IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DANIELLE SAIENNI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N15C-12-211 CEB
	)	
3 MILL PARK COURT, LLC,	)	
	)	
Defendant.	)	

Submitted: August 26, 2016
Decided: November 28, 2016

ORDER

The Court is here again called upon to revisit the "continuing storm" doctrine.[1]

1. Generally speaking, an owner of commercial property is obligated to maintain his property in a manner safe for commercial visitors. That duty to maintain the property in such a manner is suspended, however, when the weather reaches unsafe conditions, at which point the landowner is allotted sufficient time after the weather conditions subside to clear the area of the dangers brought about by the weather conditions.[2]

[1] This Court has previously surveyed the legal landscape in *Demby v. Delaware Racing Association*, 2016 WL 399136 (Del. Super. Jan. 28, 2016) and *Skinner v. Valero,* N11C-01-180 CEB.

[2] All of this is well articulated in *Elder v. Dover Downs, Inc.*, 2012 WL 2553091 (Del. Super. July 2, 2012), aff'd, 2012 WL 6206493 (Del. Supr. Dec. 11, 2012).

2. In this case, Plaintiff has alleged that she went to the Defendant's property at 3 Mill Park Apartments on January 6, 2015. She worked at a business on the property and arrived at approximately 9 a.m. According to her affidavit submitted in resistance to Defendant's motion for summary judgment, Plaintiff tells us that it was not snowing when she showed up for work.

3. Weather data supplied by Defendant in support of its motion for summary judgment indicates that New Castle County was subject to "snow and freezing fog" on January 6, 2015 beginning at 6:07 a.m. and ending at 3:15 p.m. Plaintiff's affidavit testimony that she was not aware of any snow or ice accumulation on arrival at work at 9 a.m. is not inconsistent with the climatological data supplied by the Defense as there may have been little accumulation after 3 hours, but quite a bit after 7 hours.

4. Plaintiff swears that she went out into the parking lot at 2:30 p.m. "Suddenly and without warning," she slipped and fell on the ice and snow, injuring her ankle. Plaintiff does not dispute the evidentiary data supplied by the defense showing that the storm continued until approximately 3:15 p.m.

5. So there is no question but that Plaintiff cannot recover on the facts before the Court unless she can identify some exception to the doctrine or some basis upon which to overrule the doctrine. In response to the Defendant's motion for summary judgment, Plaintiff's argument rests on the proposition that there is a

question of fact precluding summary judgment. In her view, "Plaintiff and Defendant have differing recollections as to whether it was snowing at the time Plaintiff slipped and fell." So, according to Plaintiff, her "differing recollection" of the state of the storm is sufficient to avoid summary judgment.

6. The Court must disagree with Plaintiff's position. A party opposing a motion for summary judgment must come forward with admissible evidence showing the existence of a genuine issue of fact.[3] In *Kennedy v. Giannone*[4] the Court said even if the plaintiff stated under oath that, despite all evidence to the contrary, the storm had concluded before she fell, such statements alone "do not constitute admissible factual evidence, and hence cannot be relied upon to raise a genuine issue of material fact."[5]

7. Plaintiff has not attacked the weather data submitted by the Defense, but instead has simply signed an affidavit saying that she does not recall that it was snowing at the time she fell. These disparate viewpoints can be harmonized by the proposition that it was indeed snowing, she just did not notice when she fell in the parking lot. Plaintiff's affidavit testimony is simply insufficient to raise a genuine issue of material fact so as to avoid summary judgment in this matter.

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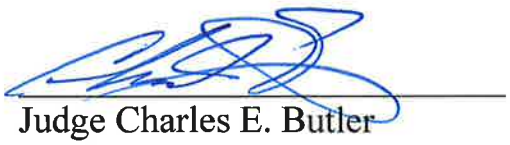
[3] *Kennedy v. Giannone,* 1987 WL 37799, at *1(Del. 1987) (Table) (*citing E.K. Geyser Co. v. Blue Rock Shopping Center, Inc.*, 229 A.2d 499 (Del. Super. 1967)).

[4] *Kennedy*, 1987 WL 37799, at *1.

[5] *See also Elder v. Dover Downs*, n. 2 *supra* (granting summary judgment despite plaintiff's affidavit testimony that speculates that there was a "lull" in the storm or preexisting icy conditions in the parking lot).

The Court therefore grants summary judgment for defendant.

IT IS SO ORDERED.



Judge Charles E. Butler