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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

VALIEH SHAMTOUBIAN,

Plaintiff and Appellant,

v.

RESEDA PARK, LP, et al.,

Defendants and Respondents.

B289902

(Los Angeles County  
Super. Ct. No. BC620798)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Marc D. Gross, Judge. Affirmed.

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Law Offices of Edward A. Hoffman and Edward A. Hoffman  
for Plaintiff and Appellant.

Gray Duffy and Michael S. Eisenbaum for Defendants and  
Respondents.  
\_\_\_\_\_

Plaintiff and appellant Valieh Shamtoubian filed a premises liability lawsuit against her landlord, defendant and respondent Reseda Park, LP, and the landlord's management company, defendant and respondent G&K Management Company, Inc. Shamtoubian alleged that she tripped and fell in her apartment over nails protruding from a wooden transition strip on the floor between her kitchen and bathroom. She claimed that defendants were aware of the potential danger but had failed to fix it. The trial court granted summary judgment in favor of defendants, a decision Shamtoubian contends was incorrect. We affirm.

### **FACTS AND PROCEEDINGS BELOW**

Shamtoubian has lived in the same apartment at the Reseda Park Apartments complex since 2002. For that entire time, there has been a wooden transition strip on the floor between the kitchen and an adjoining bathroom. A transition strip is a narrow strip installed on a floor where the level or type of flooring changes from one room or area to another.

In early 2014, approximately one year before she fell and injured herself, the management company sent someone to repair damage from a leak in the bathroom. According to Shamtoubian's son, the person repairing the area "put some glue or something on [the transition strip] and nailed it or something."

At some point later in 2014, the building's property manager Robert Garcia came to Shamtoubian's apartment to fix a light switch. Although her deposition testimony about this is not entirely clear, giving her the benefit of the doubt, as we must, at this time, Shamtoubian was concerned about the transition strip because the wood on the strip rose up higher than the level of the floor, causing her foot to get caught behind it. On

one occasion she had tripped over the strip but did not fall. Shamtoubian pointed to the transition strip and told Garcia “this piece of wood is in the way.” Garcia said, “okay. Okay,” but he did not remove the transition strip.

On February 27, 2015, Shamtoubian tripped and fell while walking from the bathroom to the kitchen. She seriously injured her hip, shoulder, elbow, and face. According to Shamtoubian, she fell because two nails were protruding up from the transition strip, and her “foot got caught in the middle” of the nails. Neither Shamtoubian nor her son had noticed earlier that the nails were sticking up from the transition strip.

Garcia, who at the time of Shamtoubian’s fall worked as the building’s property manager, stated that he caused transition strips to be removed in several apartments in the building when the carpet was replaced in the apartments with synthetic hardwood flooring. According to Garcia, the transition strips were “a trip hazard” because they would “never . . . be flush with the flooring.” The transition strip was “always going to be raised up a little bit.” Garcia did not do any research to support his opinion, but said that it was his own “personal preference” based on a recommendation from the flooring company he hired.

Shamtoubian filed suit on May 17, 2016, alleging causes of action for general negligence and premises liability. Defendants filed a motion for summary judgment, arguing that Shamtoubian could not prevail on her claims because defendants had no notice of the dangerous condition. Defendants claimed that they did not have notice that the nails were sticking up from the transition strip because neither Shamtoubian nor her son, who visited the apartment often, was aware of the nails, and, of course, did not report them to the building’s management. In the alternative,

defendants argued that any defect in the transition strip was trivial or insignificant, and consequently they did not have a duty of care to repair it.

The trial court granted the motion for summary judgment. The court rejected defendants' contention that any defect in the strip was trivial because defendants had presented no evidence of the height of the strip or nail or other relevant factors relating to the fall. But the court agreed with defendants' argument that they had no duty to repair the alleged defect because they did not have notice of the nails protruding from the strip. Although Shamtoubian stated that she had complained about the transition strip, the court found that this was insufficient to place defendants on notice because the relevant defect was not the transition strip itself, but rather the nails protruding from it.

## **DISCUSSION**

Shamtoubian contends that the trial court's decision granting summary judgment was incorrect both on the merits and procedurally. On the merits, she contends that she raised a triable question of material fact regarding whether defendants had notice of the danger posed by the transition strip, and that the trial court erred by basing its ruling on whether defendants knew about the protruding nails rather than the transition strip as a whole. With regard to procedure, she contends that the trial court erred by granting summary judgment on the basis of an issue defendants raised for the first time in their reply brief. We disagree with both of Shamtoubian's contentions. The trial court was correct to focus on the danger posed by the protruding nails because it was the nails, not the strip as a whole, that caused Shamtoubian's fall. Nor did defendants withhold their argument

regarding the nails until their reply brief—they raised it in the points and authorities in support of their motion.

Summary judgment is proper when there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (*Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 370; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*); Code Civ. Proc., § 437c, subd. (c).) A defendant moving for summary judgment bears an initial burden of showing that one or more elements of the plaintiff’s cause of action cannot be established or that there is a complete defense to that cause of action. (*Nealy v. City of Santa Monica, supra*, 234 Cal.App.4th at p. 370; *Aguilar, supra*, 25 Cal.4th at p. 849.) If the defendant meets this burden, the plaintiff has the burden to demonstrate one or more triable issues of material fact as to the cause of action or defense. (*Ibid.*) A triable issue of material fact exists “if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” (*Id.* at p. 850.)

In reviewing summary judgment, “[w]e review the trial court’s decision de novo, liberally construing the evidence in support of the party opposing summary judgment and resolving doubts concerning the evidence in favor of that party.” (*State of California v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1017–1018.)

#### **A. *The Nails Distinguished from the Strip***

Shamtoubian claims that she raised a triable question of material fact regarding whether defendants were aware of the danger posed by the transition strip, and that the trial court erred by focusing solely on the protruding nails.

Landlords owe a duty of reasonable care to their tenants. “For landlords, reasonable care ordinarily involves making sure the property is safe at the beginning of the tenancy, and repairing any hazards the landlord learns about later.” (*Stone v. Center Trust Retail Properties, Inc.* (2008) 163 Cal.App.4th 608, 612.) Defendants argue that a landlord requires “ ‘actual knowledge of the dangerous condition in question, plus the right and ability to cure the condition,’ ” in order to be liable for a defect that occurs after the tenant takes possession of a property. (*Ibid.*) Shamtoubian argues that a broader standard applies, and that a landlord who has “ ‘actual or constructive knowledge of the dangerous condition or [would] have been able by the exercise of ordinary care to discover the condition’ ” (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1206, italics added) may be liable for a tenant’s injury.

We need not decide which standard is correct because it makes no difference in the outcome of the case. Shamtoubian testified in her deposition that she told Garcia “this piece of wood is in the way.” In addition, Garcia testified that he removed the transition strips whenever the flooring in one of the apartments was replaced. We assume for the purposes of this discussion that these statements gave defendants notice that the transition strip in Shamtoubian’s apartment was potentially dangerous. On the other hand, Shamtoubian produced no evidence that defendants were or should have been aware that there were nails protruding from the transition strip in her apartment. Indeed, both she and her son admitted that they themselves were unaware of the nails prior to the fall.

Shamtoubian argues that, to raise a triable question of material fact, it was sufficient to show that defendants were

aware of the danger from the transition strip, even if they knew nothing about the nails. She argues that the nail was simply a part of the strip, like the knob on a cabinet door. If defendants knew the cabinet door was dangerously loose and she hit her head, it would not matter whether she hit her head on the knob or on some other part of the cabinet door. We do not find this analogy persuasive. The dangerous condition that caused Shamtoubian to fall was the protruding nails. There is no evidence in the record that the transition strip was defective in any other way, such as by being loose or unusually high. There is no evidence that the transition strip alone would have caused Shamtoubian's injury, if the nails had not been protruding. Without notice of the protruding nails, defendants could not be liable for Shamtoubian's injury.

**B. *Withholding Argument until the Reply Brief***

Shamtoubian contends that in their motion for summary judgment, defendants failed to argue that the nails protruding from the strip posed a hazard distinct from the danger of the strip itself. Instead, Shamtoubian claims that defendants raised the issue of the nails only in their reply brief, and that the trial court therefore erred by granting summary judgment on that basis. (See *American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453 ["Points raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument."].)

This argument misconstrues the record. Although defendants stated in the memorandum of points and authorities supporting their motion for summary judgment that the nails were "incorporated into the transition strip," they argued

unequivocally from the beginning that it was the nails protruding from the strip that caused Shamtoubian to fall, and that they had no notice that the nails were in a dangerous position. In both their memorandum of points and authorities and their statement of undisputed facts, defendants asserted that “[n]either plaintiff nor anyone on behalf of plaintiff gave notice to the defendants about the height of the nails at or above the surface of the transition strip at any time prior to February 27, 2015.”<sup>1</sup> They went on to state that “the alleged dangerous condition is a protruding nail or nails associated with a wooden transition strip located between the vinyl flooring in the entryway and the kitchen from the wood floor in the rest of the unit.” Defendants argued that they could not be liable because they “were given no notice of the dangerous condition . . . . Neither plaintiff nor her son noticed the alleged nails before the incident. No one made a demand on the landlord to repair the alleged nails which constituted a dangerous condition according to plaintiff.”

Because Shamtoubian produced no evidence that defendants were aware of the protruding nails, the trial court correctly concluded that she had not met her burden. The trial court did not act improperly in granting summary judgment on this basis.

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<sup>1</sup> In her response to defendants’ statement of undisputed facts, Shamtoubian claimed that she “asked Defendants to remove the transition strip,” but did not claim that she or anyone else on her behalf had told defendants about the height of the nails.



## **DISPOSITION**

The judgment is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

BENDIX, J.

WEINGART, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.