IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MELINDA BONNELL AND RONALD BONNELL Plaintiff	:	CIVIL ACTION - LAW : :
v.	:	DOCKET NO.: 2023-01345 :
KNIGHT-CONFER FUNERAL HOME, INC. Defendant	:	*Motion for Summary Judgment* *filed January 30, 2026*

OPINION AND ORDER

This matter came before this Court on March 20, 2026, for argument on Defendant's Motion for Summary Judgment filed January 30, 2026.

I. BACKGROUND:

Plaintiffs seek damages for a leg injury to Melinda Bonnell, resulting from a trip and fall incident which occurred on January 4, 2022. The subject real property is owned by R.I.P.S. LLC, which leases it to the Defendant corporation. In her deposition, Plaintiff Melinda Bonnell did not allege any debris on the step where she fell, nor did she allege any defect in the step itself. Rather, she testified that "I opened the doors and thought I was stepping on to the sidewalk. And I missed the step." The gravamen of Defendant's Motion for Summary Judgment is Defendant's contention that, in the complete absence of any debris or defect in the step, there is no material evidence upon which jury could base a finding of Defendant's negligence. Defendant also points out that Plaintiff traveled over the same step on her way in the building, without incident.

Plaintiffs' opposition to Defendant's Motion for Summary Judgment is rooted in the expert report of Keith A. Bergman, P.E., dated December 1, 2025. Engineer Bergman opined that "the incident single step condition at the threshold of the doorway created a hazardous condition, along a required means of egress, which endangered the public, including Melinda Bonnell." Further, Engineer Bergman opined that "The actions and/or inactions of Melinda Bonnell did not cause this incident to occur" and "the incident step was below the normal line of sight, and Melinda Bonnell was unable to perceive it, as she existed the doorway."

II. QUESTION PRESENTED:

WHETHER, AS A RESULT OF THE FACT THAT PLAINTIFFS DO NOT ALLEGE THE PRESENSE OF ANY DEBRIS NEAR THE STEP, NOR ALLEGE ANY DEFECT IN THE STEP ITSELF, DEFENDANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

III. ANSWER TO QUESTION PRESENTED:

DEFENDANT IS NOT ENTITLED TO SUMMARY JUDGMENT.

The Test for Summary Judgment:

In Pennsylvania, a party may move for summary judgement "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action…" Pa.R.C.P. No. 1035.2(1). In response, the adverse party may not rest on denials but must respond to the motion. Pa.R.C.P. No. 1035.3(a). The non-moving party can avoid an adverse ruling by identifying "one or more issues of fact arising from evidence in the record" Pa.R.C.P.1035.3(a)(1).

In considering a motion for summary judgment, it is not the Court's function to decide issues of fact. Rather, is it our function to decide whether an issue of fact exists. *Fine v. Checcio,* 582 Pa. 253, 273, 870 A.2d 850, 862 (2005).

> Summary judgment is appropriate only when the record clearly shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. The reviewing court must view the record in the light most favorable to the nonmoving party and resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Only when the facts are so clear that reasonable minds could not differ can a trial court properly enter summary judgment.

Hovis v. Sunoco, Inc., 2013 Pa.Super. 54, 64 A.3d 1078, 1081, quoting *Cassel-Hess v. Hoffer*, 44 A.3d 84-85 (Pa.Super. 2012).

In the matter of *Accu-Weather, Inc. v. Prospect Commc'ns, Inc*, the Court described the proper test for a grant of summary judgment as follows:

> First, the pleadings, depositions, answers to interrogatories, admissions on file, together with any affidavits, must demonstrate that there exists no genuine issue of fact. Pa.R.C.P. 1035(b). Second, the moving party must be entitled to judgment as a matter of law. *Id.* The moving party has the burden of proving that no genuine issue of material fact exists. *Overly v. Kass,* 382 Pa.Super. 108, 111, 554 A.2d 970, 972 (1989). However, the non-moving party may not rest upon averments contained in its pleadings; the non-moving party must demonstrate that there is a genuine issue for trial. The court must examine the record in the

> light most favorable to the non-moving party and resolve all doubts against the moving party. *Stidham v. Millvale Sportsmen's Club,* 421 Pa.Super. 548, 558, 618 A.2d 945, 950 (1992), *appeal denied,* 536 Pa. 630, 637 A.2d 290 (1993) (citing *Kerns v. Methodist Hosp.,* 393 Pa.Super. 533, 536–37, 574 A.2d 1068, 1069 (1990)). Finally, an entry of summary judgment is granted only in cases where the right is clear and free of doubt. *Ducko v. Chrysler Motors Corporation,* 433 Pa.Super. 47, 48, 639 A.2d 1204, 1205 (1993) (citing *Musser v. Vilsmeier Auction Co., Inc.,* 522 Pa. 367, 370, 562 A.2d 279, 280 (1989)). We reverse an entry of summary judgment when the trial court commits an error of law or abuses its discretion. *Kelly by Kelly v. Ickes,* 427 Pa.Super. 542, 547, 629 A.2d 1002, 1004 (1993) (citing *Carns v. Yingling,* 406 Pa.Super. 279, 594 A.2d 337 (1991).

Accu-Weather, Inc. v. Prospect Commc'ns, Inc., 435 Pa. Super. 93, 644 A.2d 1251 (Pa. Super. Ct. 1994).

In the matter of *Truax v. Roulhac*, 2015 Pa.Super. 217, 126 A.3d 991 (Pa.Super. 2015), plaintiff was walking along a sidewalk and was struck by a minivan which jumped a five-inch tall concrete wheel stop. The trial court granted Defendant's motion for summary judgment, noting that "no Pennsylvania Court has held that a business owner was negligent for failing to install vertical bollard in addition to horizontal wheel stops and we are not inclined to do so here." On appeal, our Superior Court reversed, observing that:

> The duty owed to a business invitee is the highest duty owed to any entrant upon land. The landowner is under an affirmative duty to protect a business visitor not only against known dangers but also against those which might be discovered with reasonable care." *Charlie v. Erie Ins. Exch.,* 100 A.3d 244, 253 (Pa.Super.2014), *quoting Emge v. Hagosky,* 712 A.2d 315, 317 (Pa.Super.1998). Specifically, the duty to protect business invitees against intentional or negligent acts of third parties is expressed in Section 344 of the Restatement (Second) of Torts as follows.
>
> § 344. Business Premises Open to Public: Acts of Third Persons or Animals
> A possessor of land who holds it open to the public for entry for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentionally harmful acts of third persons or animals, and by the failure of the possessor to exercise reasonable care to
> (a) discover that such acts are being done or are likely to be done, or
> (b) give a warning adequate to enable the visitors to avoid the harm, or otherwise to protect them against it.
> Restatement (Second) of Torts § 344; *see also Moran v. Valley Forge Drive–In Theater, Inc.,* 431 Pa. 432, 246 A.2d 875, 878 (1968) (adopting Section 344).

Comment f to Section 344 explains the duty to protect business invitees against third party conduct arises only if the owner has reason to anticipate such conduct.
f. Duty to police premises. Since the possessor is not an insurer of the visitor's safety, he is ordinarily under no duty to exercise any care until he knows or has reason to know that the acts of the third person are occurring, or are about to occur. He may, however, know or have reason to know, from past experience, that there is a likelihood of conduct on the part of third persons in general which is likely to endanger the safety of the visitor, even though he has no reason to expect it on the part of any particular individual. If the place or character of his business, or his past experience, is such that he should reasonably anticipate careless or criminal conduct on the part of third persons, either generally or at some particular time, he may be under a duty to take precautions against it, and to provide a reasonably sufficient number of servants to afford a reasonable protection.
Restatement (Second) of Torts § 344 cmt. f.

Consequently, Appellees owed Truax "a duty owed to any business invitee, namely, that [they] would take reasonable precaution against harmful third party conduct that might be reasonably anticipated." *Paliometros v. Loyola,* 932 A.2d 128, 133 (Pa.Super.2007) (citations omitted).

The reason is clear; places to which the general public are invited might indeed anticipate, either from common experience or known fact, that places of general public resort are also places where what men can do, they might. One who invites all may reasonably expect that all might not behave, and bears responsibility for injury that follows the absence of reasonable precaution against that common expectation. *Feld v. Merriam,* 506 Pa. 383, 485 A.2d 742, 745 (1984).

1011Accordingly, as a matter of law, Appellees had a duty to exercise reasonable care to protect its business invitees, including Truax, from all harmful third party conduct that Appellees reasonably anticipated due to either the place or character of the business, or Appellees' past experience. *See* Restatement (Second) of Torts § 344; *Paliometros, supra.* Specifically, in this case, if it was reasonably foreseeable that a vehicle operated by a third party would encroach on the sidewalk, then Appellees had a duty to exercise reasonable care to protect its business invitees from that harm.

The record before the trial court revealed Truax introduced sufficient evidence from which the jury could conclude that the harm was foreseeable. Specifically, Truax presented the expert report of James D'Angelo, a Professional Engineer and the principal and founding partner of Transportation Engineering and Construction, Inc. Truax's Answer to Wildwood's Motion for Summary Judgment, 8/30/12, at Ex. E, Summary of Traffic & Site Engineering Findings, at 1. D'Angelo examined the parking lot outside of Madd Anthony's to determine how the conditions there contributed to the accident and Truax's injuries. *Id.* During the course of his investigation, D'Angelo observed signs that the two "bump outs" of the building, which encroach out onto the sidewalk, have been hit by vehicles "because either the curb stop is not set back far enough to prevent the overhang of a vehicle from hitting

> the building or the parking maneuver was performed at a higher and potentially uncontrollable speed." *Id.* at 5. He also noted that four painted, concrete post bollards had been installed to protect a well casing on the southeastern corner of the property. *Id.* at 6. Based on his inspection, D'Angelo concluded "that the owner was aware of measures which would have increased pedestrian safety while on the sidewalk." *Id.* at 8.

Truax v. Roulhac, 2015 Pa.Super. 217, 126 A.3d 991, 997-999 (Pa.Super. 2015).

If the jury credits the testimony of Engineer Bergman, the jury could reasonably find that the condition at the threshold of the doorway was a hazardous condition which endangered Melinda Bonnell, and that her conduct was not the legal cause of her injury and Plaintiff's damages.

ORDER

And now, this 23rd day of March, 2026, for the reasons more fully set forth above, Defendant's Motion for Summary Judgment filed January 30, 2026, is **DENIED.**

BY THE COURT:

William P. Carlucci, Judge

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