IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NICOLAE LUCACIU and LIVIA LUCACIU, H/W,	:	
Plaintiffs,	:	
	:	CIVIL ACTION NO. 3:04-CV-1253
v.	:	
LOWE'S HOME CENTERS, INC.,	:	(JUDGE CAPUTO)
Defendant.	:	

MEMORANDUM

Presently before the Court is Defendant's Motion for Summary Judgment. (Doc. 17.) I will deny Defendant's motion because the hills and ridges doctrine does not apply and there are genuine issues of material fact whether Defendant was negligent in its maintenance of the loading dock area. The Court has jurisdiction pursuant to 28 U.S.C. § 1332. ____

BACKGROUND

The following facts are not in dispute. Plaintiff Nicolae Lucaciu is an independent owner/operator truck driver for KJ Transportation. (Doc. 25, Ex. A at 12-13) In this capacity, Mr. Lucaciu makes deliveries throughout the Northeast. On December 28, 2001, Mr. Lucaciu was making a delivery of cabinets to Defendant Lowe's Home Centers, Inc. (hereinafter Lowe's), in Dickson City, Pennsylvania. (Doc. 18 ¶¶ 1 & 2.) After the delivery was unloaded, Mr. Lucaciu slipped on a patch of ice on the pavement of the loading dock area as he was closing the doors of his trailer. (*Id*. ¶ 7.) Plaintiffs submit evidence that there had been no snowfall the entire month of December and there had been no rainfall for five days prior to Mr. Lucaciu's fall. (Doc. 25, Ex. D.) The parties

agree that the weather the morning of the accident was cold. (Doc. 18 ¶ 12.)

Plaintiffs submit evidence that as a result of the fall Mr. Lucaciu's eyeglasses were broken, he suffered a cut above his left eye, and he suffered an injury to his left shoulder. (Doc. 25, Ex. A at 28.) Mr. Lucaciu underwent surgery to repair the rotator cuff in his left shoulder (*id*. at 39), and he subsequently underwent approximately five months of physical therapy (*id.* at 41). During his recovery, Mr. Lucaciu missed approximately nine months of work. (*Id.* at 42.) Mr. Lucaciu is now able to work again (*id*. at 52), although Plaintiffs submit evidence that Mr. Lucaciu's injuries have ongoing effects. He testified that he has headaches approximately once a month (*id.* at 49), and he has pain in his shoulder as he moves throughout the day (*id.* at 50-51).

Mr. Lucaciu and his wife filed suit against Lowe's for recovery of medical expenses, lost wages, pain and suffering, and other damages. (Doc. 1.) Defendant filed Defendant's Motion for Summary Judgment. (Doc. 17.) The motion has been briefed, although Defendant did not file a reply brief. The matter is now ripe for disposition.

LEGAL STANDARD

Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). A fact is material if proof of its existence or non-existence might affect the outcome of the suit under the applicable substantive law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Where there is no material fact in dispute, the moving party need only establish

that it is entitled to judgment as a matter of law. Where, however, there is a disputed issue of material fact, summary judgment is appropriate only if the factual dispute is not a genuine one. *See id.* at 248. An issue of material fact is genuine if "a reasonable jury could return a verdict for the nonmoving party." *Id*.

Where there is a material fact in dispute, the moving party has the initial burden of proving that: (1) there is no genuine issue of material fact; and (2) she is entitled to judgment as a matter of law. *See* 2D CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 2727 (2d ed. 1983). The moving party may present its own evidence or, where the nonmoving party has the burden of proof, simply point out to the court that "the nonmoving party has failed to make a sufficient showing of an essential element of her case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party, and the entire record must be examined in the light most favorable to the nonmoving party. *See White v. Westinghouse Elec. Co.*, 862 F.2d 56, 59 (3d Cir. 1988). Once the moving party has satisfied its initial burden, the burden shifts to the nonmoving party to either present affirmative evidence supporting its version of the material facts or to refute the moving party's contention that the facts entitle it to judgment as a matter of law. *See Anderson*, 477 U.S. at 256-257. The Court need not accept mere conclusory allegations, whether they are made in the complaint or a sworn statement. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990). In deciding a motion for summary judgment, "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for

trial." *Anderson*, 477 U.S. at 249.

DISCUSSION

Defendant contends that it is entitled to summary judgment because the hills and ridges doctrine determines that, as a matter of law, it owed no duty to Plaintiff to ensure that the loading area was ice-free.

As a general principle, possessors of land owe a general duty of care to protect business invitees from foreseeable harm. *Carrender v. Fitterer*, 469 A.2d 120, 123 (Pa. 1983) (citing RESTATEMENT (SECOND) OF TORTS §§ 341A, 343 & 343A (1965)). The hills and ridges doctrine creates an exception to this duty for generally slippery conditions resulting from ice and snow. *Morin v. Traveler's Rest Motel, Inc.*, 704 A.2d 1085, 1087 (Pa. Super. Ct. 1997) (citing *Wentz v. Pennswood Apartments*, 518 A.2d 314, 316 (Pa. Super. Ct. 1986)). Under the hills and ridges doctrine, a land owner is only liable for injuries resulting from ice and snow when the owner permitted the ice or snow to unreasonably accumulate in ridges or elevations. *Id.* (citing *Harmotta v. Bender*, 601 A.2d 837 (Pa. Super. Ct. 1992)). A prerequisite for the application of the hills and ridges doctrine is a generally slippery condition. *Harmotta*, 601 A.2d at 842. Liability for isolated patches of ice are not governed by the hills and ridges doctrine. *Id.*; *Tonik v. Apex Garages, Inc.,* 275 A.2d 296, 298 (1971) (citing *Williams v. Shultz*, 240 A.2d 812 (Pa. 1968)).

In the present case, Plaintiffs submit evidence that at the time of the accident there were no generally slippery conditions present. In particular, Plaintiffs submit evidence that the prior precipitation of any significance (0.10 inches) occurred five days prior (Doc. 25, Ex. D) and that there had been no precipitation in the day prior to Mr.

Lucaciu's injury. (*Id.*; *see also* Doc. 25, Ex. A at 15.) Plaintiffs also submit evidence that the patch of ice Mr. Lucaciu slipped on was an isolated patch on an otherwise clear parking lot and there were no icy conditions on the walkways, roads, or other areas in the vicinity. (Doc. 25, Ex. A at 17-20.)

The evidence submitted by Plaintiffs creates a factual scenario not dissimilar from facts in the case of *Tonik v. Apex Garages, Inc.* 275 A.2d 296 (1971). In that case, the Supreme Court of Pennsylvania described the accident as occurring when "there had been no recent precipitation . . . and there was no ice or snow on any sidewalks along the way." *Id*. at 297. The court went on to hold that "[w]here, as here, a specific, localized patch of ice exists on a sidewalk otherwise free of ice and snow, the existence of 'hills and ridges' need not be established." *Id*. at 298. That principle applies equally to the undisputed facts of the present case. Thus, I find that the hills and ridges doctrine is inapplicable to the current case.

Defendant next argues that there is no genuine issue of material fact that it exercised reasonable care in the maintenance of the loading dock area. I disagree. The law is clear that a business owes a duty of care to its invitees to protect them against foreseeable harm. *Carrender*, 469 A.2d at 123.

> If conditions on the land are known to or discoverable by the possessor, he is subject to liability only where he:
>
> (a) knows or by exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitee; and
>
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it; and
>
> (c) fails to exercise reasonable care to protect them against the danger.

Banks v. Trs. of Univ. of Pa., 666 A.2d 329, 331 (Pa. Super. Ct. 1995) (citing RESTATEMENT (SECOND) OF TORTS § 343); *see also Carrender*, 469 A.2d at 123.

Thus, the burden is upon Plaintiffs to show that Defendant Lowe's was negligent, and that the negligence was the proximate cause of their injuries. *Tonik*, 275 A.2d at 298 (citing *Malitovsky v. Harshaw Chem. Co.*, 61 A.2d 846 (1948)). Whether Lowe's satisfied this duty of care is a question of fact for the jury. Therefore, I will deny Defendant's motion.

CONCLUSION

I will deny Defendant's motion because the hills and ridges doctrine is not applicable to the present case and there are genuine issues of material fact as to whether Defendant acted negligently in maintaining its loading dock area.

An appropriate order follows.

March 21, 2005
Date

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge

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LOWE'S HOME CENTERS, INC.,	:	(JUDGE CAPUTO)
Defendant.	:	

ORDER

NOW, this 21st day of March, 2005, **IT IS HEREBY ORDERED** that Defendant's Motion for Summary Judgment (Doc. 17) is **DENIED**.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge