

NO. 26239

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

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STATE OF HAWAII
J. M. RICHMOND

FILED

SANDY HARRISON and JERRY HARRISON, Plaintiff-Appellants,
v.
HILTON HAWAIIAN VILLAGE, LLC,
Defendant-Appellee,
and
JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10;
DOE PARTNERSHIPS 1-10; DOE NON-PROFIT ENTITIES 1-10; and
DOE GOVERNMENTAL ENTITIES 1-10, Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CV. NO. 02-1-0583-03)

MEMORANDUM OPINION

(By: Watanabe, Acting C.J., Nakamura, and Fujise, JJ.)

Plaintiff-Appellants Sandy Harrison and Jerry Harrison (collectively referred to as the Harrisons or the Plaintiffs) appeal from the First Amended Judgment entered on December 15, 2003, in the Circuit Court of the First Circuit (the circuit court).¹ The First Amended Judgment was entered pursuant to the circuit court's orders granting summary judgment in favor of Defendant-Appellee Hilton Hawaiian Village, LLC (Hilton) on all counts of the Harrisons' complaint and granting Hilton's motion to recover its costs in the amount of \$18,896.64.

Sandy Harrison (Sandy) allegedly tripped and fell while walking out of the bathroom in her hotel room, sustaining

¹ The Honorable Eden Elizabeth Hifo presided.

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injuries to her head and arm. The Harrisons contend that Sandy tripped on carpet that was protruding and not properly secured to the floor, in an area where there was an abnormal gap between the bathroom threshold and the abutting edge of the carpet. The Harrisons sued, alleging that Hilton was negligent in breaching its duty to keep the Harrisons' hotel room in a reasonably safe condition. In granting Hilton's motion for summary judgment, the circuit court found:

Considering the evidence presented in the light most favorable to the Plaintiffs, the Court finds that there is only one reasonable interpretation of the facts based on the record presented to it. At the time of Plaintiff SANDY HARRISON's accident, the subject carpet did not present a dangerous condition which posed an unreasonable risk of harm. In the alternative, the Court finds that Defendant Hilton did not breach its duty to keep the carpet and hotel room in a reasonably safe condition[.]

On appeal, the Harrisons argue that the circuit court erred in: 1) granting Hilton's motion for summary judgment because there were genuine issues of material fact; 2) relying on an unpublished out-of-state decision in granting the summary judgment motion; 3) deciding Hilton's motion for taxation of costs after the Harrisons had filed their initial notice of appeal because such filing divested the circuit court of jurisdiction; and 4) awarding costs to Hilton. For the reasons set forth below, we vacate the First Amended Judgment and remand this case for further proceedings consistent with this memorandum opinion.

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BACKGROUND

As the circuit court recognized, in deciding a motion for summary judgment, a court must view the evidence in the light most favorable to the party opposing the motion. Crichfield v. Grand Wailea Co., 93 Hawai'i 477, 483, 6 P.3d 349, 355 (2000). We therefore recite the facts in the light most favorable to the Harrisons.

Sandy and her husband, Jerry Harrison (Jerry), were visiting Hawai'i from Wisconsin and were staying in Room 1008 of the Hilton Hawaiian Village Hotel's Rainbow Tower. The bathroom flooring in Room 1008 was ceramic tile and the living area was carpeted. The carpet abutted a thin metal threshold at the bathroom's doorway which separated the bathroom tile from the carpet. On March 14, 2000, at about 6:00 a.m., Sandy tripped as she walked out of the bathroom when the front of her left sandal "caught the edge [of the carpet] that was sticking up." Sandy stumbled forward about eight feet and, unable to regain her balance, collided head-first with the wall outside the bathroom and fell to the ground. After her fall, Sandy went back to the bathroom doorway and looked at the area of the carpet that she believed had caused her to trip. She noticed that there was a gap between where the bathroom tile ended and the carpet began and that the carpet was "up" in that area.

After Sandy's fall, the Harrisons went on a tour of Pearl Harbor. Later that day, however, Sandy started feeling

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nauseated and tired, and she began vomiting. When her condition worsened the following day, Sandy was examined by a hotel doctor then immediately taken by ambulance to Straub Clinic and Hospital. Sandy stayed at the hospital from March 15, 2000, until she was discharged on March 18, 2000. Sandy suffered a closed head injury, with right epidural over subdural hematoma and associated seizures, and a bruised left elbow. She recovered fully and returned to work on May 1, 2000.

The carpet in Room 1008 had been installed in 1996. The Harrisons hired Jeffrey Whittington (Whittington), a certified carpet installer, who inspected the carpet in Room 1008 in July 2003. Whittington observed that the carpet was properly secured and tucked against the bathroom threshold in the middle of the doorway but was loose and protruding at both ends of the doorway. Whittington opined that the condition of the carpet in the area where Sandy tripped was defective and did not conform to accepted industry practices and standards for the installation of commercial carpet. In particular, Whittington stated that the carpet in that area was "loose" and protruded higher than the ceramic tile in the bathroom because the tackstrip that was supposed to secure the carpet to the concrete sub floor was not attached to the floor. Whittington could not say whether this defect existed when the carpet was first installed but opined that the defect existed at the time of Sandy's accident.

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The Harrisons also hired Richard Gill (Gill), Ph.D., a human factors engineer, who inspected Room 1008 in August 2002. Gill opined that "[u]nbeknownst to Ms. Harrison, the carpet on the threshold of the door had pulled loose from its mounting and was protruding up above the tile flooring[;]" that "the carpet was protruding up in the left-hand portion of the doorway at the time she walked through[;]" and that "the sandal on her left foot became entrapped by the dangerous and defective carpet condition," causing her to fall. At his deposition, Gill elaborated on the basis for his opinions:

I'm referring to the carpet condition that violates Hilton's own in-house standards, it violates the CRI standards, it violates the ASTM standards.² It's a non tight and uniform seam. It is exposed backing. It is backing that is fraying. It is carpet that is loose and free to be moved.

. . . .

It's a dangerous and defective condition to have loose carpeting like that. . . .

You recreate an accident by taking eye witness testimony and physical evidence and the basic laws and science of physics, and from that you reconstruct it.

We have photographs that show, to my understanding were taken two days after the accident, which show a carpet seam against a threshold that is loose and defective. We have a Hilton incident report that says the person tripped on the rug. We have the victim describing in perfect detail the classic biomechanic response to a toe trip and entrapment. We have the inspection of the carpet that I made that shows that that is consistent with the photographs that it's a dangerous condition.

All of those, in my opinion, support the conclusion that the carpet was loose and protruding.

During his inspection, Gill measured the gap between the metal threshold and the carpet in the area where Sandy

² "CRI" is apparently an acronym for the Carpet and Rug Institute. It is not clear from the record what the acronym "ASTM" means.

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tripped as greater than 3/8 inch but less than 1/2 inch. Gill acknowledged that the gap would have been smaller at the time of the accident because the edge of the carpet had deteriorated over time. Based on the description of the accident, Gill opined that the vertical protrusion of the carpet edge in the area of the accident was more than 1/4 inch, but he was unable to say what the upper limit of the vertical protrusion was. Gill stated in his deposition that he did not believe that the vertical protrusion he observed during his inspection, which he estimated at "less than half an inch," was the amount of protrusion Sandy encountered because the amount of protrusion he observed was "unlikely to result in a toe trip." He then, somewhat confusingly, testified:

Generally speaking, if you have a protrusion that is less than a half inch, it's unlikely to produce a toe trip. I won't tell you it doesn't. But the guidelines for safety requirements are, if the protrusion is vertically more than a quarter inch, then it becomes a safety hazard and likely to result in a toe trip.

(Emphases added.)

Hilton's housekeepers vacuumed, swept, mopped, or cleaned, on a daily basis, the area in the Harrisons' room where the accident occurred. Hilton has a Housekeeping Operations Manual that contains a section on carpets which states:

Mechanical damage such as rips, frayed bindings and open seams usually require the services of a carpet installer. Rips and open seams are serious safety hazards and will increase in size rapidly if not repaired promptly. The same statement applies to carpet that has worked loose around thresholds.

(Emphases added.)

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DISCUSSION

I.

A.

In reviewing the grant or denial of summary judgment, we apply the same standard the trial court applied. Iddings v. Mee-Lee, 82 Hawai'i 1, 5, 919 P.2d 263, 267 (1996). Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Hawai'i Rules of Civil Procedure (HRCP) Rule 56(c). The court "must view all of the evidence and the inferences drawn therefrom in the light most favorable to the party opposing the motion," Crichfield, 93 Hawai'i at 483, 6 P.3d at 355 (internal quotations and brackets omitted), and doubts concerning the propriety of granting the motion should be resolved in favor of the non-moving party. GECC Financial Corp. v. Jaffarian, 79 Hawai'i 516, 521, 904 P.2d 530, 535 (App. 1995).

A judge ruling on a motion for summary judgment cannot summarily try the facts; his [or her] role is limited to applying the law to facts that have been established by the litigants' papers. Therefore, a party moving for summary judgment is not entitled to a judgment merely because the facts he [or she] offers appear more plausible than those tendered in opposition or because it appears that the adversary is unlikely to prevail at trial. . . . Therefore, if the evidence presented on the motion is subject to conflicting interpretations, or reasonable [people] might differ as to its significance, summary judgment is improper.

Kajiya v. Dep't. of Water Supply, 2 Haw. App. 221, 224, 629 P.2d 635, 638-39 (1981).

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The Hawai'i Supreme Court has recognized that "issues of negligence are ordinarily not susceptible of summary adjudication by the court." Bidar v. Amfac, Inc., 66 Haw. 547, 553, 669 P.2d 154, 159 (1983) (internal quotation marks and brackets omitted).

Whether the obligation to exercise reasonable care was breached is ordinarily a question for the trier of fact to determine. For under the prevailing rule duty to use care is bounded by the foreseeable range of danger, and reasonable foreseeability of harm is the very prototype of the question a jury must pass upon in particularizing the standard of conduct in the case before it.

Id. at 552-53, 669 P.2d at 159 (internal quotation marks and brackets omitted).

B.

As the operator of a hotel, Hilton had a duty to maintain its rooms in a reasonably safe condition for its guests. Id. at 552, 669 P.2d at 159. The possessor of land owes a duty toward persons using the land. Corbett v. Ass'n of Apartment Owners of Wailua Bayview Apartments, 70 Haw. 415, 417, 772 P.2d 693, 695 (1989). This duty is to take reasonable steps to eliminate, or adequately warn users against, conditions posing an unreasonable risk of harm, if the possessor of land knows or should have known of the unreasonable risk. Id. The possessor of land, however, is not required to be an insurer against all accidents that occur on the premises. Harris v. State, 1 Haw. App. 554, 557, 623 P.2d 446, 448 (1981). As a general rule, "no liability is incurred for every trivial departure from

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perfection." Id. (internal quotation marks omitted). In addition, liability cannot be imposed when the possessor of land "has not been put on actual or constructive notice of the unsafe condition or defect that causes [another person] injury." Id. Furthermore, the duty of care owed by the possessor of land does not require the "elimination of known or obvious hazards which are not extremes and which [the person claiming injury] would reasonably be expected to avoid." Id.

C.

Applying these standards to the evidence presented on Hilton's motion for summary judgment, we conclude that there are genuine issues of material fact and thus the circuit court erred in granting Hilton's motion. With respect to whether the alleged defect in the carpet created an unreasonable risk of harm, Hilton focuses on the evidence that the gap between the metal threshold and the carpet in the area where Sandy allegedly tripped was at most about 3/8 inch at the time of the accident. Hilton argues that this gap did not present an unreasonable risk of harm but was merely a trivial departure from perfection.

Gill, the Harrisons' human factors expert, however, explained that the gap was significant because it was a symptom of the defective condition of the carpet and not because the gap itself constituted a tripping hazard. Gill stated that the gap signified that the carpet was loose and thus free to bulge up. According to Gill, it was the protrusion or bulge in the carpet

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that caused Sandy's trip, not the gap itself:

It's not catching your toe in the gap. It's that the carpet is not secured. If the carpet is not firmly secured, then the carpet is free to bulge up. And the bulge is what causes the toe trip, not the gap. The gap is the reflection of the dangerous and defective condition.

But your foot is not going to rotate down into that gap and cause you to toe trip. The toe trip comes from the protruding carpet. The reason the carpet protrudes is because it's not securely fastened. And the way you know that it's not securely fastened is that you have a loose edge, you have a gap, you have frayed backing. That is what tells you you have a dangerous condition.

The parties disputed the extent to which the carpet protruded and was secured to the floor at the time of Sandy's trip and fall. There was no definitive evidence presented on these matters. The Harrisons' experts opined that the carpet in the area of the accident was loose and protruding and constituted a dangerous condition at the time of Sandy's trip and fall. The alleged defect in the carpet was located in a frequently traversed area of the hotel room. Moreover, Hilton's Housekeeping Operations Manual suggested that, at least with respect to Hilton's hotel rooms, carpet that has worked loose around a threshold was a "serious safety hazard." Under the particular facts of this case, we conclude that there were genuine issues of material fact concerning whether the alleged defect in the carpet presented an unreasonable risk of harm.

For similar reasons, we conclude that there were genuine issues of material fact concerning whether Hilton should have known of the alleged unsafe condition of the carpet and whether the carpet's condition was an obvious hazard that Sandy

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would reasonably have been expected to avoid. Resolution of these issues depend on the determination of the actual condition of the carpet at the time of the accident, which the parties disputed.

In addition, the Harrisons presented evidence that Hilton's housekeeping staff cleaned the carpet where the accident occurred in Room 1008 on a daily basis. This evidence, as well as evidence that Hilton's Housekeeping Operations Manual identified loose carpeting around thresholds as a safety hazard, raised genuine issues of material fact over whether the housekeeping staff should have seen the gap between the metal threshold and the carpet and realized that the carpet's condition created an unsafe condition.

Finally, Sandy testified in her deposition that prior to her trip and fall, nothing about the carpet caught her attention or raised safety concerns during the times that she walked in and out of the bathroom. She also testified that before the accident, she had not noticed defects in the carpet edge. Sandy's testimony placed in dispute and raised genuine issues of material fact concerning whether the alleged defect in the carpet constituted an obvious hazard that Sandy should reasonably have avoided.

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II.

Because we conclude that the circuit court erred in granting Hilton's motion for summary judgment, we need not decide the other issues the Harrisons raise on appeal.

CONCLUSION

Based on the foregoing, we: 1) reverse the "Order Granting Defendant Hilton Hawaiian Village, LLC's Motion for Summary Judgment Filed September 29, 2003," which was filed in the circuit court on November 17, 2003; 2) vacate the "Order Granting Taxation of Costs to Defendant Hilton Hawaiian Village, LLC," which was filed in the circuit court on December 8, 2003; 3) vacate the First Amended Judgment, which was filed in the circuit court on December 15, 2003; 4) and remand the case to the circuit court for further proceedings consistent with this memorandum opinion.

DATED: Honolulu, Hawai'i, June 7, 2006.

On the briefs:

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Corenne KA Wataxale

Acting Chief Judge

Craig H. Makamua

Associate Judge

Aewa Olu Jijiri

Associate Judge