IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION: AE
CASE NO.: 50-2020-CA-007123-XXXX-MB

DENLYS JEREZ MARTE,
LUIS URENA CASTILLO,
Plaintiff/Petitioners
vs.
TARGET CORP,
COCA COLA BEVERAGES FLORIDA LLC,
Defendant/Respondents.

_____/

ORDER GRANTING TARGET CORPORATION'S MOTION FOR FINAL SUMMARY JUDGMENT AND FINAL JUDGMENT BASED THEREON

THIS CAUSE CAME TO BE HEARD by the Court on TARGET CORPORATION's ("Target") Motion for Final Summary Judgment ("Motion") on July 13, 2021. Based upon the Court's consideration of Target's Motion, PLAINTIFFS', LUIS URENA CASTILLO and DENYLS JEREZ MARTE, as Parents and Natural Guardians of ASHLEY URENA JEREZ, a minor, ("Plaintiffs") late filed Response[1], Target's Reply, along with Arguments of Counsel, Target's Motion is hereby GRANTED for the reasons set forth hereinafter.

This action arises out of an incident which occurred in the Grocery Department at Target's Palm Beach Lakes Store at 6:30 p.m. on October 16, 2019. At that time, seven (7) year old ASHLEY URENA ("Ashley") struck an end cap shelf resulting in a laceration to her right leg. The incident was captured on the store's video surveillance system; still shots depicting the incident are of record.

[1] The Court finds Plaintiffs' response to the Motion for Summary Judgment untimely. However, the Court declined to strike the response and therefore moves forward in consideration thereto.

The record evidence does not explain why Ashley struck the end cap. Ashley's mother, Denlys Marte and her grandmother, Luisa Liriano, did not see Ashley strike the end cap. Still shots from the video and photographs taken after the incident confirm that the end cap was not hidden or concealed. As also set forth in the still shots, Denlys Marte, Luisa Liriano and numerous other customers avoided the end cap before and after the incident.

There is no admissible evidence in the record demonstrating that the end cap which Ashley struck was materially different from the other end caps/shelves at the Palm Beach Lakes Target store. There is no evidence in the record indicating that any person other than Ashley was ever injured by striking this particular end cap nor any other end cap at the Palm Beach Lakes store.

Target's Motion was filed on May 10, 2021. As such, the newly amended version of Florida Rule of Civil Procedure 1.510 relating to Summary Judgment applies. In accordance therewith, the standard which the Court must apply in considering the Motion is governed by Federal Rules of Civil Procedure, Rule 56. As articulated in numerous Federal cases discussing Rule 56, if the moving party demonstrates that there is no genuine dispute as to the material facts, the burden shifts to the non-moving party to come forward with specific facts showing that there is a genuine issue for trial. *Shaw v. City of Selma,* 884 F. 3d 1993 (11th Cir. 2018). The non-moving party does not satisfy this burden "if the rebuttal evidence is merely colorable or is not significantly probative of a disputed fact." *Jones v. UPS Ground Freight,* 683 F. 3d 1283 (11th Cir. 2012). Conclusory allegations and speculation are insufficient to create a genuine issue of material fact. *Glasscox v. City of Argo,* 903 F. 3d 1207 (11th Cir. 2018). The non-moving party must make a showing sufficient to establish the existence of the elements essential to that party's case, on which that party will bear the burden of proof at trial. *Jones* at 1292.

To support their claim herein, Plaintiffs have the burden of demonstrating through admissible record evidence that there is a genuine issue of material fact as to whether an "inherently dangerous condition" on Target's premises caused Ashley's injury. *Dampier v. Morgan Tire & Auto, LLC,* 82 So. 3d 204 (Fla. 5th DCA 2012); *Brookie v. Winn-Dixie Stores, Inc.,* 213 So. 3d 1129 (Fla. 1st DCA 2017). Notwithstanding, there is no evidence in the record to support the contention that the end cap at issue here was inherently dangerous.

Standing alone, the fact Ashley was injured when she struck an end cap does not make the end cap dangerous. The end cap was not in a place which was unexpected or unusual, nor did it protrude in the aisle. Plaintiffs have not presented testimony from an expert witness or anyone else identifying design or manufacturing flaws in the end cap. The Court has considered the evidence contained in the record and spent significant time reviewing the same; even in the light most favorable to the Plaintiff, there is no evidence to support Plaintiff's contention that the end cap was inherently dangerous. The Court cannot speculate as to why Ashley failed to avoid the end cap.

Here, although the Court has reviewed relevant caselaw and is aware of the restraint that must be shown in granting motions for summary judgment, the evidence does not raise any genuine issue of material fact. *Moore v. Morris,* 475 So. 2d 666, 668 (Fla. 1985) (*citing Giallanza v. Sands,* 316 So. 2d 77 (Fla. 4th DCA 1975)). "[I]t is well established that where the evidence is conflicting or could permit different reasonable inferences, it should be submitted to the jury as a question of fact." *MacClatchey v. HCA Health Servs. of Fla., Inc.*, 139 So. 3d 970, 974 (Fla. 4th DCA 2014) (*citing Moore*, 475 So. 2d at 668). The Court has thoroughly examined the file and does not find either conflicting evidence or evidence that could permit different reasonable inferences.

Based upon the evidence, the Court concludes that the end cap was both open and obvious and not inherently dangerous. As in *Dampier, Brookie, Portuonado v. Wal-Mart Stores, Inc.,* 2018

WL922367 (S.D. Fla. 2013), *Porfilio v. United States,* 2017 WL 7796061 (S.D. Fla. 2017), *Gorin v. City of St. Augustine*, 595 So. 2d 1062 (Fla. 5th DCA 1992), and, the fact that Ashley struck an open, obvious, typical and innocuous fixture is insufficient to demonstrate that an inherently dangerous condition caused her injury. *See also Yaque v. J.C. Penney Corporation*, 2009 WL 10666693 (S.D. Fla. 2009) (wherein the Court held that Plaintiff's theory regarding a trip and fall on a table leg "would require stores like J.C. Penney to warn customers that display tables with tablecloths have legs, or tell them where the legs are located, or not cover display tables with tablecloths. These would be nonsensical results and would run afoul of Florida law given that tables are common and well-known pieces of furniture.") *Id.* at 4. As in *Yaque*, Plaintiffs' assertion herein that Target should have warned Ashley of the presence of the end cap is illogical.

Plaintiffs' attempt to rely on the doctrine of *res ipsa loquitor* to support the claim is also unavailing as a matter of law. "Where there exists a genuine issue of material fact, which if resolved in the plaintiff's favor, could permit *res ipsa loquitur* to apply, summary judgment is premature." *MacClatchey v. HCA Health Servs. of Fla., Inc.,* 139 So. 3d 970, 973 (Fla. 4th DCA 2014). Here, the record does not show a genuine issue of material fact and therefore, the Court cannot advance to the doctrine of *res ipsa loquitur* as suggested by the Plaintiff.

Further, *res ipsa loquitor* does not apply where the actions of the claimant contributed to causing the incident giving rise to her injury, to incidents which could have occurred in the absence of negligence on the part of the defendant nor to incidents where the instrumentality which caused the injury can be evaluated and inspected by the plaintiff. *McDougald v. Perry,* 716 So. 2d 783 (Fla. 1998); *Goodyear Tire & Rubber Co. v. Hughes Supply, Inc.,* 358 So. 2d 1339 (Fla. 1978); *Schindler Corporation v. Ross,* 625 So. 2d 94 (Fla. 3d DCA 1993); *Brooks v. Plant,* 296 So. 2d 71 (Fla. 2d DCA 1974). In this case, Ashley's action in striking the end cap was the cause of her

injury, the incident occurred in the absence of negligence on the part of Target and the end cap was available for inspection and evaluation by Plaintiffs after the incident. Based upon the foregoing, *res ipsa loquitor* does not apply and Plaintiffs' reference thereto is insufficient to preclude Summary Judgment.

It is noted that this was an unfortunate incident involving a child. The Court has, as with every case presented before it, taken great care to examine the Motion, record, and relevant caselaw. The Court finds that in the absence of record evidence demonstrating that there was something concealed, unusual or extraordinary about the end cap, the fact that Ashley was injured is insufficient to demonstrate that Target failed to maintain its store in a reasonably safe condition.

Based upon all of the foregoing, the Court finds that there are no issues of material fact that remain for consideration by a jury and that Target is entitled to Summary Final Judgment as a matter of law. The Motion for Final Summary Judgment is, therefore, GRANTED.

Final Judgment is hereby entered and rendered in favor of Target. Plaintiffs shall take nothing by this action and Target shall go hence without day. The Court reserves jurisdiction to consider timely filed Motions to Tax Costs and to Award Attorney's Fees as applicable.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 27th day of July, 2021.

502020CA007123XXXXMB 07/27/2021
Ashley Zuckerman County Judge

THE 15TH JUDICIAL CIRCUIT
ADMINISTRATIVE OFFICE OF THE COURT

502020CA007123XXXXMB 07/27/2021
Ashley Zuckerman
County Judge

The Honorable Ashley Zuckerman, Div AE

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