

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT MOSTAD,
Appellant,

vs.

PARK PLACE ENTERTAINMENT
CORPORATION; PARBALL
CORPORATION; AND BALLY'S - LAS
VEGAS, D/B/A BALLY'S OF LAS
VEGAS,
Respondents.

No. 46597

FILED

NOV 13 2007
JACQUETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a tort action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

After appellant Scott Mostad slipped and fell, allegedly having stepped on an unknown foreign substance in the buffet area at Bally's Hotel and Casino, Mostad filed a complaint against respondents Park Place Entertainment Corporation, Parball Corporation, and Bally's-Las Vegas (collectively, "Bally's"), alleging that Bally's had negligently maintained its premises.

Bally's filed a summary judgment motion, arguing that Mostad's negligence claim failed as a matter of law because Mostad had failed to demonstrate any factual issues with respect to whether Bally's was responsible for the foreign substance on the property or had any actual or constructive notice of its existence. Bally's noted that Mostad failed to present any deposition testimony, affidavits, or other evidence demonstrating how the substance got on the floor or that Bally's had actual or constructive notice of the substance's presence.

Mostad opposed the motion, arguing that he would present evidence and witness testimony supporting his claims at trial.

On December 7, 2005, based on Bally's arguments, the district court granted Bally's motion for summary judgment. Mostad's timely appeal followed.

This court reviews orders granting summary judgment de novo.¹ Summary judgment was appropriate here if the pleadings and other evidence on file, viewed in the light most favorable to Mostad, demonstrate that no genuine issue of material fact remained in dispute and that Bally's was entitled to judgment as a matter of law.² To withstand summary judgment, Mostad could not rely solely on the general allegations and conclusions set forth in his complaint, but must instead have presented specific facts demonstrating the existence of a genuine factual issue supporting his claims.³

Upon our review of the record and consideration of the parties' appellate arguments,⁴ we perceive no error in the district court's summary judgment. Although the presence of a foreign substance on the floor may be contrary to ordinary care,⁵ liability for any injuries Mostad sustained

¹See Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

²Id.

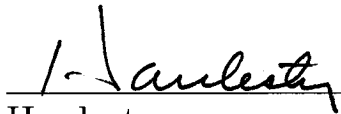
³Id. at 731, 121 P.3d at 1030-31.

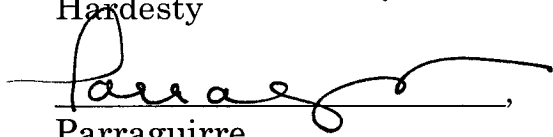
⁴We decline to consider any issues that Mostad presented in his reply brief that were not first raised in his opening brief. See City of Elko v. Zillich, 100 Nev. 366, 371, 683 P.2d 5, 8 (1984) (providing that a party may not raise a new issue or argument for the first time in the reply brief).

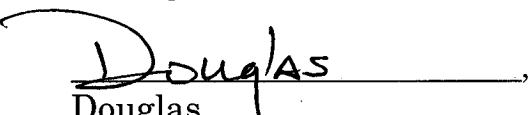
⁵See Asmussen v. New Golden Hotel Co., 80 Nev. 260, 262, 392 P.2d 49, 49 (1964) (noting that a business owes its customers a duty to keep its premises in a reasonably safe condition for the customers' use).

after slipping in the substance and falling may be found only if Bally's employees created the condition or had actual or constructive notice of its existence.⁶ Thus, in order to defeat Bally's summary judgment motion, Mostad was required to offer evidence suggesting that the employees had spilled or otherwise deposited the substance on the floor, or that they had constructive notice of its existence.⁷ Accordingly, because Mostad failed to do so, he failed to demonstrate any material factual issues with regard to Bally's negligence, and we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁶Id. at 262, 392 P.2d at 50; Sprague v. Lucky Stores, Inc., 109 Nev. 247, 250, 849 P.2d 320, 322-23 (1993).

⁷Wood, 121 Nev. at 731, 121 P.3d at 1030-31; Sprague, 109 Nev. at 250, 849 P.2d at 322-23.

⁸We reject Mostad's view that a foreign substance on the floor created a per se inference that Bally's was responsible or had actual or constructive knowledge of the substance's presence on the floor before Mostad's slip and fall. "The nonmoving party 'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'" Wood, 121 Nev. at 732, 121 P.3d at 1031 (quoting Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992)).

cc: Hon. Michelle Leavitt, District Judge
Carolyn Worrell, Settlement Judge
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Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Eighth District Court Clerk