IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CV12776647 76861838

EILEEN ROSS,	)	CASE NO. CV 12 776647
	)	
Plaintiff	)	JUDGE PAMELA A. BARKER
	)	
v.	)	**OPINION AND JOURNAL ENTRY**
	)	
CASE WESTERN RESERVE UNIVERSITY, et al.,	)	
	)	
Defendants	)	
	)	

This matter is before the Court on Defendant Case Western Reserve University's Motion for Summary Judgment (hereinafter "Defendant's Motion") and Plaintiff's Response to Defendant's Motion for Summary Judgment (hereinafter "Plaintiff's Response").

Civ. R. 56(C) provides in relevant part as follows:

> Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

"In order to properly grant a summary judgment motion pursuant to Civ. R. 56(C), a trial court must review the pleadings, deposition testimony, and other evidentiary materials and determine that: '*** (1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most

strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 4 O.O.3d 466, 472, 364 N.E.2d 267, 274; ***.'" *Johnson v. Great American Ins. Co.* (1988), 44 Ohio App.3d 71, 72-73.

The burden of showing that no genuine issue exists as to any material fact falls upon the moving party in requesting a summary judgment. *Harless v. Willis Day Warehousing Company, et al.* (1978), 54 Ohio St.2d 64, 66, 8 O.O.3d 73, 375 N.E.2d 46, 47. Civ. R. 56(E) requires that the adverse or non-moving party set forth specific facts showing that there is a genuine issue for trial and the non-moving party must so perform if he is to avoid summary judgment. *Id.*, 54 Ohio St.2d at 65.

"Although a party seeking summary judgment must inform the trial court of the basis for its motion, the movant need not necessarily support its motion with evidentiary materials which *directly negate* its opponent's claim. *Celotex Corp. v. Catrett* (1986), 477 U.S. 317, 323. Rather, the movant may sometimes meet its burden by pointing out to the trial judge 'that there is an absence of evidence to support the nonmoving party's case.' *Id.* at 325. See, also, *Hodgkinson v. Dunlop Tire & Rubber Corp.* (1987), 38 Ohio App.3d 101, 526 N.E.2d 89." *Johnson v. Great American Ins. Co.* (1988), 44 Ohio App.3d 71, 72-73.

Plaintiff brought this action against Defendant Case Western Reserve University, seeking compensation for injuries allegedly sustained as a result of her falling down a set of stairs at Yost Hall on Case Western Reserve's campus. Specifically, Plaintiff testified in relevant part during her deposition that her "heel caught on the penny of [a] step and it just threw [her]"; that she "didn't notice anything until [she] fell, then [she] realized the padding on the steps was

lifted up"; "[i]t wasn't flat down like the rest of the steps"; and "[her] heel evidently caught that part of that padding that was lifted up." (Deposition of Eileen Ross, at page 19, lines 10-11; and at page 22, lines 20-24.)

Within a week after the incident, Roderick Roilton examined the stairs where Plaintiff advised him she had fallen. (Deposition of Roderick Roilton, at page 7, lines 20-24.) According to Mr. Roilton, Plaintiff had told him that she had walked out of the door on the fourth floor and it was at the top of the stairs, the first two stairs, and the next thing she knew she was down on the platform. (Deposition of Roderick Roilton, at page 24, lines 22-25, page 25, line 1.) Mr. Roilton later clarified that Plaintiff advised him that she had stepped off of the platform onto the first step and down the stairs she went. (Deposition of Roderick Roilton, at page 30, lines 21-24.) According to Mr. Roilton, "[t]he bull nose [of the step that Eileen Ross tripped and fell down in Yost Hall] was not properly anchored and was warped." (Affidavit of Roderick Roilton, attached as Exhibit "A" to Plaintiff's Response, at paragraph 5.)

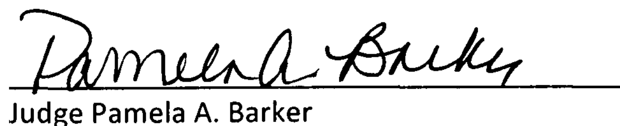
Plaintiff did not submit any evidence to establish that Case Western Reserve University had any knowledge of a hazardous condition or problem with the steps located in Yost Hall that required repair. However, Defendant submitted affidavit testimony from Eugene Matthews, Director of Plant Services at Case Western Reserve University demonstrating that the University had no knowledge of the stairs in Yost Hall being in a dangerous condition or needing repair prior to the incident. (Affidavit of Eugene Matthews, attached as Exhibit "A" to Defendant's Motion.)

Plaintiff contends that Defendant should have known that the stairs were loose, and cited *Johnson v. Wagner Provision Co.* (1943), 141 Ohio St.584, 589, 49 N.E.2d 925 for the

proposition that "[i]n order to recover in a slip-and-fall case, a plaintiff must show that a dangerous condition existed for a sufficient length of time reasonably to justify the inference that the failure to warn against it or remove it was attributable to a want of ordinary care." However, Plaintiff has failed to submit any evidence whatsoever to make this showing. Instead, Plaintiff merely argues or asserts that because Plaintiff identified the step on which she fell and Mr. Roilton observed a defect in the stairs within days of the incident, it is reasonable to conclude that the loose and/or deteriorating condition of the stairs was present for a sufficient length of time that Defendant should have been aware of said condition.

There is no evidence that Case Western Reserve University, as the owner of the premises where Plaintiff fell, had knowledge of any hazardous condition, or that any dangerous condition existed for a sufficient length of time reasonably to justify the inference that the failure to warn against it or remove it was attributable to a want of ordinary care. However, there is evidence to establish that Defendant did not have knowledge of any hazardous condition associated with the stair upon which Plaintiff fell. Accordingly, there can be no liability to Plaintiff, the invitee. *Genova v. Hillbrook Club*, 2004 Ohio App. LEXIS 3194 at *10 (Geauga Cty., June 30, 2004).

Accordingly, Defendant's Motion for Summary Judgment is granted. Costs assessed to Plaintiff.



Judge Pamela A. Barker

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GERALD E. FUERST, CLERK

BY ______ DEP.