

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

| | | |
|--------------------------------|---|------------------------------|
| PATRICIA KILLIAN, |) | CASE NO. CV-12-788240 |
| |) | |
| Plaintiff, |) | JUDGE DICK AMBROSE |
| |) | |
| -vs- |) | |
| |) | |
| ROCK OHIO CAESARS, LLC, |) | <u>JUDGMENT ENTRY</u> |
| |) | <u>AND OPINION</u> |
| |) | |
| Defendant. |) | |

{¶1} This matter is before the Court on Defendant's, Rock Ohio Caesars, LLC, Motion for Summary Judgment. For the reasons set forth herein, the Court hereby grants Defendant's Motion.

FACTS

{¶2} Plaintiff, Patricia Killian, alleges negligence against Defendant arising from injuries Plaintiff sustained when she fell due to an alleged defect on Defendant's property. According to Plaintiff, after parking her car in the Defendant's parking garage, Plaintiff, her niece, and her niece's boyfriend happened upon a Maserati parked on a five-inch platform near the valet entrance on the first floor of the garage. Plaintiff, her niece, and her niece's boyfriend then stepped up onto the platform where the Maserati was parked. Plaintiff alleges that while she was fixated on the Maserati, she stepped backward and fell off the platform, fracturing her hip.

APPLICABLE LAW

A. Summary Judgment Standard

{¶3} Summary judgment shall be rendered in favor of the moving party when, viewing all inferences in a light most favorable to the nonmoving party, 1) there is no genuine

issue as to any material fact; 2) the moving party is entitled to judgment as a matter of law; and 3) reasonable minds can come to but one conclusion, which conclusion is adverse to the nonmoving party. *Zivich v. Mentor Soccer Club, Inc.*, 82 Ohio St.3d 367, 1998 Ohio 389, 696 N.E.2d 201.

B. A Property Owner's Duty to a Business Invitee

{¶4} “To establish a cause of action for negligence, the plaintiff must show (1) the existence of a duty, (2) a breach of a duty, and (3) an injury proximately resulted therefrom. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003 Ohio 2573, ¶ 8, 788 N.E.2d 1088. A property owner owes a duty of ordinary care to a business invitee for hazardous conditions on the property. *Johnson v. Wagner Provision Co.*, 141 Ohio St. 584, 49 N.E.2d 923 (1943). Here, there is no dispute that Plaintiff is a business invitee. See *Gladon v. Greater Cleveland Regional Transit Auth.* (1996), 75 Ohio St.3d 312, 317, 1996 Ohio 137, 662 N.E.2d 287 (Business invitees are persons who come upon the premises of another, by invitation, express or implied, for some purpose which is beneficial to the owner.) Thus, for purposes of Defendant's Motion, this Court must determine if a genuine issue of material fact exists as to whether Defendant exercised ordinary and reasonable care.

{¶5} Though Defendant owes Plaintiff a duty of ordinary care, Defendant is not the insurer of Plaintiff's safety. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203, 480 N.E.2d 474. In fact, Defendant, is “under no duty to protect business invitees from dangers ‘which are known to such invitee that she may reasonably expect to discover and protect herself against.’” *Paschal*, 18 Ohio St.3d at 203-04, quoting *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, 233 N.E.2d 589. Conversely, Defendant has a

duty to warn a business invitee of latent defects, which are defined as: “a hidden or concealed defect. One which could not be discovered by reasonable or customary observation.” *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Quaranta*, 7th Dist. No. 01 CA 60, 2002 Ohio App. Lexis 7282 (Mar. 18, 2002).

1. The Platform is not a Latent Defect.

{¶6} Plaintiff argues that the raised platform at issue is a latent defect. The Court, however, finds that this platform, its step-up and its drop off were not hidden or concealed, as Plaintiff negotiated the platform, moved about the platform, then fell from the platform. Thus, the Court finds that Plaintiff was well aware that she was standing on a raised platform, which thereby prevents this Court from considering the platform a latent defect.

2. The Platform was an Open and Obvious Defect Notwithstanding any Attendant Circumstances.

{¶7} Next, Plaintiff argues that attendant circumstances create a genuine issue of material fact as to whether the platform was an open and obvious defect. “Attendant circumstances are all facts relating to a situation such as time, place, surroundings, and other conditions that would unreasonably increase the typical risk of a harmful result of an event.” *Marock v. Barberton Liedertafel*, 9th Dist. No. 23111, 2006 Ohio 5423, ¶ 8, quoting *Hudspath v. The Cafaro Co.*, 11th Dist. No. 2004_A-0073, 2005 Ohio 6911, ¶ 19.

{¶8} In the Case at bar, Plaintiff argues that she was so enamored by the Maserati that the risk of falling off the raised platform was unreasonably increased to the extent that this Court cannot conclude the defect was open and obvious. However, “an individual’s failure to avoid a known hazard is not excused because he “did not think” or

“forgot.” *Stewart v. AMF Bowling Ctr, Inc.*, 3rd Dist. No. 5-10-16, 2010 Ohio 5671, ¶15, citing *Raflo v. Losantiville Country Club* (1973), 34 Ohio St.2d 1, 295 N.E.2d 202. Here, Plaintiff states that she along with her niece and her niece’s boyfriend “stepped on to the island to take a closer look [at the Maserati].” (Pl.’s Br. Opp. p. 3). Plaintiff then stepped back, while her attention was on the car, and fell. The Court finds that Plaintiff was aware of the platform because she stepped on to the platform, then fell backwards resulting in injury. Consequently, the platform is still open and obvious notwithstanding attendant circumstances because Plaintiff cannot claim she did not think she was at the platform’s edge or forgot where she was, even if Plaintiff was focused on the car when she fell.

CONCLUSION

{¶9} Accordingly, Defendant’s Motion for Summary Judgment is granted because there is no genuine issue of material fact that the raised platform was anything other than an open and obvious defect for which Defendant owed Plaintiff no duty to warn or protect. For the foregoing reasons, Defendant’s Motion is granted and the case is dismissed.

IT IS SO ORDERED.

DATE: _____

JUDGE DICK AMBROSE