DENISE LEWIS, Plaintiff v. W. BENSON FRY, JR., Defendant

No. 2016-SU-003050

Slip and Fall – "Hills and Ridges" Doctrine – Premises Liability

1. The Court granted Defendant W. Benson Fry's Motion for Summary Judgment, and dismissed all of Plaintiff Denise Lewis' claims, with prejudice, based on the conclusion that Plaintiff failed to establish a *prima facie* case and Defendant is entitled to judgment as a matter of law under both the "hills and ridges" doctrine and premises liability.

2. The underlying action was filed after Plaintiff fell, sustaining a broken hip, on Defendant's property after the parties returned from a date, during which snow/sleet had fallen.

3. In its finding, the Court noted that in the event that Defendant could show that the "hills and ridges" doctrine applies to the present case, Plaintiff would be unable to establish a *prima facie* case to prevail at trial over Defendant because Plaintiff has not established any facts to demonstrate that snow or ice accumulated to an unreasonable size or character that would obstruct her travel and Plaintiff also cannot establish exactly what made her fall. The Court notes that Plaintiff has failed to include any facts in the pleadings, interrogatories, or depositions about the size or characteristic of any snow or ice that caused her to fall.

4. In granting Defendant's Motion for Summary Judgement, the Court concluded that even viewing this motion in a light most favorable to the non-moving Plaintiffs, the Plaintiff has failed to establish a prima facie case in the pleadings, answers to interrogatories, and depositions under either the "hills and ridges" doctrine or general premises liability. As a result, the *Nanty-Glo* Rule is inapplicable to the present case, because Plaintiff cannot establish a prima facie case under either theory.

IN THE COURT OF COMMON PLEAS YORK COUNTY PENNSYLVANIA

DENISE LEWIS	:	
Plaintiff	:	No. 2016-SU-003050
	:	
v.	:	CIVIL DIVISION
	:	
W. BENSON FRY, JR.	:	
Defendant	:	

APPEARANCES:
MICHAEL J. PISANCHYN, JR., Esquire
Attorney for the Plaintiff

MICHAEL B. SCHEIB, Esquire
Attorney for the Defendant

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

AND NOW, this 27th day of November, 2017, pursuant to Pennsylvania Rule of Civil Procedure 1035.2 the Court hereby GRANTS Defendant W. Benson Fry's Motion for Summary Judgment, and dismisses all of Plaintiff Denise Lewis' claims, with prejudice, based on the conclusion that Plaintiff failed to establish a

prima facie case and Defendant is entitled to judgment as a matter of law under both the "hills and ridges" doctrine and premises liability.

Factual and Procedural History

Plaintiff Denise Lewis and Defendant W. Benson Fry, Jr. are adult individuals who reside in York County. Plaintiff and Defendant had been dating for eight years when an incident occurred on November 16, 2014. On this date, Plaintiff drove to Defendant's residence and the two then drove to the VFW to have dinner together. Plaintiff alleges that it had been raining when she drove to the Defendant's residence. While the parties were at the VFW, it was alleged that the rain had started to mix with sleet.

Plaintiff and Defendant drove back to Defendant's residence after the dinner. Plaintiff alleges that she stepped out of the vehicle, began to walk towards the Defendant's residence using the driveway, and she slipped and fell. Plaintiff sustained a broken hip in the fall.

On November 7, 2016, Plaintiff filed a complaint alleging negligence and recklessness against Defendant. On December 27, 2016, Defendant filed an answer with new matter. On July 31, 2017, Defendant filed a motion for summary judgment and a supporting brief. On August 25, 2017, Plaintiff filed a response

and brief in opposition to the motion for summary judgment. On August 29, 2017, Defendant filed a reply brief.

Discussion

"Summary judgment is proper when all the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Pa.R.C.P. 1035.2; *Baker v. Cambridge Chase, Inc.*, 725 A.2d 757, 764 (Pa. Super. 1999). "The moving party has the burden of proving the nonexistence of any genuine issue of fact." *Thompson Coal Co. v. Pike Coal Co.*, 412 A.2d 466, 468-69 (Pa. 1979); *citing Kent v. Miller*, 294 A.2d 821 (Pa. Super. 1972). "All doubts as to the existence of a genuine issue of a material fact must be resolved against the moving party." *Id.* at 469 *citing Ritmanich v. Jonnel Enterprises, Inc.*, 280 A.2d 570 (Pa. Super. 1971). "Summary judgment is granted only in the clearest of cases, where the right is clear and free from doubt." *Id.* at 468; *citing Kotwasinski v. Rasner*, 258 A.2d 865 (Pa. 1969). "Where the non-moving party bears the burden of proof on an issue, [they] may not merely rely on [their] pleadings or answers in order to survive summary judgment." *Murray v. Albright College*, 2014 WL 10936796, 3 (Pa. Super. 2014); *citing Babb v. Ctr.*

Cmty. Hosp., 47 A.3d 1214, 1223 (Pa. Super. 2012). "Failure of a non-moving party to adduce sufficient evidence on an issue essential to [their] case and on which [they] bear the burden of proof establishes the entitlement of the moving party to judgment as a matter of law." *Id.*

"Summary judgment is proper if, after the completion of discovery relevant to the motion . . . 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 would require the issues to be submitted to a jury." *Alexander v. City of Meadville*, 61 A.3d 218, 221 (Pa. Super. 2012). "Thus, a record that supports summary judgment will either (1) show the material facts are undisputed or (2) contain insufficient evidence of facts to make out a *prima facie* cause of action or defense and, therefore, there is no issue to be submitted to the jury." *Id.*

In his motion for summary judgment, Defendant argues that Plaintiff's claims fail because the "hills and ridges" doctrine applies to the facts of the case and Plaintiff has not alleged sufficient facts that would allow her to recover under the "hills and ridges" doctrine. In addition, Defendant argues that even if the doctrine does not apply, Plaintiff cannot establish the requisite elements of a premises liability claim against the Defendant.

Plaintiff argues that summary judgment is not appropriate because Defendants are basing their motion for summary judgment on Plaintiff's oral testimony, which is in violation of the *Nanty-Glo* rule. Plaintiff also argues that weather reports show that the temperature did not drop below freezing on the day of the fall and Defendant's argument that the weather condition occurred after the couple left for dinner is based only on a broad assumption of Plaintiff's testimony. Plaintiff also argues that Defendant's motion for summary judgment is based on several generalized assumptions and that there are genuine issues of material facts present in this case. Plaintiff asserts that the "hills and ridges" doctrine does not apply to the present case and Plaintiff has established a prima facie case under premises liability.

The Court finds that even viewing this motion in a light most favorable to the non-moving Plaintiff, the Plaintiff has not established a prima facie case for recovery under the "hills and ridges" doctrine or premises liability. As a result, the *Nanty-Glo* Rule is not applicable to the present case and Defendants are entitled to judgment as a matter of law.

I. Plaintiff has not established a prima facie case under the Hills and Ridges Doctrine.

"The 'Hills and Ridges' Doctrine is a longstanding and well entrenched legal principle that protects an owner or occupier of land from liability for generally slippery conditions resulting from ice and snow where the owner has not permitted the ice and snow to unreasonably accumulate in ridges or elevations." *Morin v. Traveler's Rest Motel, Inc.*, 704 A.2d 1085, 1087 (Pa. Super. 1997); citing *Harmotta v. Bender*, 601 A.2d 837 (1992). "The doctrine . . . is a refinement or clarification of the duty owed by a possessor of land and is applicable to a single type of dangerous condition, i.e., ice and snow." *Id.*; quoting *Wentz v. Pennswood Apartments*, 518 A.2d 314, 316 (1986). The rationale behind the doctrine is as follows: "to require that one's walks be always free of ice and snow would be to impose an impossible burden in view of the climatic conditions in this hemisphere." *Id.* The doctrine applies equally to both public and private spaces. *Id.* at 1088; *Wentz*, 518 A.2d at 316.

"In order to recover for a fall on an ice or snow covered surface . . . a plaintiff [must] prove: (1) that snow and ice had accumulated on the sidewalk in ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians traveling thereon; (2) that the property owner had notice, either actual or constructive, of the existence of such condition; [and] (3) that it was the dangerous accumulation of snow and ice which caused the

plaintiff to fall." *Id.*; *Rinaldi v. Levine*, 176 A.2d 623, 625 (Pa. 1962). The plaintiff sustains the burden to prove "not only that there was an accumulation of snow and ice on the sidewalk but that such accumulation, whether in the form of ridges or other elevations, was of such size and character to constitute a substantial obstruction to travel." *Rinaldi*, 176 A.2d at 626.

In *Morin*, Plaintiff was staying at Defendant Traveler's Rest Motel overnight and freezing precipitation fell during the late night into the following morning. 704 A.2d at 1086. The next morning, the motel manager spread salt and sand around part of the parking lot, but did not spread salt around the entire parking lot. *Id.* at 1086-87. The next morning, Plaintiff was crossing the parking lot when she fell on a part of the parking lot that was not salted or sanded, fracturing her shoulder and elbow. *Id.* at 1087. Plaintiff filed suit against Defendant alleging negligence. *Id.* Defendant filed a motion for summary judgment arguing that the "hills and ridges" doctrine applied to the facts of the case and Plaintiff did not proffer any evidence that Defendant allowed snow or ice to "accumulate unreasonably" on their premises. *Id.* The trial court agreed and granted Defendant's motion for summary judgment. *Id.*

On appeal, the Superior Court affirmed the decision of the trial court in granting Defendant's motion for summary judgment. *Id.* at 1089. The Court found

that generally slippery conditions existed in this case which barred Plaintiff's recovery under the "hills and ridges" doctrine. *Id.* at 1088. The Court based this conclusion on the following facts: the freezing precipitation that fell overnight, several news reports that detailed the freezing precipitation falling all over Lancaster County and making the roads treacherous for drivers, and Plaintiff's own admission that "after she had fallen she realized the entire parking lot was covered with a thin glaze of ice." *Id.*

In *Rinaldi,* Plaintiff testified at trial that he was walking home from work on January 15, 1957, while it was snowing, and saw "all fresh snow" on the curb outside of the defendant's property. 176 A.2d at 625. Plaintiff testified that "he could feel [his] leg step on a piece of ice . . . a ridge of ice or something" and the condition of the ground was "bumps here, bumps there, right in front of where [he] fell." *Id.* Plaintiff did not testify about the size or character of the bumps, ice, or ridge of ice, and his testimony specifically stated that: "he stepped either on a 'piece of ice' or 'a ridge of ice' or 'something'." *Id.* Records from the Weather Bureau indicated that it had snowed the evening of January 13 into the morning of January 14 at 8:00 a.m. and then began snowing again at 4:00 p.m. on January 15th continuing into the time when Plaintiff fell on the sidewalk. *Id.* At trial, the jury awarded a verdict in favor of the Plaintiff for $10,000, but this award was vacated

when the trial court granted the defendant's motion for judgment notwithstanding the verdict." *Id.* at 624.

On appeal, the Pennsylvania Supreme Court affirmed the trial court's grant of the defendant's motion for judgment notwithstanding the verdict. *Id.* at 627. The Court found that the plaintiff failed to sustain his burden that the snow had accumulated unreasonably on the sidewalk that caused a danger to pedestrians and that plaintiff failed to establish a causal connection between the accumulation of snow or ice and his fall. *Id.* at 626. The Court found that the plaintiff's testimony that the sidewalk was merely "icy, bumpy, lumpy, or hilly, and covered with a fresh layer of snow", failed to provide "any evidence of the size or character of the ridges, bumps, lumps, hills, or other elevations of the snow or ice such as would constitute an obstruction or danger to the traveling public." *Id.* In addition, the plaintiff could not testify as to what actually caused him to fall, testifying that "either 'a piece of ice' or 'a ridge of ice' or 'something' caused him to slip and fall." *Id.* The Court found that the plaintiff's failure to specify exactly what made him fall would have required the jury to use "only . . . conjecture and guesswork" to determine what made the plaintiff fall. *Id.* The Court found that the plaintiff failed to sustain his burden of proof during the trial and the trial court granting the defendant's motion for judgment notwithstanding the verdict was proper. *Id.*

In the present case, we note that in the event that Defendant could show that the "hills and ridges" doctrine applies to the present case, Plaintiff would be unable to establish a *prima facie* case to prevail at trial over Defendant because Plaintiff has not established any facts to demonstrate that snow or ice accumulated to an unreasonable size or character that would obstruct her travel and Plaintiff also cannot establish exactly what made her fall. The Court notes that Plaintiff has failed to include any facts in the pleadings, interrogatories, or depositions about the size or characteristic of any snow or ice that caused her to fall.

Plaintiff testified in her deposition that it began to sleet when the parties left the VFW, which supports the fact that generally slippery conditions existed in the area like in *Morin,* and the driveway was slippery when she fell. (See Deposition of Denise Lewis, May 12, 2017, pp. 113-23). However, Plaintiff never provides any details about the condition of the driveway other than to say it was slippery. *Id.* Plaintiff does not give any facts about the accumulation of snow or ice, admitting that it was dark and she could not see the accumulation on the driveway. (*Id.* at p. 122, ll. 21-25; p. 123, ll. 1-3.)

In addition, Plaintiff states numerous times throughout the deposition that she does not know what caused her to fall, at times surmising that it may have been the sleet and other times saying that it was the sleet that caused her to fall.

(*Id.* at p. 113, ll. 10-20; p. 115, ll. 1-10, 15-24; p. 116 ll. 1-6; p. 119, ll. 14-25; p. 120 ll. 1-23; p. 121, ll. 1-25; p. 122, ll. 1-24; p. 123, ll. 1-8).

Even when we look at the facts in the light most favorable to Plaintiff, it is clear that Plaintiff has not provided sufficient facts to establish a *prima facie* case that would allow her to recover under the "hills and ridges" doctrine. Similar to the *Rinaldi* case, Plaintiff has not provided any description about the size or character of any snow or ice that had accumulated on Defendant's property and, also like *Rinaldi*, Plaintiff cannot state for certain what caused her to fall. The only information that can be ascertained from Plaintiff's testimony is that it sleeted, the driveway was slippery, and that she may or may not have fallen due to the sleet. These facts are not sufficient to recover under the "hills and ridges" doctrine because there is no evidence that Defendant allowed sleet to accumulate on his driveway to an unreasonable degree nor is there evidence that snow or ice from previous weather conditions had accumulated on Defendant's property to an unreasonable degree.

Therefore, in the event that the "hills and ridges" doctrine would be applicable to the present case, Plaintiff would not be able to establish a *prima facie* case and Defendants are entitled to judgment as a matter of law under this theory.

II. Even if the "hills and ridges" doctrine is inapplicable, Plaintiff has not established a prima facie case of negligence under a premises liability theory.

Defendant argues that even if the "hills and ridges" doctrine does not apply to the present case, Plaintiff still would not be able to recover under a premises liability theory of negligence. We agree.

When analyzing a case under a premises liability theory, the court must first establish the status of the person that is present on the land. "It is well-settled that '[t]he duty of a possessor of land toward a third party entering the land depends upon whether the entrant is a trespasser, licensee, or invitee.'" *Cresswell v. End,* 831 A.2d 673, 675 (Pa. Super. 2003). "A licensee is a person who is privileged to enter or remain on land only by virtue of the possessor's consent." Restatement (Second) of Torts Section 330. The Restatement identifies social guests as licensees. *Id.*, Comment h(3).

The Court finds that Plaintiff was a licensee when she came onto Defendant's property based on the fact that Plaintiff testified that she was a social guest of the Defendant and the two were meeting for the purpose of going out on a date. (Deposition of Denise Lewis, May 12, 2017, pp. 99-104).

The Restatement (Second) of Torts § 342 states the duty that a possessor of land owes to licensees and when they can be held liable for physical harm that occurs on their property. The Restatement (Second) of Torts § 342, Dangerous Conditions Known to Possessor, states:

> A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if,
>
> (a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees and should expect that they will not discover or realize the danger, and
>
> (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and
>
> (c) the licensees do not know or have reason to know of the condition and the risk involved.

Id.

In *Alexander v. City of Meadville,* 61 A.3d 218, 220 (Pa. Super. 2012), Plaintiff left a bar on a night that it had been snowing steadily and started walking home around 1:20 am.. Plaintiff descended down a sidewalk ramp on the corner of Chestnut and Market Streets when he "fell on a smooth patch of ice covered by approximately one to two inches of snow in the dip of the ramp" outside of Defendant Patron Mutual's property. *Id.* Plaintiff sued the City of Meadville and Patron Mutual for negligently failing to remove the snow and ice off of the ramp. *Id.* Plaintiff did cite to a city ordinance that required property owners to maintain

their sidewalks in a reasonably safe condition that included removing snow and ice accumulations. *Id.* Defendants filed motions for summary judgment, which the trial court granted. *Id.*

In addition to discussing the Hills and Ridges Doctrine, the Superior Court also stated that under Restatement (Second) of Torts § 342 Plaintiff "fail[ed] to establish that [Defendant] Patron Mutual had notice of the icy conditions that caused [Plaintiff's] injuries." *Id.* at 222. The Court held that the incident occurred well outside of the weekend business hours of Defendant Patron Mutual, therefore, "[Defendant] would not have had notice of the accumulation of the ice and snow, nor would it be proper for [the Court] to hold that [Defendant] should have known of this condition at the time of the accident." *Id.* The Court found that Defendant was not negligent for failing to remove the snow and ice on the ramp. *Id.*

In the present case, again we note that Plaintiff cannot state for certain what caused her to fall on the driveway. (Deposition of Denise Lewis, May 12, 2017, p. 113, ll. 10-20; p. 115, ll. 1-10, 15-24; p. 116 ll. 1-6; p. 119, ll. 14-25; p. 120 ll. 1-23; p. 121, ll. 1-25; p. 122, ll. 1-24; p. 123, ll. 1-8). Throughout Plaintiff's deposition, Plaintiff states that the sleet may or may not have caused her to fall. *Id.* Assuming that the sleet did cause Plaintiff to fall, Plaintiff has not set out a prima facie case under premises liability because Plaintiff has failed to present facts that

would support the conclusion that Defendant knew about the dangerous condition of the sleet on his driveway.

The facts show that Plaintiff and Defendant met at the Defendant's property, then left to go to dinner at the VFW, and it began to sleet while the parties were at the VFW. (See Deposition of Denise Lewis, May 12, 2017, pp. 113-23). Under these facts, the alleged dangerous condition on the Defendant's property did not occur until after the parties left Defendant's property and Defendant would not have been aware of the danger until the parties returned from the VFW. Similar to the *Alexander* case, where the dangerous condition occurred when the business was not in operation, the Plaintiff in the present case has not alleged any facts that would demonstrate Defendant knew about the dangerous condition of the sleet because the facts demonstrate the sleet occurred while the parties were off the property. Defendant would not have had notice of the dangerous condition until after the parties arrived back at Defendant's property, which is when Plaintiff fell.

Plaintiff also alleged in her deposition that earlier in the day it had been raining, and she had no difficulty navigating the driveway when she first arrived at the Defendant's property. (*Id.* at 101-102, 106). The testimony reflects that the conditions of the driveway did not change until after the parties arrived back from

the VFW which is when the sleet began to fall. (*Id.* at 113-123). The Restatement (Second) of Torts § 342, Comment G notes that if the condition of the land changes after the licensee has entered, or after the licensee has been given permission to enter but before the licensee enters, the rule will still be applicable. *Id.* Under these circumstances, if Plaintiff and Defendant had remained on the property during the time that the sleet fell, and Plaintiff could demonstrate that Defendant knew about the sleet on the driveway while Plaintiff was on the property and did not exercise reasonable care to make the condition safe, then the outcome of the case may have been different. However, under the facts averred, Plaintiff and Defendant left the property and the condition changed while they were off the property. Therefore, Defendant would not have known about the condition of his driveway until after the parties arrived back from the VFW because the sleet started falling after the parties left the property. Plaintiff has failed to allege any fact that would allow this Court to find a prima facie case under premises liability in the event that the sleet caused the Plaintiff to fall because Plaintiff cannot show Defendant knew about the condition and failed to exercise reasonable care to make the condition safe because the parties were not present on the property when the sleet began to fall. Therefore, Defendant is entitled to judgment as a matter of law under this theory.

In the alternative, even if Plaintiff would allege that the sleet did not cause her to fall, the record is silent as to an additional dangerous condition that caused the Plaintiff to fall on the driveway. Plaintiff alleges that it may have been the sleet that caused her to fall or it may not have been. (*Id.* at 113-15). In addition, when asked whether any other condition existed that caused the fall, Plaintiff said, "No." (*Id.* at 123-24). Unlike the *Tonik* case where Plaintiff was able to demonstrate that there was an isolated patch of ice inside a crack in the sidewalk, the Plaintiff in the present case has not presented any additional reason for why she fell other than the fact that there was sleet on the driveway. In order for Plaintiff to recover under a premises liability theory, Plaintiff must establish what dangerous condition existed on the land that caused her to fall. If Plaintiff cannot state the dangerous condition, then Plaintiff fails to make out a prima facie case under premises liability.

Under the facts of the present case, Plaintiff has failed to establish that there is a genuine issue of material fact as to what caused her fall because the only explanation identified in the pleadings, interrogatories, and depositions is that the sleet caused her to fall. Plaintiff has not identified any other specific dangerous condition on Defendant's land that caused her to fall. Under these facts, Plaintiff fails to make out a prima facie case under premises liability and Defendant is entitled to judgment as a matter of law.

III. The Nanty-Glo Rule does not apply if Plaintiff cannot establish a prima facie case.

"Originally, the *Nanty-Glo* rule established that testimonial affidavits of the moving party or his witnesses, even if uncontradicted, would not afford a sufficient basis for the entry of a directed verdict, since the credibility of the testimony is still a matter for the jury." *Troy v. Kampgrounds of America, Inc.*, 581 A.2d 665, 669 (Pa. Super. 1990). "The court expanded the *Nanty-Glo* rule to preclude the trial court from making such determinations of credibility with regard to any party's oral testimony or testimonial affidavit." *Id.*

"There have been numerous cases addressing the *Nanty-Glo* doctrine in the context of summary judgments." *Dudley v. USX Corp.*, 606 A.2d 916, 920 (Pa. Super. 1992). "There is an inherent three-step process involved in determining whether the *Nanty-Glo* Rule applies so as to preclude a grant of summary judgment." *Id.*

> Initially, it must be determined whether the plaintiff has alleged facts sufficient to establish a prima facie case. If so, the second step is to determine whether there is any discrepancy as to any facts material to the case. Finally, it must be determined whether, in granting summary judgment, the trial court has usurped improperly the role of the jury by resolving any material issues of fact. It is only when the third stage is reached that *Nanty-Glo* comes into play. Thus, it is true that *Nanty-Glo* precludes summary judgment where the moving party relies solely upon

> testimonial affidavits and depositions of his witnesses to resolve material issues of fact. However, if there are no material issues of fact, or if the non-moving party has failed, in the first instance, to allege facts sufficient to make out a prima facie case, then summary judgment may be granted properly, even if the moving party has only set forth the pleadings and depositions of his witnesses in support thereof.

Dudley, 606 A.2d at 920.

"Error only occurs if the moving party, in relying upon the testimonial affidavits of his witnesses, is attempting to resolve a material issue of fact, or . . . is attempting to demonstrate the lack of any material issues of fact by asserting that the testimony of his witnesses is uncontradicted." *Id.* "If there are no material issues of fact in dispute, and Plaintiff has failed to allege facts sufficient to make out a *prima facie* case, as a matter of law, then summary judgment may be granted properly." *Id.*

We find that the *Nanty-Glo* Rule is inapplicable to the present case because Plaintiff has failed to establish a prima facie case through the pleadings, answers to interrogatories, and depositions. We find that Plaintiff could not overcome her burden of proving liability under the "hills and ridges" doctrine and, even if the "hills and ridges" doctrine is inapplicable, Plaintiff still cannot establish a prima facie case for premises liability. We note that *Nanty-Glo* is only applicable if the reviewing court finds that a prima facie case has been established. Our ruling is not based on a determination of the credibility of the Plaintiff or the Defendant's

statements. Our ruling is based on the conclusion that the Plaintiff has failed to provide sufficient facts that would allow this Court to find, as a matter of law, that Plaintiff established a prima facie case under either theory of liability presented in this case. For the reasons discussed below, we find Plaintiff failed to establish a prima facie case under the "hills and ridges" doctrine or premises liability. As a result, the *Nanty-Glo* Rule does not preclude this Court from granting Defendant's motion for summary judgment in this case.

Conclusion

The Court finds that, even viewing this motion in a light most favorable to the non-moving Plaintiffs, the Plaintiff has failed to establish a prima facie case in the pleadings, answers to interrogatories, and depositions under either the "hills and ridges" doctrine or general premises liability. As a result, the *Nanty-Glo* Rule is inapplicable to the present case, because Plaintiff cannot establish a prima facie case under either theory.

For the reasons stated above, Defendant is entitled to judgment as a matter of law. Plaintiff's entire claim is dismissed, with prejudice.

Copies of this order are to be sent to: Michael J. Pisanchyn, Jr., Esquire, attorney for the Plaintiff; and Michael B. Scheib, Esquire, Esquire, attorney for the Defendant.

BY THE COURT:

_____
Richard K. Renn, Judge