2018 IL App (1st) 172292-U

SECOND DIVISION
September 25, 2018

No. 1-17-2292

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GABRIEL SARNA, Plaintiff-Appellant, v. THE CLUB, INC, MARGARET PODMANSKI, WALTER PODMANSKI, DONNA PODMANSKI SHALABI, LESTER OGRODNY, and LANCE J. MOON. Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County, Illinois. No. 2014 L 012726 Honorable William E. Gomolinski, Judge Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Where plaintiff sustained injury due to standing in the path of an opening door, the defendant property owner did not owe a duty of reasonable care to plaintiff because the risk of injury was open and obvious.

¶ 2 Plaintiff Gabriel Sarna was injured when he was struck by an opening door while standing outside after a New Year's celebration event at a nightclub operated by defendant The Club, Inc. He brought a claim in negligence alleging that The Club and other defendants failed to

maintain the premises in a reasonably safe condition, therefore breaching a duty owed to Sarna as a business invitee and causing harm in the form of traumatic brain injury.

¶ 3 The trial court granted summary judgment to the defendants, and we affirm. When Sarna exited the premises with notice that he would not be permitted to reenter, he was no longer a business invitee. Moreover, Sarna should have appreciated the open and obvious risk of standing directly in front of a door that can only open outward. We therefore find that he failed to raise an issue of material fact as to whether defendants owed him a duty of care.

BACKGROUND

¶ 4 On December 21, 2012, at around 10 p.m., Sarna and his wife Nichole Inglot arrived at The Club for a New Year's party, entering by the main door. Sarna had attended two other events at The Club in the past. While on the premises, Sarna consumed five alcoholic drinks. At around 1:30 a.m., at the conclusion of the New Year's event, Sarna and Inglot left the club through the main door. A sign by the door on the inside of the premises indicated to patrons that they would not be allowed to reenter once they exited the building.

¶ 5 The door is hollow, metal, and has no windows. It complies with all OSHA safety requirements and opens outward as required by law.

¶ 6 After leaving The Club, Sarna and Inglot stood outside to smoke and hail a taxi. Around 10 other people were standing outside with them. Before Sarna and Inglot's taxi arrived, a fight broke out among some of the people standing outside, and Sarna and Inglot decided to reenter the club. According to Inglot, Sarna attempted to open the door by pulling with both hands. When the door did not budge, Sarna took a step back but remained standing approximately two feet away from the door. Inglot testified that she "saw the door swing open very fast, and the crevice of it hit [Sarna] in the check, and a bouncer kicked out a man from inside." The door

slammed shut, and Sarna lay unconscious on the ground. After Sarna was struck by the door, Inglot tried the handle and found that it was locked.

¶ 7 Sergeant James Brodnick, a supervisor on duty for the Burbank police department, was parked approximately a hundred feet away from The Club. When Brodnick saw the commotion and approached the scene, he called for medical assistance and checked on Sarna. Sarna lay near the exit door on his left side with his head against the ground. Sarna appeared to be passed out, smelled of alcohol, and Brodnick was unable to wake him, leading the officer to believe that Sarna was "extremely intoxicated." Brodnick did not observe any cuts, bleeding, or bruising on Sarna, and testified that other individuals in the crowd believed that Sarna had tripped or had fallen. Brodnick observed "hundreds of people" outside of The Club when he encountered Sarna.

¶ 8 At 3:31 a.m. paramedics admitted Sarna to the emergency room in Christ Hospital. At 4:15 a.m. Sarna was subjected to a blood alcohol test which reported a blood alcohol content of .252, more than three times the legal limit.

¶ 9 As a result of the incident outside The Club, Sarna sustained a "complex traumatic brain injury" with "brain hemorrhage and skull fracture." Sarna attests that that after the incident he lost most of his sense of smell and taste, and has not yet fully recovered. Inglot and Sarna also testified that his behavior changed after the injury. These symptoms are consistent with the physical injury sustained by Sarna.

¶ 10 Sarna sued The Club; Lance Moon, the bouncer who allegedly opened the door that hit him; Margaret Podmanski, Walter Podmanski, and Donna Podmanski Shalabi, the owners of The Club; Lester Ogrodny, the event promoter; and Burbank Mall, LLC, the landlord of the premises. Burbank Mall was granted summary judgment on grounds that it neither controlled the property

nor employed the personnel on the property at the time of the incident, and Sarna does not appeal this judgment.

¶ 11 The remaining defendants filed a motion for summary judgment as well. In that motion the defendants argued that the door did not pose an unreasonable risk of harm and was not dangerous or defective. Therefore, according to the defendants, Sarna's contention that the remaining defendants negligently failed to take precautions to prevent injuries caused by the door was meritless. The court below ruled in favor of the defendants on the basis that they owed no duty to Sarna and were therefore entitled to judgment as a matter of law.

ANALYSIS

¶ 12 Sarna argues that the trial court erred by granting summary judgment to defendants on the basis that The Club owed him no duty of care.[1] We review a grant of summary judgment *de novo*. *Atlantic Mutual Insurance Co. v. American Academy of Orthopaedic Surgeons*, 315 Ill. App. 3d 552, 559 (2000). Summary judgment is appropriate only when "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(c) (West 2012). We draw all reasonable inferences in favor of the nonmoving party and construe the record strictly against the movant. *Gaines v. Chicago Transit Authority*, 346 Ill. App. 3d 346, 349 (2004). To prevail on a motion for summary judgment, the nonmoving party need merely present some evidence that might entitle him to recover at trial. *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 12.

¶ 13 In an action for negligence, the plaintiff must show that (i) the defendant owed a duty to the plaintiff, (ii) the defendant breached that duty, and (iii) the breach proximately caused the plaintiff's injury. *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 22. "The

[1] Although there are other issues pertaining to the potential liability of the event promoter and the owners of The Club, the parties do not raise these issues, so we do not address them.

existence of a duty under a particular set of circumstances is a question of law for the court to decide." *Id*. A duty exists when a "defendant and plaintiff [stand] in such a relationship to one another that the law impose[s] upon defendant an obligation of reasonable conduct for the benefit of the plaintiff." *Ward v. Kmart Corp*., 136 Ill. 2d 132, 140 (1990). In Illinois, courts consider four factors to determine whether a duty exists: (i) the reasonable foreseeability of the injury, (ii) the likelihood of the injury, (iii) the magnitude of the burden of guarding against the injury, and (iv) the consequences of placing that burden on the defendant. *Simkins v. CSX Transportation, Inc*., 2012 IL 110662, ¶18; *Bruns*, 2014 IL 116998, ¶ 14.

¶ 14 A business owes a duty to business invitees to exercise reasonable care for their safety while they are on the premises and to use reasonable care to keep such premises reasonably safe for their use. *Ward*, 136 Ill. 2d at 141. As to trespassers, a business owes only the duty to refrain from willful and wanton conduct (*Choate*, 2012 IL 112948, ¶ 25), which Sarna does not allege. Moreover, a business owner's duties are limited by the open and obvious doctrine, an exception that applies when a dangerous condition is sufficiently obvious that an invitee should be aware of it. Restatement (Second) of Torts § 343A(1) (1965) ("A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness."); see also *Jeung-Hee Park v. Northeast Ill. Reg'l Commuter R.R. Corp.*, 2011 IL App (1st) 101283, ¶ 12. When applied to a traditional duty analysis, the open and obvious nature of a condition on land implicates the foreseeability and likelihood of injury. *Park*, 2011 IL App (1st) 101283, ¶ 13.

¶ 15 Initially, the parties disagree as to whether Sarna was a business invitee at the time of his injury. "A person is a business invitee on the land of another if (1) the person enters by express

or implied invitation; (2) the entry is connected with the owner's business or with an activity conducted by the owner on the land; and (3) the owner receives a benefit." *Sameer v. Butt*, 343 Ill. App. 3d 78, 86 (2003); see also *Libolt v. Wiener Circle, Inc*., 2016 IL App (1st) 150118 (plaintiff was a business invitee of a restaurant when she entered with the intention to purchase food). This duty extends only to the legal boundaries of the property, and the invitee no longer qualifies as such when he or she has exited the premises. *Lewis v. Razzberries, Inc.*, 222 Ill. App. 3d 843, 850 (1991) ("[W]e find ample Illinois authority holding that a duty of care does not extend beyond the tavern owner's legal boundaries.").

¶ 16 Although Sarna purchased tickets to attend the New Year's event at the Club, defendants argue that he lost his status as an invitee when he exited the premises at closing time. Sarna contends he was still an invitee and proposes that the appropriate test is whether The Club "might have reasonably anticipated that [the plaintiff] might use the door." *Coken v. Peterson*, 340 Ill. App. 518, 522 (1950).

¶ 17 Sarna argues that this case is analogous to *Coken*, where an elderly tavern patron walked through a swinging door believing that it led to the entrance to the women's restroom. *Id*. at 519. The light in the hallway was off, and as the patron felt around for a cord to illuminate the path to the restroom, she stepped backwards and fell down a staircase leading to the basement. *Id*. at 519-20. The tavern argued that once the patron walked through the swinging door, which only provided access to the tavern's kitchen and basement, she was no longer an invitee but rather a trespasser to whom they owed no duty of reasonable care. *Id*. at 521. *Coken* held that, drawing all inferences in favor of the plaintiff, a reasonable finder of fact could have concluded that defendant ought to have anticipated that plaintiff would mistakenly believe the swinging door led to the restroom. *Id*.

¶ 18 Similarly, Sarna contends that The Club could reasonably have anticipated that a large group of people would congregate near the doors at closing time on a cold winter night. Relying on *Coken*, Sarna asserts that because this conduct ought to have been anticipated by The Club, he and the others congregating at the door continued to be invitees.

¶ 19 *Coken* is easily distinguishable. The *Coken* plaintiff did not intend to, and in fact did not exit the premises. *Coken*, 340 Ill. App. at 519-20. Because she remained on the premises at all times and did not know the area behind the swinging door was not open to patrons, the plaintiff did not lose her status as a business invitee. *Id*. at 521. Thus, in *Coken* the issue was whether the defendant should have reasonably anticipated that patrons would make the same mistake, and the court concluded this question should be resolved by the trier of fact. *Id*. at 522. By contrast, Sarna intentionally exited The Club at closing time with no intention to reenter and remained outside for some time before trying to open a locked door in order to get back inside. Thus, *Coken* does not address the circumstances here.

¶ 20 Even though Sarna exited the building at closing time without intention to reenter and with notice that readmission was not permitted, he argues that he was an invitee at the time of the accident because The Club used the area around its doors to control ingress to and egress from the premises. Sarna cites *Osborne v. Stages Music Hall*, 312 Ill. App. 3d 141, 148 (2000), for the proposition that a defendant business owner may owe a duty even if a plaintiff has exited the business premises when that plaintiff's injuries were reasonably foreseeable.

¶ 21 In *Osborne*, a bar patron suffered injuries in an altercation with two men who had shortly before been ejected from the bar. *Id*. at 149. The altercation took place just outside the doors to the bar's main entrance. *Id*. at 148. The bouncers who ejected the men "exported the club's problems to the sidewalk," and because the bouncers were aware that the men were belligerent,

injuries of the sort suffered by the plaintiff were reasonably foreseeable. *Id.* The court thus held that the defendant owed a duty of reasonable care to the plaintiff even though the patrons had left the premises. *Id*.

¶ 22 In reaching this decision, *Osborne* did not alter the general rule that business operators owe no duty to patrons who have exited the premises. On the contrary, it acknowledged that typically, "a person no longer qualifies as a business invitee once he/she leaves the establishment." *Id*. at 148 (citing *Lewis* 222 Ill. App. 3d at 843 (tavern owner's duty of care did not extend beyond the tavern's boundaries); *Badillo v. De Vivo*, 161 Ill. App. 3d 596 (1987) (affirming dismissal of tort claims by tavern patron against tavern because injury had occurred outside the tavern's premises and to rule otherwise would require business establishments to police the streets to ensure patron's safety); *St. Phillips v. O'Donnell*, 137 Ill. App. 3d 639 (1985) (operator of tavern was entitled to summary judgment because duty of reasonable care did not extend beyond the premises to a shared parking lot)). *Osborne* merely created a limited exception when a business operator is aware of the aggressive nature of patrons ejected from the premises and enhances the risk of criminal attack by those parties. These circumstances are not present here, as Sarna adduced no evidence that the patrons who congregated on the sidewalk were belligerent or aggressive inside the premises or that patrons like Sarna who had already exited the premises were likely to encounter them outside. Thus, *Osborne* is distinguishable.

¶ 23 Accordingly, because Sarna (i) exited The Club at closing time without the intention to return, (ii) was given notice that The Club did not allow readmission, and (iii) attempted to reenter by opening a locked door, we find that he was no longer a business invitee at the time of the injury.

¶ 24 Moreover, even if Sarna still retained the status of a business invitee at the time of the injury, a defendant generally does not have a duty to protect against injuries from potentially dangerous conditions that are open and obvious. *Bucheleres v. Chicago Park District*, 171 Ill. 2d 435, 447-48 (1996).

> "In cases involving obvious and common conditions, such as fire, height, and bodies of water, the law generally assumes that persons who encounter these conditions will take care to avoid any danger inherent in such condition. The open and obvious nature of the condition itself gives caution and therefore the risk of harm is considered slight; people are expected to appreciate and avoid obvious risks." *Id*. at 449 (because Lake Michigan was an open and obvious risk, the Chicago Park District was not liable to people who were injured after diving into the lake).

¶ 25 The open and obvious doctrine implicates "the first two of the four factors of the duty analysis: likelihood of injury and foreseeability." *Park*, 2011 IL App (1st) 101283, ¶ 13; *Bucheleres*, 171 Ill. 2d at 456. When an open and obvious danger exists, the likelihood of injury is slight, because a reasonable person will appreciate the risk and take steps to protect himself. For the same reason, any injury caused by an open and obvious danger is less foreseeable than one from a similar but non-obvious danger. Moreover, the open and obvious doctrine is not confined to " 'fire, height, and bodies of water.' " *Bruns*, 2014 IL 116998, ¶ 17 (quoting *Bucheleres*, 171 Ill. 2d at 449). Whether a condition is open and obvious depends on whether the condition and the associated risk " 'would be recognized by a reasonable man, in the position of the visitor, exercising ordinary perception, intelligence, and judgment.' " *Id.* ¶ 16 (quoting Restatement (Second) of Torts § 343A cmt. b, at 219 (1965)).

¶ 26 The defendants argue that the door presented an open and obvious risk because it complied with OSHA requirements, it was neither unusually heavy or in disrepair, and it was neither hidden nor poorly lit. We agree that the potential risks of standing next to the door were open and obvious. Sarna was clearly aware of the door, because he walked through it twice that evening—once when entering the club and once when leaving—and attempted to reopen the door shortly before the accident. See *Bruns*, 2014 IL 116998, ¶¶ 4, 18 (sidewalk defect was open and obvious where plaintiff had observed it on previous occasions). Additionally, Sarna attempted to open the door by pulling on it, thereby indicating his awareness that the door opened outward. A reasonable person in Sarna's position would have understood that standing close to the door could be hazardous if someone attempted to open the door from within. Therefore, under the circumstances, the door was an open and obvious condition.

CONCLUSION

¶ 27 Because Sarna was not a business invitee at the time of the injury, and because a reasonable person in Sarna's position would have appreciated the open and obvious risk of standing directly in front of a door that opens outward, The Club owed him no duty of care to protect him from injuries caused by the door opening. We therefore affirm the trial court's grant of summary judgment in favor of The Club.

¶ 28 Affirmed.