

FILED
Clerk
District Court

DEC 22 2008

For The Northern Mariana Islands
By _____
(Deputy Clerk)

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

Civil Case No. 08-0008

KOICHI TANIGUCHI,

Plaintiff,

v.

KAN PACIFIC SAIPAN, LTD., dba
MARIANA RESORT AND SPA,

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION FOR CROSS-SUMMARY
JUDGMENT**

THIS MATTER came before the Court on Thursday, December 18, 2008 at 9:00 a.m., for hearing of the following motions: (1) Plaintiff Koichi Taniguchi's Motion for Partial Summary Judgment and Defendant Kan Pacific Saipan, Ltd.'s Cross-Motion for Summary Judgment; (2) Plaintiff's Motion for Sanctions; (3) Plaintiff's Motion to Submit a Late Filed Declaration; (4) Defendant's Motion to Dismiss or in the Alternative Motion for Partial Summary Judgment or in the Alternative Motion In Limine; and (5) Defendant's Motion for Summary Judgment on Punitive Damages. Defendant appeared through its attorneys Tim Roberts and Richard W. Pierce. Plaintiff appeared through his attorney Douglas F. Cushnie. Having carefully reviewed the parties' briefs and the relevant legal authority, and having had the benefit of oral argument and good cause appearing, the Court hereby GRANTS Defendant's Cross-Motion for Summary Judgment.

BACKGROUND

This case arises out of a personal injury. On November 6, 2006, Plaintiff Koichi Taniguchi was taken on a tour of the grounds of the Mariana Resort & Spa ("Defendant"). (Taniguchi Depo. at 2.) A piece of a wooden deck broke beneath Mr. Taniguchi and his leg fell through the resulting hole. Following the accident, Mr. Taniguchi said he was fine and that he did not need to go to the doctor. (Opp. to Plaintiff's Motion for Sanctions, Watanabe Decl.

1 (“Dec. 9, 2008 Watanabe Decl.”) ¶ 2.) Mr. Taniguchi returned to Saipan on November 21, 2006
2 and informed Defendant that the fall had caused him to incur medical costs and miss three days
3 of work. (Id. ¶ 3.) On February 11, 2008, Mr. Taniguchi filed suit in this Court alleging that he
4 suffered “various cuts, bruises, and ligament tears” which caused him to incur medical costs and
5 a loss of income. (Comp. ¶¶ 5, 8.) The complaint does not assert any causes of action. The
6 Court will discuss additional specific facts as required in the analysis.

7 ANALYSIS

8 A. Motion for Summary Judgment Legal Standard.

9 Plaintiff moves for summary judgment on the issue of liability and Defendant cross
10 moves on the same issue. Pursuant to Federal Rule of Civil Procedure 56(c), a moving party is
11 entitled to a judgment as a matter of law “if the pleadings, depositions, answers to
12 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
13 genuine issue as to any material fact” See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322
14 (1986). The moving party bears the initial burden of establishing that there is no genuine issue
15 of material fact, “that is, pointing out to the district court [] that there is an absence of evidence to
16 support the nonmoving party’s case.” *Id.* at 325. Only where the moving party meets its burden
17 of establishing that there is an absence of evidence to support the nonmoving party’s case does
18 the burden shift to the nonmoving party to present more than a scintilla of evidence in support of
19 its position. Fed. R. Civ. P. 56(e) (once the moving party has met its burden, the opposing party
20 “must set forth specific facts showing that there is a genuine issue for trial”); *Anderson v. Liberty*
21 *Lobby, Inc.*, 477 U.S. 242, 252 (1986). A dispute is genuine “if the evidence is such that a
22 reasonable jury could return a verdict for the nonmoving party.” *Id.* at 248. “Credibility
23 determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts
24 are jury functions, not those of a judge, [when] ruling on a motion for summary
25 judgment The evidence of the non-movant is to be believed, and all justifiable inferences
26 are to be drawn in his favor.” *Id.* at 255.

24 B. Defendant’s Are Not Liable As a Matter of Law.

25 The instant motions for summary judgment derive from Plaintiff’s allegation that
26 Defendant is liable for Plaintiff’s injuries because Defendant failed to protect its business invitee
from a dangerous condition on its land. The Restatement Second of Torts provides that: “A

1 possessor of land is subject to liability for physical harm caused to his invitees by a condition on
2 the land if, but only if, he (a) knows or by the exercise of reasonable care would discover the
3 condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
4 (b) should expect that they will not discover or realize the danger or will fail to protect
5 themselves against it, and (c) fails to exercise reasonable care to protect them against danger.”¹
6 Restatement 2d of Torts § 343. “An invitee is either a public invitee or a business visitor. . . . A
7 business visitor is a person who is invited to enter or remain on land for a purpose directly or
8 indirectly connected with business dealings with the possessor of the land.” *Id.* § 332.

9 Here, it is undisputed that Plaintiff was an invitee at Defendant’s resort. The alleged
10 dangerous condition on Defendant’s land was the weakened deck. There is no evidence of what
11 actually caused the deck to break. However, even if the Court assumed that there was a
12 dangerous condition, there is also no evidence before the Court that Defendant reasonably should
13 have known of the dangerous condition or that it failed to exercise reasonable care to protect
14 Plaintiff against the danger. Plaintiff seemingly relies on the undisputed fact that the break
15 happened as evidence of the unreasonable condition and Defendant’s failure to adequately
16 protect Plaintiff. The Court cannot rely on allegations alone to find Defendant liable for Mr.
17 Taniguchi’s injury as a matter of law. Accordingly, Plaintiff has failed to fulfill his initial
18 burden under Rule 56 and Plaintiff’s motion for partial summary judgment is DENIED.

19 Next, Defendant moved for cross-summary judgment on the issue of liability. Defendant
20 concedes that the deck broke underneath Plaintiff’s footing and similarly cannot produce
21 evidence of the reason for the break. However, Defendant does present evidence that it
22 exercised reasonable care prior to the accident and never discovered the condition. First,
23 Defendant inspected the deck at weekly intervals and never found any unsafe conditions on the
24 deck. (Watanabe Decl. ¶ 2.) In addition, the entire deck was painted every six months and no
25 defects or dangerous conditions were ever discovered during the painting. (*Id.* ¶ 3.) Moreover,
26 no complaint had ever been made about any unsafe condition on the deck. (*Id.* 4–5.) As such,

¹ In the Commonwealth of the Northern Mariana Islands, “the rules of the common law as expressed in the Restatements of the law as approved by the American Law Institute serve as the applicable rules of decision, in the absence of written or local customary law to the contrary.” *Ito v. Macro Energy, Inc.*, 1993 WL 614805, at *7 (N.M.I. Oct. 26, 1993).

1 Defendant argues that it cannot be liable for Plaintiff's injury because, even assuming that there
2 was a dangerous condition, Defendant exercised reasonable care and never discovered the
3 dangerous condition. Since Defendant did not discover the condition, it could not have realized
4 that the condition posed a risk of harm to its invitees and could not have known that their
5 invitees required protecting from the danger. The evidence fulfills Defendant's initial burden to
6 demonstrate to the Court that there is an absence of evidence to support Plaintiff's case.

7 In response, Plaintiff offers no evidence to create a genuine issue of material fact that
8 Defendant should have known of the condition or that it failed to adequately protect him.
9 Rather, Plaintiff relies on its assertion that Defendant destroyed the evidence of the broken deck
10 and Plaintiff has therefore been unable to determine the cause of the break. However, even
11 assuming that there was a dangerous condition, Plaintiff failed to present *any* evidence to refute
12 Defendant's assertion that it exercised reasonable care prior to the break and therefore could not
13 have known of the dangerous condition. Once Defendant fulfilled its initial burden under Rule
14 56, the burden shifted to Plaintiff to present more than a scintilla of evidence in support of its
15 position. Fed. R. Civ. P. 56(e) (once the moving party has met its burden, the opposing party
16 "must set forth specific facts showing that there is a genuine issue for trial"); *Anderson v. Liberty*
17 *Lobby, Inc.*, 477 U.S. 242, 252 (1986). Here, Plaintiff failed to set forth any facts to create a
18 genuine issue of material fact regarding Defendant's exercise of reasonable care. Accordingly,
19 Plaintiff failed to fulfill his burden to create a genuine issue for trial and Defendant's Cross-
20 Motion for Summary Judgment is GRANTED.²

21
22
23
24
25 ² There are four additional motions before the Court. However, the Court's ruling on
26 the Summary Judgment motions are dispositive and the Court will not address the remaining
motions as they are now moot.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CONCLUSION

In sum, the Court finds that based on the evidence before it there is no genuine issue of material fact that Defendant was not negligent. Accordingly, Plaintiff's Motion for Partial Summary Judgment is DENIED and Defendant's Cross-Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED.

Dated: December 22, 2008



ALEX R. MUNSON
UNITED STATES DISTRICT JUDGE