

**THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS**

SHARON VARGAS and LUQMAN AKBAR

V.

BED, BATH & BEYOND, INC.

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TRIAL DIVISION-CIVIL

**AUGUST TERM, 2007
NO. 3564**

**Superior Court Docket No.
1341 EDA 2008**

OPINION

PROCEDURAL HISTORY

Plaintiffs, Sharon Vargas and Luqman Akbar, appeal from the April 25, 2008 Order granting a Motion for Summary Judgment in favor of the Defendant Bed, Bath & Beyond, Inc.

FACTUAL BACKGROUND

On October 26, 2006, Plaintiff Sharon Vargas (“Vargas”) was shopping at Defendant Bed, Bath & Beyond’s retail store located at 2410 Chemical Road, Plymouth Meeting, Pennsylvania. (Complaint ¶3). Plaintiff Vargas entered the store and walked the aisles with the intent to purchase merchandise from the display shelves. (Complaint ¶3).

While shopping, Plaintiff Vargas contends she reached for a box of platters that she wished to purchase when another box fell from the same display shelf and struck her

foot. (Complaint ¶4). As a result, Vargas suffered a nondisplaced fracture of the right toe and a left upper leg strain. (Complaint ¶7).

On August 30, 2007, the Plaintiffs instituted this action asserting that Bed, Bath & Beyond was negligent in arranging and stacking the boxes of platters on the shelves in a staggering and overlapping manner, creating a dangerous condition that existed before the injury to Plaintiff Vargas. (Complaint ¶4). Plaintiff's husband, Luqman Akbar, also made a claim for loss of consortium asserting that he has been deprived of Plaintiff Vargas' help, services, support, assistance, society, companionship and consortium as a direct and proximate result of Bed, Bath & Beyond's negligence. (Complaint ¶8).

On March 13, 2008, Bed, Bath & Beyond filed its Motion for Summary Judgment. (See Docket, pg. 3). In the motion, Bed, Bath & Beyond argued that Vargas was unable to establish that it was negligent in causing the box to fall on her foot. (Defendant's Motion for Summary Judgment, pg. 5). Although Vargas stated that the box fell from the display shelf and struck her foot, she made conflicting statements of how the incident occurred. (Defendant's Motion for Summary Judgment, pg. 2) According to Vargas' statements in the EMS report, the box slipped out of her hand and struck her foot while Vargas was removing a box of platters from the shelf to put in her shopping cart. (Defendant's Motion for Summary Judgment, pg. 3). Vargas also communicated this same account to the assistant store manager of Bed, Bath & Beyond, Brett McClenning, after the incident. (Defendant's Motion for Summary Judgment, pg. 3).

Plaintiffs filed their answer to the Motion for Summary Judgment on April 11, 2008. (See Docket, pg. 3). Bed, Bath & Beyond filed a sur reply to its Motion for Summary Judgment on April 17, 2008 with an attached deposition of Plaintiff Vargas.

(See Docket, pg. 3). Vargas' deposition revealed yet another version of the facts. While she was taking a box from the shelf, another box underneath the one she was taking fell onto her foot, but she does not know with certainty what caused the box to fall.

(Defendant's Motion for Summary Judgment, pg. 2).

During the deposition, Plaintiff Vargas stated that she did not notice anything unusual about the arrangement of boxed platters while shopping, especially since she shopped in the Plymouth Meeting Bed, Bath & Beyond on previous occasions without any problems. (Defendant's Deposition, pg. 32, lines 7-12, pg. 33, lines 2-6). She stated that the boxes were stacked "left to right length-wise," but when asked if she knew why the box fell from the shelf, the Plaintiff responded "I think it's the way they were stacked...I didn't notice anything. Maybe they were stuck." (Defendant's Deposition, pg. 37, lines 12-13, pg. 33, lines 7-16). However, the Plaintiff explained, "I wouldn't know if they [the boxes] were stuck. I wouldn't be able to see that." (Defendant's Deposition, pg. 33, lines 20-21). Significantly, the Plaintiff stated that the boxes "*weren't leaning off the shelf obviously out of disarray, anything like that. I didn't notice anything,*" which evidences her failure to identify what caused the box to fall on her foot, and therefore failed to identify Bed, Bath & Beyond's negligence. (Defendant's Deposition, pg. 33, lines 23-24, pg. 34, line 1)(emphasis added).

This Court granted the Motion for Summary Judgment dismissing the case on April 25, 2008. (See Docket, pg. 3). Plaintiffs appealed from this Order on May 1, 2008 and filed their Statement of Matters accordingly pursuant to Pa.R.A.P. 1925(b).

The issue on appeal is whether the lower court committed an error of law or abused its discretion in granting Bed, Bath & Beyond's Motion for Summary Judgment

where the Plaintiff was unable to produce any evidence to show that it was negligent in causing the box to fall on her foot.

LEGAL ANALYSIS

The standard of review for summary judgment motions is abuse of discretion. *Weber v. Lancaster Newspapers, Inc.*, 2005 Pa. Super 192, 878 A.2d 63, 71 (Pa. Super 2005). The adverse party appealing the grant of summary judgment “bears a heavy burden” in persuading the appellate court to reverse. *Bartlett v. Bradford Publ’g, Inc.*, 885 A.2d 562, 566 (Pa. Super 2005).

Pennsylvania Rule of Civil Procedure 1035.2 states that Summary Judgment may be granted as follows:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for Summary Judgment in whole or in part as a matter of law (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or (2) if, after the completion of discovery relevant to the Motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial require the issues to be submitted to a jury.

Pa. R.C.P. 1035.2.

When deciding a Motion for Summary Judgment, the moving party bears the initial burden of proving that there is no genuine issue of material fact and that he is entitled to a judgment as a matter of law based on the facts alleged. *Pennsylvania Gas and Water Co v. Nenna Farin, Inc.*, 320 Pa. Super 291, 298 (1983). It is the Court’s position that Bed, Bath & Beyond has met its burden by proving that the Plaintiffs lack

any evidence to establish that Bed, Bath & Beyond committed an act of negligence that caused the box to fall and land on Vargas' foot.

Our Superior Court has previously affirmed a lower court's ruling that granting summary judgment in favor of the Defendant was appropriate and necessary, where the Plaintiff could not prove that the can of juice that fell on her foot was caused by the Defendant's negligence. *Cohen v. Penn Fruit Company*, 192 Pa. Super 244 (1960). In *Cohen*, the Plaintiff, who shopped weekly at the Defendant's grocery store, reached for a can of tomato juice when a can of pineapple juice fell from the shelf and struck her foot. *Id.* at 246. The court held that the Plaintiff did not meet its burden of proving that the injury was a result of the Defendant's negligence in arranging the products on the shelves since other customers could have rearranged the cans in a dangerous manner without the Defendant's knowledge. *Id.* at 248-49.

Likewise, our Supreme Court reiterated the same principle in *Stewart v. Morrow*. In *Stewart*, the court held that although the Plaintiff sustained injuries from a falling object, she failed to prove that the falling object was caused by the Defendant's negligence. *Stewart v. Morrow*, 403 Pa. 459 (1961). The Plaintiff, a domestic worker employed by the Defendant, was struck by a mirror while on duty at the Defendant's house. *Id.* at 460. The Plaintiff alleged the mere fall of the mirror and that it was not fastened to the wall, but failed to show evidence that the mirror was unsafe, likely to fall, or dangerously positioned. *Id.* at 461. As a result, the court reasoned that it was incumbent on the Plaintiff to "produce *more* evidence, factual or circumstantial, from which negligence on the part of the Morrows [Defendants] might be legitimately and reasonably inferred." *Id.* at 462 (emphasis added).

In the present case, the Plaintiffs have failed, under Pa.R.C.P. 1035.2(2), to produce any evidence that Bed, Bath & Beyond was negligent in its arrangement, management, and supervision of the retail store at 2410 Chemical Road, Plymouth Meeting, Pennsylvania. Vargas stated that when she pulled the box she wanted to purchase off the shelf, another box underneath fell and struck her foot, but she did not know why the box fell from the display shelf. She stated in her deposition that she “thinks” the box fell because of the manner in which it was stacked, but she added, “I wouldn’t know if they [the boxes] were stuck. I wouldn’t be able to see that.” Significantly, the Plaintiff stated that the boxes “*weren’t leaning off the shelf obviously out of disarray, anything like that. I didn’t notice anything.*” Therefore, her testimony established that a dangerous condition did not exist.

This case is similar to *Cohen* and *Stewart* because the Plaintiff Vargas has failed to produce any evidence beyond the mere fact that the box fell and struck her foot while in Bed, Bath & Beyond’s store. In *Stewart*, where the Plaintiff failed to show that the perception of the mirror unsecured from the wall created a dangerous situation, Vargas similarly noticed that the boxes were stacked left to right length-wise, but this perception does not indicate that the manner in which the boxes were stacked made the aisle dangerous for customers. Also, Vargas’ incident mirrors *Cohen* because in each case, the Plaintiff was struck by a product from the shelf while shopping in the Defendant’s store, but neither Plaintiff could provide any evidence as to why the object fell. Therefore, the Plaintiffs did not adequately prove the causation and breach of duty elements of negligence.

In viewing all of the facts, Vargas failed to establish that Bed, Bath & Beyond was negligent in the arrangement, management, and supervision of the retail store and that this negligence caused the box to fall and injure her. The lack of evidence of negligence and causation entitles the Court to grant the Defendant's Motion for Summary Judgment pursuant to the Pennsylvania Rule of Civil Procedure 1035.2.

CONCLUSION

For all the aforementioned reasons the Court did not commit an error of law or abuse its discretion in granting Defendant's Motion for Summary Judgment. Thus, the Court respectfully requests that the April 25, 2008 Order be affirmed.

BY THE COURT:

Date

ALLAN L. TERESHKO, J.

cc:
Frank D. Branella, Esq.
Elizabeth A. Chalik, Esq.

