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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

SONIA TANIO
Plaintiff

ULTIMATE WASH OF MAPLE HEIGHTS ET AL
Defendant

Case No: CV-10-744491

Judge: MICHAEL J RUSSO

JOURNAL ENTRY

96 DISP.OTHER - FINAL

FOR THE FOLLOWING REASONS, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IS DENIED AND DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. THE UNDISPUTED FACTS ARE THAT ON JANUARY 5, 2009 PLAINTIFF SONIA TANIO DROVE TO DEFENDANT ULTIMATE WASH OF MAPLE HEIGHTS, INC. TO WASH HER CAR. SHE ENTERED THE FIRST SELF-SERVICE CAR WASH BAY (WHICH IS OPEN ON BOTH ENDS) AND PARKED. UPON EXITING HER CAR, SHE WALKED AROUND THE REAR OF THE VEHICLE AND SLIPPED ON A PATCH OF ICE. IN THE RESULTING FALL, SHE INJURED HER KNEE. A SIGN POSTED ON THE WALL OF THE CAR WASH WARNED "BAY MAY BE SLIPPERY WHEN WET OR ICY." IT IS WELL SETTLED THAT A POSSESSOR OF PREMISES GENERALLY OWES A BUSINESS INVITEE A DUTY OF ORDINARY CARE IN MAINTAINING THE PROPERTY IN A REASONABLY SAFE CONDITION SO THAT ITS CUSTOMERS ARE NOT UNNECESSARILY AND UNREASONABLY EXPOSED TO DANGER. PASCHAL V. RITE AID, 18 OHIO ST.3D 203, 480 N.E.2D 474 (1985). HOWEVER, THE GENERAL DUTY OF REASONABLE CARE DOES NOT APPLY TO THE POSSESSOR WHEN THE HAZARD IS SO OPEN OR OBVIOUS THAT BUSINESS INVITEES ARE EXPECTED TO EXERCISE REASONABLE CARE TO PROTECT THEMSELVES. ARMSTRONG V. BEST BUY, 99 OHIO ST.3D 79, 2003-OHIO-2573. THE RISK OF ICE FORMING WHILE USING A CAR WASH IN SUBFREEZING TEMPERATURES IS SO OPEN AND OBVIOUS THAT NO DUTY ATTACHES TO THE LAND OWNER ABSENT EVIDENCE THAT THE OWNER HAS SOMEHOW AGGRAVATED THE INHERENT RISK. COUTURE V. OAK HILL RENTALS, LTD., 6TH DIST. NO. OT-03-048, 2004-OHIO-5237 AND BEVINS V. ARLEDGE, 4TH DIST. NO. 03CA19, 2003-OHIO-729. IN THIS INSTANCE, PLAINTIFF HAS FAILED TO PRODUCE ANY EVIDENCE THAT DEFENDANT AGGRAVATED THE INHERENT RISK PLAINTIFF ASSUMED IN WASHING HER CAR IN WINTERTIME. IN AN ATTEMPT TO FORESTALL SUMMARY JUDGMENT, PLAINTIFF HAS ARGUED THAT THE CAR WASH HAD A FLOOR-HEAT SYSTEM THAT WAS NOT ENGAGED OR NOT WORKING PROPERLY AT THE TIME OF HER FALL. NEVERTHELESS, PLAINTIFF HAS NOT DEMONSTRATED ANY RELIANCE ON THE USE OF A FLOOR-HEAT SYSTEM OR THAT IT INDUCED HER TO PATRONIZE THIS CAR WASH, NOR HAS PLAINTIFF CITED ANY STATUTORY OR OTHER AUTHORITY REQUIRING AN OPEN BAY CAR WASH TO HAVE A FLOOR-HEAT SYSTEM. IN SIMILAR FASHION, THE CLAIMANT IN WORKMAN V. W. & W. DEV. CORP., 5TH. DIST. NO. 2010-CA-0138, 2011-OHIO-2305, ARGUED THAT THE BLACK ICE HE SLIPPED ON WAS INHERENTLY NOT OPEN AND OBVIOUS AND THAT THE CAR WASH BOILER SHOULD HAVE BEEN RUNNING 24 HOURS A DAY SO THAT THE INTERIOR FLOOR OF THE CAR WASH BAYS WOULD NOT FREEZE OVERNIGHT. BOTH OF THESE ARGUMENTS WERE REJECTED IN WORKMAN AND THE GRANTING OF SUMMARY JUDGMENT WAS AFFIRMED ON THE BASIS ON THE OPEN AND OBVIOUS DOCTRINE. IN PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, TANIO ASSERTS THAT THE BOILER WAS NOT INSPECTED BY THE STATE AND THAT THIS OMISSION WAS THE PROXIMATE CAUSE OF HER INJURIES. THE COURT FINDS THIS ARGUMENT AND THE OTHERS RAISED BY PLAINTIFF TO BE UNSUPPORTED AND UNPERSUASIVE. THE RISK OF ICE IN DEFENDANT'S CAR WASH WAS OPEN AND OBVIOUS AND A SPECIFIC WARNING HAD BEEN POSTED, THUS PLAINTIFF SHOULD HAVE EXERCISED REASONABLE CAUTION TO PROTECT HERSELF WHEN WALKING IN THE CAR WASH BAY. ACCORDINGLY, THE COURT FINDS THAT THERE ARE NO GENUINE ISSUES OF MATERIAL FACT AND THAT DEFENDANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS GRANTED AND PLAINTIFF'S MOTION FOR SUMMARY

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JUDGMENT IS DENIED.
COURT COST ASSESSED TO THE PLAINTIFF(S).

Judge Signature 07/19/2012

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07/17/2012

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