

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	FIFTEENTH JUDICIAL CIRCUIT
)	
Kelly Jacobs,)	Civil Action No.: 2019-CP-26-01545
)	
Plaintiff,)	
)	
vs.)	<u>ORDER GRANTING DEFENDANT</u>
)	<u>FAMILY KINGDOM, INC.'S</u>
Family Kingdom, Inc.,)	<u>MOTION FOR SUMMARY JUDGMENT</u>
)	
Defendant.)	
)	

This matter is before the Court upon Motion of Defendant, Family Kingdom, Inc. (“Defendant”), for Summary Judgment. A hearing was held on January 7, 2020, and all parties were represented by counsel.

BACKGROUND

This matter arises from a premises liability claim by Plaintiff against Defendant in connection with alleged injuries she suffered while riding a roller coaster at Defendant’s amusement park. Specifically, Plaintiff asserts she was a patron of Family Kingdom on June 9, 2018. (Compl. ¶ 3.). She acknowledges she had a pre-existing back condition but elected to ride a roller coaster while on Defendant’s premises. (Compl. ¶ 4). Plaintiff asserts the roller coaster was rougher than a normal roller coaster and aggravated her pre-existing back conditions. (Compl. ¶ 4).

Defendant filed its Motion for Summary Judgment on the basis that Plaintiff cannot articulate any evidence that Defendant breached a duty to Plaintiff or that any alleged breach is causally connected to Plaintiff’s injuries.

STANDARD OF REVIEW

Summary judgment is appropriate where the “pleadings, depositions, answers to interrogatories and admissions on file together with the affidavits if any show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c) SCRPC. “By its very terms this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported Motion for Summary Judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 106 S.Ct. 2505, 2509, 477 U.S. 242, 248 (1986). “The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder.” *Singleton v. Sherer*, 377 S.C. 185, 197-98, 659 S.E.2d 196, 202 (Ct. App. 2008). In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in a light most favorable to the non-moving party.” *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). “It is well settled that the non-moving party may not rely on mere allegations to resist summary judgment but must present some evidence in the form of affidavits or otherwise in support of its proposition.” *Bd. Of Trs. For the Fairfield County School Dist. v. State of South Carolina*, 409 S.C. 119, 126, 761 S.E.2d 241, 245 (2014). A party’s response to the motion “must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial.” *Moody v. McLellan*, 295 S.C. 157, 163, 367 S.E.2d 449, 452 (Ct. App. 1988).

The summary judgment standard may require Plaintiff to produce only a scintilla of evidence to avoid summary judgment as a matter of law, but a scintilla is a perceptible amount. *Gibson v. Epting et al.*, 426 S.C. 346, 827 S.E.2d 178 (Ct. App. 2019). There still must be a verifiable spark, not something conjured by shadows. *Id. citing Bethea v. Floyd*, 177 S.C. 521, 529, 181 S.E. 721, 724 (1935)(“Scintilla’ means according to 56 C.J. 863, ‘a gleam, a glimmer, a

spark, the least particle, the smallest trace.”); *Crosby v. Seaboard Air Line Ry.*, 81 S.C. 24, 31-32, 61 S.E. 1064, 1067 (1908)(“[A] scintilla of evidence is any material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror”); *Scintilla*, The Oxford English Dictionary (2nd Ed. 2018)(“A spark. . . a minute particle, an atom.”); see *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003) (“When opposing a summary judgment motion, the nonmoving party must do more than ‘simply show that there is metaphysical doubt as the material facts but must come forward with specific facts showing that there is a genuine issue for trial.’ (citations omitted)); *Grimsley v. S.C. Law Enf’t Div.*, 415 S.C. 33, 42, 780 S.E.2d 897, 901 (2015)(affirming trial court’s grant of summary judgment and noticing court of appeals improperly “cherry-picked” an isolated portion of the record, placed it out of context, and “elevated what is, at best, a metaphysical doubt into a genuine issue of material fact”); *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984)(“The judge is not required to single out some morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine.”) *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985)(explaining that summary judgment “cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another”).

DISCUSSION

To establish negligence in South Carolina, a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach. *Carson v. Adgar*, 326 S.C. 212, 486 S.E.2d 3 (1997).

Plaintiff asserts Defendant is obligated to operate its amusement park in a reasonably prudent manner so as not to endanger its guests or patrons. (Compl. ¶ 5). It is alleged Defendant

breached this duty by failing to examine the roller coaster to make sure it was operating properly and in failing to discover latent defects that rendered the roller coaster to be more dangerous than a typical roller coaster. (Compl. ¶ 6). However, Plaintiff failed to provide evidence that Defendant breached any duty owed to Plaintiff.

The Defendant presented evidence, via affidavit, that its roller coaster was tested on October 23, 2018, by a professional engineering firm that specializes in mechanical testing and amusement ride certification. The accelerometer testing performed demonstrated the roller coaster was operating within applicable standards. The Plaintiff did not provide any evidence rebutting this evidence. Instead, Plaintiff's counsel relied solely on the testimony of the Plaintiff and her friends asserting the roller coaster was rougher than others they had previously ridden.

Plaintiff further argued evidence of prior injuries on the roller coaster was enough to create a question of fact. However, this assertion is incorrect. South Carolina does not follow the doctrine of *res ipsa loquitur* – a/k/a “the thing speaks for itself.” *Snow v. City of Columbia*, 305 S.C. 544, 409 S.E.2d 79 (Ct. App. 1991). The mere existence of prior injuries does not indicate the roller coaster was unsafe or that it was operating outside of applicable standards. By comparison, people are injured on ski slopes daily but, such accidents do not indicate that the ski slope operator breached any standard of care owed to skiers. Also, the plaintiff's assertion that the roller coaster ride was rougher than others that she had been on does not indicate any breach of duty, especially in light of the defendant's expert evidence that the defendant complied with all required standards for the operation of a roller coaster.

Plaintiff has failed to provide any evidence Defendant breached a duty or that any alleged breach is causally connected to Plaintiff's injuries. The plaintiff has only argued that the roller coaster operated by the defendant was a rougher ride than any she had been on in the past. Thus,

Plaintiff has failed to demonstrate there is a genuine issue of material fact, and Defendant's Motion must be granted.

CONCLUSION

ACCORDINGLY, IT IS, THEREFORE, ORDERED that Defendant's Motion for Summary Judgment be granted as to each cause of action, and this action is dismissed with prejudice.

AND IT IS SO ORDERED!

The Honorable Benjamin H. Culbertson
Fifteenth Judicial Circuit

Conway, South Carolina

_____, 2020



Horry Common Pleas

Case Caption: Kelly Jacobs VS Family Kingdom Inc

Case Number: 2019CP2601545

Type: Order/Summary Judgment

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148