Circuit Court for Prince George's County
Case No. CAL17-00292

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1155

September Term, 2018

MATILDE MEJIA, ET AL.

v.

URGE FOOD CORPORATION, ET AL.

Fader, C.J.,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: November 19, 2019

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On the morning of November 7, 2014, Matilde Mejia and her husband, Valerio Mejia, appellants, were shopping at the Mega Supermarket in Hyattsville when Ms. Mejia fell, fracturing her wrist. A little over two years later, in the Circuit Court for Prince George's County, the Mejias sued Urge Food Corporation ("Urge"), d/b/a Mega Supermarket, and Daniel Raymundo, an employee of Urge, appellees,[1] asserting claims for negligence, *respondeat superior*, and loss of consortium. At the close of all the evidence in a jury trial, the court granted Urge's motion for judgment on all counts, ruling that Ms. Mejia had failed to make out a *prima facie* case of negligence. The Mejias's motion for a new trial was denied.

On appeal, the Mejias present three questions, which we have rephrased:

> I. Did the trial court err by entering judgment in favor of Urge and Mr. Raymundo?
>
> II. Did the trial court err or abuse its discretion by striking in its entirety the testimony of the Mejias's premises liability expert?
>
> III. Did the trial court err or abuse its discretion by denying the Mejias's motion for mistrial?

For the following reasons, we answer the first question in the affirmative, vacate the judgment of the circuit court, and remand for further proceedings. Consequently, we need not reach the other questions presented.

[1] We shall refer to the appellees collectively as Urge except when necessary to distinguish between them.

FACTS AND PROCEEDINGS

The evidence presented at the two-day jury trial, viewed in the light most favorable to the Mejias, showed the following. On the morning of November 7, 2014, Mr. Raymundo, who had been employed by Urge for one month, was stocking shelves in an aisle of the Mega Supermarket. Multiple boxes containing items to be stocked were positioned along the right side of the aisle, as viewed from the back of the store. Closest to the back of the aisle was a tall stack of boxes, followed by a milk crate used by Mr. Raymundo as a step-stool. Beyond those items was a stack of boxes inside a shopping cart, and the last item, closest to the front of the store, was a short stack of "two rice boxes."

Ms. Mejia entered the aisle where Mr. Raymundo was working from the back of the store. She observed him squatting down looking at his phone. She asked him where a brand of rice was located, and he motioned to an upper shelf on the right saying, "[t]here."

A surveillance video taken from a camera positioned at the back of the store was introduced into evidence at the trial. It does not capture sound and it begins after Ms. Mejia already has entered the aisle and passed by Mr. Raymundo. A jury could find that it depicts the following. Mr. Raymundo is in the foreground standing on the crate stocking shelves on the right side of the aisle, just beyond the tall stack of boxes. Ms. Mejia is closer to the front of the store, beyond the last stack of boxes, looking up at the shelves on the right side of the aisle. She reaches up for an item and then, while still

facing the shelf, steps backward away from it. A few seconds later, she begins turning toward the back of the store. As she does so, she appears to trip on the short stack of rice boxes, falling into the aisle behind Mr. Raymundo. Mr. Raymundo looks down as Ms. Mejia falls and then climbs off the crate to assist her. As he walks toward her, he stops and appears to straighten the short stack of rice boxes before leaning down to speak to Ms. Mejia, who is sitting on the floor.

At trial, Mr. Raymundo was shown a still-shot from the surveillance video depicting the boxes and crates in the aisle, with numerical markers next to each stack. After he identified the various items, he was asked if Ms. Mejia "tripped on" what he had identified as the short stack of rice boxes. He replied, "Yes." Mr. Raymundo also was asked if he had been "instructed to put up orange cones when [he] [was] stocking shelves?" He replied, "[y]es[,]" adding that he had been trained to do so "mostly when we were cleaning."

Ms. Mejia testified through a translator at trial about the moments leading up to her fall:

> I was looking for the rice. I saw the rice. I reached for it. I grabbed the side [indiscernible] bag of rice and as I went to turn, I couldn't move my right foot to turn because my foot was stuck beneath the shelf.
>
> As I was trying to disengage to move my foot from under the shelf and I just turned –

She then was asked if she knew what caused her to fall and she replied, "I just felt that my foot was stuck," adding "[w]hen I set my foot down, there was nothing there." In response to the question, "what happened after you grabbed the bag of rice," Ms. Mejia

responded, "As I was trying to turn to move, I felt that my right foot was stuck. . . . I couldn't move it."

On cross-examination, defense counsel asked Ms. Mejia if she had testified that her "right foot got stuck under the shelf[?]" She replied, "Yes. It was between the shelf and something, something that was in the way. I don't know what it was. But it wasn't there when I set my foot down." In follow up, defense counsel asked Ms. Mejia if it was her "testimony that when [she] [was] facing the shelf to grab the rice, that somebody pushed something behind [her] and blocked [her] way?" She replied, "That's what I think."

At the close of the Mejias' case, Urge moved for judgment. It relied upon a written motion for judgment in which it argued that Ms. Mejia was contributorily negligent as a matter of law and/or that the Mejias' claims were barred by assumption of the risk. Urge supplemented the written motion, arguing in open court that there was "no evidence . . . as to what, if anything, the defendants did wrong that caused [Ms. Mejia's] accident because she does not know [what caused her to fall]." It emphasized Ms. Mejia's testimony that she fell because her foot was stuck and the lack of any standard of care testimony from the premises liability expert, whose testimony had been stricken. On that basis, it argued that the Mejias had not made out a *prima facie* case of negligence. The court reserved on the motion.

Urge rested without putting on evidence and renewed its motion for judgment on the same bases, arguing that there was "no evidence that the defendant did anything

negligent that caused [the] accident." At that juncture, the court ruled that the Mejias had not "met [their] burden of proof" and granted the motion for judgment as to Urge and Mr. Raymundo.

The Mejias filed a motion for a new trial, which was denied. This timely appeal followed. We shall include additional facts in our discussion of the issues.

DISCUSSION

I.

"We review, without deference, the trial court's grant of a motion for judgment in a civil case. We conduct the same analysis that a trial court should make when considering the motion for judgment." *District of Columbia v. Singleton*, 425 Md. 398, 406-07 (2012) (internal citations and footnote omitted). "In deciding a motion for judgment in a jury trial, the trial court must 'consider all evidence and inferences in the light most favorable to the party against whom the motion is made.'" *Elste v. ISG Sparrows Point, LLC*, 188 Md. App. 634, 647 (2009) (quoting Md. Rule 2-519(b)). The case must be submitted to the jury for decision if there is legally sufficient evidence, however slight, to support the claim. *Id*.

A plaintiff must prove four well-established elements to make out a *prima facie* case of negligence: "(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty." *Rosenblatt v. Exxon Co., U.S.A.*, 335 Md. 58, 76 (1994). Here, it is

undisputed that the first and third elements were satisfied. Ms. Mejia was a business invitee when she was shopping at Mega Supermarket and, consequently, Urge owed her "a duty of 'reasonable and ordinary care to keep [the] premises safe for the invitee and to protect the invitee from injury caused by an unreasonable risk which the invitee, by exercising ordinary care for his own safety, will not discover." *Blood v. Hamami P'Ship, LLP*, 143 Md. App. 375, 384 (2002) (quoting *Bramble v. Thompson*, 264 Md. 518, 521 (1972)) (alteration in *Blood*). Ms. Mejia suffered an actual injury when she fractured her wrist.

Turning to the second factor, we conclude that whether Urge created an "unreasonable risk" to Ms. Mejia by leaving a knee-high stack of boxes sitting on the floor in an aisle while consumers were shopping was an issue of fact for the jury. This Court's decision in *Tennant v. Shoppers Food Warehouse Md. Corp*., 115 Md. App. 381, 394-95 (1997), is instructive. There, the plaintiff slipped and fell at a grocery store, fracturing her foot and suffering pelvic and back strain. She testified at her deposition that she initially had slipped on "cabbage or spinach leaves that had been swept into a 'neat pile'" on the floor and, as she steadied herself, tripped over an empty produce box protruding from under the cabbage case. *Id*. at 384. The defendant store owner moved for summary judgment, which was granted. On appeal, this Court reversed, holding that it was a jury issue whether the store "created a dangerous situation" by allowing the leaves and/or the box to be placed as described by the plaintiff and that it also was a jury issue whether the plaintiff was contributorily negligent. *Id*. at 395.

In so holding, we relied upon the Court of Appeals' decision in *Chalmers v. Great Atlantic & Pacific Tea Company*, 172 Md. 552 (1937), and this Court's decision in *Diffendal v. Kash and Karry Service Corp.*, 74 Md. App. 170 (1988). In *Chalmers*, the plaintiff tripped and fell over a carton of canned goods after stepping away from the meat counter at a grocery store. After the jury returned a verdict in the plaintiff's favor, the store owner appealed, arguing that the evidence was legally insufficient to sustain her cause of action. The Court of Appeals affirmed the judgment. It noted that "[b]oxes, cartons, crates, and bags are commonly found in grocery . . . stores, placed in a more or less disorderly way about the store" and reasoned that visitors to a store "must expect to find and to guard against those conditions[.]" 172 Md. at 555. Nevertheless, considering the location and height of the display box, which was below eye level and in the passageway near the meat counter, the Court held that "[w]hether under the circumstances [the store's] conduct in placing the box in the aisle, or permitting it to remain there, was consistent with due care, was peculiarly a jury question." *Id*. at 558. This was especially so given that a "storekeeper expects and intends that his customers shall look not at the floor but at the goods which he displays to attract their attention and which he hopes they will buy." *Id*. at 559.

In *Diffendal*, the plaintiff had tripped over an "'L-bed' cart" in the frozen food aisle, suffering injuries as a result. 74 Md. App. at 172. This Court reversed the grant of summary judgment in favor of a defendant grocery store owner on the ground of contributory negligence. In holding that the plaintiff's negligence, *vel non*, was an issue

of fact, we emphasized that there was a "distinction between the failure to see [something], at eye level [that] is clearly visible, . . ., and the failure to see an L-cart which is inches off the ground." *Id*. at 178.

Returning to the case at bar, it was likewise an issue of fact for the jury whether Urge's conduct, through its employee, Mr. Raymundo, in placing a knee-high stack of boxes in an aisle and/or in permitting the boxes to remain there, created an unreasonable risk to shoppers, like Ms. Mejia, who's attention was directed at the shelves, not at knee level. This is especially true where, as here, there was evidence that the knee-high stack of boxes was partially obscured by larger stacks and that Ms. Mejia asked Mr. Raymundo where the rice was located and that he gestured indicating that the item was on an upper shelf.

There also was evidence generating a jury issue on causation. Urge focuses entirely upon Ms. Mejia's testimony that she fell because her foot became stuck under or against something, which it maintains was completely inconsistent with her theory of negligence. There was other evidence in the record supporting an inference that Ms. Mejia tripped on the stack of rice boxes, however, namely the surveillance video and Mr. Raymundo's testimony. Where, as here, the "'interplay of circumstances is susceptible of different interpretations by rational minds, . . . [t]he choice between conflicting facts and the weighing and assessing of competing inferences radiating therefrom is the jury's province.'" *Grady v. Brown*, 408 Md. 182, 198 (2009) (quoting *Rea Constr. Co. v. Robey*, 204 Md. 94, 100 (1954)).

For all these reasons, the trial court erred by granting the motion for judgment and withdrawing the case from the jury.[2]

II. & III.

Considering our resolution of the first issue, we decline to address the other two issues raised by the Mejias as they are fact dependent and, on remand, are unlikely to arise in duplicate form.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY THE APPELLEES.

[2] We express no opinion on the issues of contributory negligence and/or assumption of the risk because the trial court did not grant judgment on those bases and the issues were not briefed on appeal.