[Cite as *South v. Cleveland State Univ.*, 2022-Ohio-3087.]

MARCH SOUTH Plaintiff v. CLEVELAND STATE UNIVERSITY Defendant	Case No. 2021-00096JD Magistrate Scott Sheets DECISION OF THE MAGISTRATE

{¶1} Plaintiff March South asserts a negligence claim and seeks damages for injuries she alleges were sustained on March 24, 2017 when she fell while attending a comedy show at Defendant's Wolstein Center (the Center). In addition to plaintiff and her sister, Paula Hackney, the Center's Operations Manager, Gus Kanakis, and the Center's Events Manager Melanie Snodell also testified. Several photographs, marked as Exhibit A, were admitted into evidence. For the following reasons, the magistrate finds that plaintiff failed to prove her claim and recommends judgment in defendant's favor.

Findings of Fact

{¶2} On March 24, 2017, plaintiff, along with her friend and members of her family, attended a comedy show at the Center in Cleveland, Ohio. The group had front row seats. After the show concluded, they began to exit the Center. Plaintiff, who uses a cane when she walks, got tired and/or winded while leaving the Center and needed to sit down. An usher working at the Center directed plaintiff to a nearby seat, specifically Seat 1 in Row Q of Section 105 (Seat 1), where plaintiff intended to rest momentarily.

{¶3} The Center's seats are cushioned, spring-operated folding seats with a seat and a back. The seat portion rests in an upright position, with the front edge of the seat portion pointing upward. Exhibit A depicts seats in their normal operating condition with the front edge of the seat pointing up. The seat portion folds down when sat upon, stopping approximately parallel to the floor.

{¶4} Neither plaintiff nor her sister, Ms. Hackney, noticed any problem with Seat 1 before plaintiff sat in it. Nevertheless, when plaintiff sat down, the seat portion failed. Instead of stopping and supporting plaintiff, the seat portion collapsed and quickly pivoted straight down spilling plaintiff onto the concrete floor without anything softening or breaking her fall. Thereafter, plaintiff's family helped her to her feet. Exhibit A depicts the damaged seat, Seat 1, as it appeared after plaintiff's fall, with the seat portion collapsed and its front edge pointing toward the floor.

{¶5} The Center has approximately 14,000 seats. The seats are not individually inspected or tested. Rather, before and in between events, staff members, including ushers, walk around the arena including the seating areas and visually inspect areas to look for deficiencies or issues that need to be addressed or corrected. Cleaning staff, who clean after every event, are also instructed to report any broken seats. In addition, patrons can report broken seats to staff members. If notified of a broken seat during an event, event staff sometimes fix it immediately. At other times, patrons will be relocated and the seat will be fixed the next day.

{¶6} On March 24, 2017 and prior to plaintiff's fall, there were no reports of problems with Seat 1. It was only after the event ended and after Seat 1 collapsed causing plaintiff to fall that defendant became aware that Seat 1 was broken. Mr. Kanakis opined that either Seat 1's spring or spring-stop, which are both located under the seat, failed and caused Seat 1 to collapse on plaintiff. Inspecting these parts of the Center's seats would require taking the seats apart. During his six years as operations manager, Mr. Kanakis could only recall 5 or 6 seats that broke in this way.

{¶7} Mr. Kanakis has been the Center's Operations Manager for six years. His job responsibilities include staffing, cleaning, repairs, acting as a liaison between facilities and event staff, and setting up and tearing down for events. Ms. Snodell is the event manager for the Center; she oversees all the events at the Center and oversees all event staff. Both Mr. Kanakis and Ms. Snodell have extensive experience working at other

similar venues. In their experience, visual inspection, like that employed at the Center, is standard practice; individual inspection and/or testing of seats is not.

Conclusions of Law

{¶8} To meet her burden at trial, plaintiff needed to prove her claims by a preponderance of the evidence which "is 'the greater weight of the evidence * * * evidence that is more probable, more persuasive, or of greater probative value.'" *Brothers v. Morrone-O'Keefe Dev. Co., LLC,* 10th Dist. Franklin No. 06AP-713, 2007-Ohio-1942, 2007 Ohio App. LEXIS 1762, ¶ 49.

{¶9} Plaintiff's complaint asserts a claim for negligence. To establish negligence, plaintiff needed to demonstrate "the existence of a duty, the breach of that duty, and injury resulting proximately therefrom." Here, the magistrate finds that plaintiff was an invitee and, therefore, that defendant owed plaintiff "a duty of ordinary and reasonable care" which "includes maintaining the premises in a reasonably safe condition and inspecting the premises to discovery hidden or latent dangers." *Tarkany v. Bd. of Trs. of Ohio State Univ.,*10th Dist. No. 90AP-1398, 1991 Ohio App. LEXIS 2648, at *2-4 (June 4, 1991). In addition, if defendant failed "to conduct a reasonable inspection of the premises, [it] will be charged with constructive knowledge of any latent defect which [it] would have discovered had [it] conducted the reasonable inspection" and it "may face liability for failing to warn the invitee of the latent defect or otherwise make the premises reasonably safe." *Rowe v. Pseekos*, 10th Dist. No. 13AP-889, 2014-Ohio-2024, ¶ 7.

{¶10} However, a landowner's duty is to "undertake *reasonable* inspections, not to inspect everything that might conceivably cause injury" and, moreover, "a landowner who undertakes an inspection is not held to a 100 percent success rate, if the inspection was reasonable under the circumstances." *Id.* at ¶ 8; *Tarkany* at *5-6; *Aldamen v. Sunburst USA, Inc*., 10th Dist. No. 08AP-235, 2008-Ohio-5071, ¶ 17 (emphasis in original).

Decision

{¶11} Initially, the magistrate notes that there is no evidence and plaintiff did not argue or prove that defendant had actual notice of any defect with Seat 1 prior to plaintiff's accident. Further, considering the facts of this individual case, the magistrate finds plaintiff failed to prove by the greater weight of the evidence that defendant failed to conduct a reasonable inspection or otherwise had constructive notice. The Center has approximately 14,000 seats and the magistrate finds that individually inspecting or testing each and every seat is not reasonable. Instead, the industry-standard, per Mr. Kanakis and Ms. Snodell, is to conduct visual inspections. Moreover, the evidence establishes that multiple and frequent visual inspections are undertaken by several different employees and/or staff members. Further, Mr. Kanakis could only recall 5 or 6 similar incidents during his entire six-years as operations manager. Thus, a seat breaking as it did on plaintiff is rare. In addition, the mechanism which caused Seat 1 to fail, i.e. the spring and/or spring-stop, could not be examined without dismantling each seat. The magistrate finds that defendant's routine and frequent visual inspection of seating areas is reasonable under the circumstances and that it did not violate any duty in failing to dismantle, test, and/or individually inspect each seat. *See Tarkany* at *6 (A routine visual inspection can satisfy the duty of ordinary care and/or reasonable inspection); *Rowe* at ¶ 9-11 (A cursory, visual inspection does not breach the duty to conduct a reasonable inspection).

{¶12} Based on the foregoing, the magistrate finds plaintiff failed to prove her claim by a preponderance of the evidence and recommends judgment in defendant's favor.

{¶13} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or*

conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

SCOTT SHEETS
Magistrate

Filed July 25, 2022
Sent to S.C. Reporter 9/2/22