87, 92 (2000). The best indicator of the legislature's intent is the plain language of the statute. *Lee*, 208 Ill. 2d at 43. "When the statute's language is clear, it will be given effect without resort to other aids of statutory construction." *Id*. Moreover, we must construe the statute to avoid

rendering any part of it meaningless or superfluous. *In re Marriage of Blum*, 235 Ill. 2d 21, 29 (2009). Here, Stanley asks us to read the phrase "claimed to have resulted from the *formula or design of *** the substitute part*" out of the statute. There is no basis for doing so, and we therefore reject this argument.

¶ 37 Nevertheless, we find no error in the trial court's grant of summary judgment for Stanley on counts III and IV, based on its alternate finding that there was no material issue of fact as to these strict liability claims. "To recover in strict liability in tort, a plaintiff must prove that his injuries resulted from an unreasonably dangerous or defective condition of the product and that the condition existed at the time the product left the manufacturer's control. [Citation.] The fact that an injury has occurred, in and of itself, is insufficient to show the existence of a product defect." *Schultz v. Hennessy Industries, Inc.*, 222 Ill. App. 3d 532, 540 (1991).

¶ 38 Here, the trial court found that Stanley was entitled to summary judgment on the defective-manufacture claims in counts III and IV because the plaintiffs had not produced any evidence that the breakout switch was in an unreasonably dangerous condition when it left Stanley's hands. The plaintiffs did not challenge (indeed, did not even mention) this ruling in their appeal. Points not raised on appeal are forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Mikolajczyk v. Ford Motor Co.*, 374 Ill. App. 3d 646, 677 (2007). Further, the plaintiffs' forfeiture of this issue was noted by Stanley in its appellate brief, but the plaintiffs did not address the point in their reply brief, thereby confirming their forfeiture. Accordingly, we affirm the trial court's grant of summary judgment in favor of Stanley on counts III and IV.

¶ 39 Counts V and VI: Negligence

¶ 40 Counts V and VI comprised the plaintiffs' product liability claims sounding in negligence. Each of these counts alleged seven possible ways in which Barbara's injury was

caused by someone's negligence. Three of those allegations related to alleged flaws in the presence sensor, which was manufactured by BEA, not Stanley. The remaining four allegations are at issue in this appeal.

¶ 41 The allegations directed at Stanley asserted that: (1) Stanley furnished both a defective breakout switch design and a defective breakout switch that "failed to disable the door when the door was opened a short distance to the outside sufficient to trigger the entrance opening mechanism"; (2) Stanley replacement breakout switches, including the one installed in Door 106237 in 2006 and replaced in 2009, "due to poor quality had a shorter than normal switch life and therefore an unreasonably high failure rate"; (3) Stanley designed a system in which the breakout switch could fail in an improper fail-safe mode (*i.e.*, with a closed circuit that allowed the door motor to continue to operate); and (4) Stanley designed a breakout switch system that was "unsafe in that there were no Stanley recommended tests" by which the owner of the door could ensure that the breakout switch was functioning properly.

¶ 42 Product liability claims sounding in negligence, like any negligence claims, require the plaintiff to prove the following elements: the existence of a duty, a breach of that duty, and that the plaintiff's injury was caused by that breach. *Jablonski v. Ford Motor Co.*, 2011 IL 110096, ¶ 82. Of these three elements, Stanley's arguments are directed primarily at the third: proximate cause. Stanley notes that, to survive a motion for summary judgment, the plaintiffs must bring forward evidence that demonstrates with reasonable certainty that Stanley's alleged negligence caused Barbara's injury, and liability may not be premised on speculation or mere conjecture. *Wiegman v. Hitch-Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 795 (1999). Stanley argues that the plaintiffs have not produced sufficient evidence that Barbara's injury was caused by any negligence on its part to create a genuine issue of fact on this point.

¶ 43 "The purpose of summary judgment is to determine whether a genuine issue of material fact exists, not to try a question of fact." *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011). Summary judgment is proper when the pleadings, depositions and admissions on record, together with any affidavits, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2008); *Gaylor v. Village of Ringwood*, 363 Ill. App. 3d 543, 546 (2006). "In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent." *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). A triable issue precluding summary judgment exists where material facts are disputed or where the material facts are undisputed but reasonable persons might draw different inferences from the undisputed facts. *Id*. Although summary judgment has been called a "drastic measure," it is an appropriate tool to employ in the expeditious disposition of a lawsuit in which " 'the right of the moving party is clear and free from doubt.' " *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001) (quoting *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)). In reviewing a trial court's grant of this relief, we do not assess the credibility of the testimony presented but, rather, only determine whether the evidence presented was sufficient to create an issue of fact. See *Jackson v. Graham*, 323 Ill. App. 3d 766, 779 (2001). We review the grant of summary judgment under a *de novo* standard. *Morris*, 197 Ill. 2d at 35.

¶ 44 We begin with the plaintiffs' contention that, on the date of the accident, the breakout switch failed in the "closed" position so that power continued to flow to the door's motor, as this contention is at the heart of the plaintiffs' theory as to how the accident occurred. Specifically, the plaintiffs alleged that Stanley breakout switches were negligently designed, because they could fail in an improper fail-safe mode: due to the arcing of electricity across the contacts in the

microswitch, the switch could become "lightly welded" closed, thereby allowing the motor to continue operating even when the door was being broken out. The plaintiffs' sole support for this claim is the opinion of their expert, Davis. Davis's opinion is based on Rago's testimony that he believed that electricity would arc across the contacts in the breakout switch when the switch was triggered. However, Rago had never opened up a Stanley breakout switch to see if there was evidence of arcing. Moreover, he believed that any failure of the breakout switch would occur in the "open" position, cutting all power to the motor and causing the door to cease its automatic functioning entirely. Although Rago did not know whether a breakout switch could fail in the "closed" position, allowing the door to continue operating, he testified that he had never seen this occur. Stanley further points out that Davis had not conducted testing on Stanley breakout switches and had no other empirical data to support his theory that the switches could fail in the "closed" position, or that the breakout switch in Door 106237 on the date of the accident did, in fact, fail in this manner. Stanley argues that Davis's opinion—that Stanley designed the switch in a negligent manner such that it could and did allow arcing across the contacts and the failure of the switch in the "closed" position—was simply speculation. As such, it would be insufficient to prevent the entry of summary judgment. *Id*. at 934 (summary judgment was proper where evidence of causation was mere speculation).

¶ 45 In response, the plaintiffs argue that Davis's opinion that the switch failed in an improper fail-safe mode (a "closed" position) was a reasonable inference from the facts: the breakout switch did not operate as it should have at the time of the accident, in that it did not disable the door motor, and the door continued to operate thereafter (for another six weeks, anyway). The plaintiffs argue that, given Rago's testimony that the door was not miscalibrated, there was no

other reasonable explanation for the way in which the door operated at the time of the accident and afterward.

¶ 46 In evaluating whether the plaintiffs have identified sufficient evidence that the switch failed in the "closed" position to stave off summary judgment, we find helpful *Foreman v. Gunite Corp.*, 2012 IL App (1st) 091644. In that case, a truck driver brought suit after the truck he was driving tipped over and injured him, alleging that a facilities owner had improperly loaded the truck trailer in such a way that the truck was imbalanced. However, the plaintiff had sustained a brain injury and did not remember the day of the accident. The trial court granted summary judgment and the plaintiff appealed.

¶ 47 The reviewing court reversed. It began by noting that proximate cause may be proved by circumstantial evidence so long as the circumstances are such that " 'it is the only probable, and not merely possible, conclusion that may be drawn.' " *Id.*, ¶ 15, *quoting Keating v. 68th & Paxton, L.L.C.*, 401 Ill. App. 3d 456, 473 (2010). It then noted that certain facts supported the plaintiff's assertion that the trailer had been loaded only half full with pallets, which were loaded down the middle of the trailer: the bill of lading showed that the truck was loaded at half capacity; another driver's trailer had been loaded in the same way on the date of the accident, and that driver also experienced leaning due to a shifting load; and although the plaintiff did not recall the accident, a state trooper who responded to the scene testified that the plaintiff told him that the truck began leaning to one side, causing him to lose control. *Id.*, ¶¶ 16-17. The reviewing court found that these facts, coupled with the lack of any evidence for alternate theories of how the accident occurred (such as road conditions or reckless driving by the plaintiff), were sufficient evidence of proximate cause to create a factual issue that was

inappropriate for summary judgment. Accordingly, it reversed and remanded the case for further proceedings. *Id*., ¶ 22.

¶ 48 *Foreman* differs from this case, because in *Foreman* there was independent evidence corroborating the plaintiff's theory of causation. Here, however, Davis' theory that the door malfunctioned because the breakout switch failed in the "closed" position is not supported by any evidence. Although Rago testified that he believed arcing could occur in the breakout switch, he also stated that he had never experienced a breakout switch failing in such a manner that the door continued to operate: in his experience, breakout switches failed in the "open" position, resulting in a loss of power to the door motor. Davis, who had never examined or tested a Stanley breakout switch, had no personal experience with the possible failure modes of such a switch. Accordingly, while Davis' theory may be a reasonable explanation of how the accident could have occurred, without some evidentiary basis, it is simply speculation. As speculation is insufficient to prevent the entry of summary judgment (*Wiegman*, 308 Ill. App. 3d at 795), we must reject the plaintiffs' contention that they presented sufficient evidence to withstand summary judgment on this claim.

¶ 49 We note that both parties devote considerable effort to arguing over whether the plaintiffs sufficiently ruled out other possible causes of the accident and the door's malfunction. However, given that the plaintiffs' *only* theory as to the specific manner in which the breakout switch failed (that it failed in the closed position) is not supported by any evidence, these arguments are irrelevant. Regardless of whether other possible causes were ruled out, the plaintiffs have not presented evidence raising a jury question about whether the breakout switch caused the accident.

¶ 50 The plaintiffs also alleged that Stanley replacement switches "due to poor quality had a shorter than normal switch life and therefore an unreasonably high failure rate." Stanley argues that there is no evidence in the record to support this assertion and that Davis' opinion to this effect is of no value because it also lacks factual support. *Hussung v. Patel*, 369 Ill. App. 3d 924, 932 (2007) (where expert's opinion lacks a basis in facts, expert's conclusion cannot defeat summary judgment).

¶ 51 We agree. The plaintiffs offered no evidence as to what the normal life expectancy of a breakout switch was or should be. They contend that the inadequacy of the breakout switches can be shown by the fact that other switches installed in the Stanley doors at the Farm & Fleet did not require replacement as often, but there is no evidence that the other switches were comparable in design or function, or that they were subjected to similar stresses. Davis's opinions did not provide support for this claim: Davis conceded in deposition that he had not seen test data on the life expectancy of breakout switches, had never performed any testing on such switches, had never seen a breakout switch that was removed from a door, and had never worked on the design, installation, or repair of a breakout switch. Further, Stanley employees stated in affidavits that Stanley had manufactured over 26,000 door operators with the same breakout switch and had not received any reports of accidents relating to the breakout switch other than the plaintiffs' accident. Finally, we note that the plaintiffs did not offer any response to this argument on appeal. Accordingly, we find that the trial court properly granted summary judgment in favor of Stanley on the claim that the breakout switches had a shorter-than-normal life expectancy or an unreasonably high failure rate.

¶ 52 The plaintiffs' final claim of negligence on the part of Stanley focuses on the lack of Stanley-recommended procedures by which the owner of a Magic Swing door could test to see if

the breakout switch was functioning. (Stanley recommended that certain procedures be performed regularly by Magic Swing owners to test other aspects of the doors' functions, but did not recommend any procedures to test the breakout switch.) It is undisputed that there were tests that could have been done. For instance, Davis opined that annual inspections of the type promoted by the American Association of Automatic Door Manufacturers (AAADM) would almost certainly have detected a failed breakout switch. Davis also placed the primary responsibility for conducting regular tests of the doors' functioning on AEW and Farm & Fleet, stating that service technicians and door owners should perform AAADM inspections on a yearly basis.

¶ 53 In this case, the plaintiffs cannot show that Stanley's failure to recommend annual AAADM inspections was a proximate cause of the accident. Even if Stanley had recommended such tests, compliance with its recommendation would depend solely on the actions of AEW and Farm & Fleet. Moreover, because the recommended inspections are intended as annual inspections, and because it is unknown when exactly the breakout switch in Door 106237 failed (if that is what happened), there is no guarantee that the inspection would have detected the failure of the breakout switch prior to the accident. Accordingly, the trial court did not err in granting summary judgment on this claim.

¶ 54 CONCLUSION

¶ 55 For all of the foregoing reasons, we affirm the judgment of the circuit court of Winnebago County.

¶ 56 Affirmed.