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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

LAURA TEVANYAN, Plaintiff and Appellant, v. JPMORGAN CHASE BANK, N.A., Defendant and Respondent.	B278948 (Los Angeles County Super. Ct. No. BC553949)

APPEAL from a judgment of the Superior Court of Los Angeles County. Howard L. Halm and Randolph M. Hammock, Judges. Affirmed.

Law Offices of Julia Sklar and Julia Sklar for Plaintiff and Appellant.

Yoka & Smith, Stephen H. Smith and Lauren A.R. Lofton for Defendant and Respondent.

Plaintiff and appellant Laura Tevanyan challenges a judgment entered in favor of defendant and respondent JPMorgan Chase Bank, N.A., following the trial court's order granting defendant's motion for summary judgment. Plaintiff contends that conflicting expert testimony created a triable issue of fact, precluding summary judgment.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Factual Background

On October 11, 2012, plaintiff visited defendant's branch located at 1600 North Vermont, as she had done previously. She drove to the bank and parked in the parking lot. She went inside the bank and completed her transaction.

As she was exiting the bank, plaintiff fell in an indented or depressed area of the parking lot surface. At the time she fell, the weather was "normal." There were no obstructions to plaintiff's view at the time of the incident. No portion of the ground was wet in the area of her fall; there was no food or debris on the ground.

Complaint

Plaintiff was injured, and she filed a complaint against defendant, alleging negligence and premises liability.

Defendant's Motion for Summary Judgment

Defendant moved for summary judgment. Plaintiff opposed the motion.

The parties each submitted expert declarations. According to defendant's expert, in the area of plaintiff's incident, the measured differential between the depression and the surrounding asphalt of the parking lot was one-fourth inch or less. No depth dimension measured exceeded one-fourth inch.

According to plaintiff, the indentation measured 0.9 inches. Plaintiff's daughter measured the depression where plaintiff fell, and plaintiff's expert opined that "it [was] highly possible [that] the indentation where [plaintiff] fell was at 0.9 inches in height, as was measured by" plaintiff's daughter. Plaintiff's expert further opined: "Based on the examination of [plaintiff's] injuries, the biomechanics of her fall and the associated physics calculations involved in the analysis of this serious accident, I believe the sudden forward fall of [plaintiff] was predetermined by the surroundings. It was the depressed asphalt."

Defendant's objections to plaintiff's expert's testimony were overruled.

Trial Court Order; Judgment; Appeal

After reviewing the parties' papers, the trial court issued a tentative ruling, granting defendant's motion for summary judgment. The parties submitted to the tentative ruling. Judgment was entered, and plaintiff's timely appeal ensued.

DISCUSSION

I. *Standard of review*

"A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) We review the trial court's decision de novo." (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.)

Like the trial court, "[w]e first identify the issues framed by the pleadings, since it is these allegations to which the motion must respond. Secondly, we determine whether the moving party has established facts which negate the opponents' claim and justify a judgment in the movant's favor. Finally, if the summary judgment motion prima facie justifies a judgment, we determine

whether the opposition demonstrates the existence of a triable, material factual issue. [Citation.]" (*Torres v. Reardon* (1992) 3 Cal.App.4th 831, 836.) "[W]e construe the moving party's affidavits strictly, construe the opponent's affidavits liberally, and resolve doubts about the propriety of granting the motion in favor of the party opposing it." (*Szadolci v. Hollywood Park Operating Co.* (1993) 14 Cal.App.4th 16, 19.)

II. *The trial court properly granted summary judgment*

Plaintiff's claims are based upon the theory that the depth of the depression on which she tripped was unsafe. She contends that her daughter's measurement of the depression, 0.9 inches, creates a triable issue of fact as to whether the depression was dangerous.

A. Relevant law

"An initial and essential element of recovery for premises liability . . . is proof a dangerous condition existed. [Citations.] The law imposes no duty on a landowner . . . to repair trivial defects, or 'to maintain [its property] in an absolutely perfect condition.' [Citation.] '[A] property owner is not liable for damages caused by a minor, trivial or insignificant defect in property.' [Citation.] Some defects are bound to exist even in the exercise of reasonable care in the maintenance of property and cannot reasonably be expected to cause accidents. [Citations.]" (*Stathoulis v. City of Montebello* (2008) 164 Cal.App.4th 559, 566 (*Stathoulis*).)

"The decision whether a crack or other defect in a walkway is dangerous does not rest entirely on the size of the depression." (*Stathoulis*, *supra*, 164 Cal.App.4th at p. 566.) Although the size of a depression is "pivotal factor," courts must determine whether any other circumstances, such as debris concealing the defect and

weather, may have rendered the defect more dangerous than its depth would indicate. (*Id*. at p. 567; see also *Fielder v. City of Glendale* (1977) 71 Cal.App.3d 719, 734 (*Fielder*); *Dolquist v. City of Bellflower* (1987) 196 Cal.App.3d 261, 268.)

A court may determine whether a defect is trivial as a matter of law. (*Stathoulis*, *supra*, 164 Cal.App.4th at p. 567.) "'Where reasonable minds can reach only one conclusion—that there was no substantial risk of injury—the issue is a question of law, properly resolved by way of summary judgment.'" (*Ibid*.)

"The legal analysis involves several steps. First, the court reviews evidence regarding the type and size of the defect. If that preliminary analysis reveals a trivial defect, the court considers evidence of any additional factors, such as weather, lighting and visibility conditions at the time of the accident, the existence of debris or other obstructions, and plaintiff's knowledge of the area. If these additional factors do not indicate the defect was sufficiently dangerous to a reasonably careful person, the court should deem the defect trivial as a matter of law and grant judgment for the landowner." (*Stathoulis*, *supra*, 164 Cal.App.4th at pp. 567–568, citing *Fielder*, *supra*, 71 Cal.App.3d at p. 729.)

B. Analysis

Here, even assuming plaintiff's daughter's measurement of the depression (0.9 inches) was accurate and properly considered by plaintiff's expert, the defect was trivial as a matter of law. "Several decisions have found height differentials of up to one and one-half inches trivial as a matter of law." (*Stathoulis*, *supra*, 164 Cal.App.4th at p. 568, citing, among other cases, *Fielder*, *supra,* 71 Cal.App.3d at p. 726.)

Because the size of the depression is not determinative, albeit "'[t]he most important'" factor in determining whether a defect is trivial as a matter of law, we must also consider other factors. Here, there was no evidence of any other factors that may have rendered the otherwise trivial defect dangerous. It is undisputed that plaintiff had been to that bank location before and had never tripped or fallen. It is also undisputed that there were no obstructions to plaintiff's view at the time of the incident. No portion of the ground was wet and there was no food or debris on the ground.

Plaintiff's expert declared that the area where plaintiff fell "is covered by aged asphalt" and "some of the depressions are quite deep. The asphalt certainly includes the indentations." That vague testimony is insufficient to create a triable issue of fact. (*Bay Area Rapid Transit Dist. v. Superior Court* (1996) 46 Cal.App.4th 476, 482.)

In urging us to reverse, plaintiff directs us to the following statement in her expert's declaration: "Based on the examination of [plaintiff's] injuries, the biomechanics of her fall and the associated physics calculations involved in the analysis of this serious accident, I believe the sudden forward fall of [plaintiff] was predetermined by the surroundings. It was the depressed asphalt."

As set forth in defendant's objection below, this statement lacks foundation and is speculative. We agree with defendant that the trial court erred in overruling its objection to this portion of plaintiff's expert's testimony.[1] He never inspected the parking

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[1] We reach this conclusion under any standard of review. (See *Howard Entertainment, Inc. v. Kudrow* (2012) 208 Cal.App.4th 1102, 1114.)

lot or the area where plaintiff fell. There is no evidence that he utilized any methods or performed any tests to corroborate plaintiff's daughter's measurements of the area. And, he failed to explain how he is qualified to assess "the biomechanics of [plaintiff's] fall and the associated physics calculations," let alone what those calculations were. Thus, the trial court erred in overruling defendant's objection. There is no triable issue of fact.

DISPOSITION

The judgment is affirmed. Defendant is entitled to costs on appeal.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
HOFFSTADT

_____, J.*
RUBIN

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* Associate Justice of the Court of Appeal, Second Appellate District, Division Eight, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.