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THIRD DIVISION
FEBRUARY 6, 2008

1-06-2394

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RHONDA TOUSSAS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 03 L 12671
)	
PLEASANT DALE PARK DISTRICT and DIRECT)	
FITNESS SOLUTION, L.L.C.,)	Honorable
)	Kathy M. Flanagan,
Defendants-Appellees.)	Judge Presiding.

SUMMARY ORDER

The plaintiff Rhonda Toussas appeals from the entry of summary judgment by the circuit court of Cook County in favor of defendants Pleasant Dale Park District (the District) and Direct Fitness Solution, L.L.C. (DFS). The plaintiff sued these entities for injuries she allegedly suffered when she used a weight training shoulder press machine at the District's sports facility and something fell on her head. In granting summary judgment for the defendants, the trial court found that the plaintiff had failed to allege facts which would support a finding of wilful and wanton behavior by the District, and had failed to establish that DFS, which had ceased servicing the machine in question at least two months before the plaintiff sustained her injuries, owed any duty to the plaintiff. We affirm.

Our standard of review of these summary judgment rulings is *de novo*. Illinois State Chamber

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of Commerce v. Filan, 216 Ill. 2d 653, 661, 837 N.E.2d 922, 928 (2005). We will affirm summary judgment orders when, upon examination of the depositions, pleadings, affidavits and admissions in the light most favorable to the plaintiff as the nonmoving party, we find that there is no genuine issue of material fact and the defendants, as the moving parties, are entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2004).

The plaintiff concedes that to prevail against the District, a local public entity, for personal injury, she will have to establish that the District acted with willful and wanton disregard for her safety, as required by section 3-106 of the Tort Immunity Act. 745 ILCS 10/3-106 (West 2002). This standard is not met where the plaintiff cannot even establish the cause of her injury, or whether her injury can be attributed to any action or inaction by the District, much less willful and wanton behavior. The plaintiff testified in her deposition that she removed the pin from the weights on the machine in order to move some of the weights so as to lessen the weight she would work with. At that time she was struck on the head with an object. She did not see what struck her, although she suggests that it was the handle bar for the shoulder press machine, nor has she advanced any theory for what caused her to be struck. She admits that when she got up after being struck and knocked down, the shoulder press was still attached to the machine and none of it had broken. Also there were no weights or other pieces of metal on the floor, which could have come from the machine. She also admitted that she did not know of anything faulty about the machine on the day she used it, and she had used hundreds of times in the years prior to the accident. The plaintiff and her friend, who was present at the time of the accident but did not see it occur, both testified that immediately after the accident an elderly man named Milton Berlin came up and excitedly told the plaintiff he saw what

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happened to her, that "this" had happened twice before and that he had complained to management. Almost immediately thereafter the man encountered a District employee of the club and began screaming "I have been telling you about this machine. I told you twice and now look. Somebody is hurt." It is upon these facts that the plaintiff urges us to find that this evidence was sufficient, if believed, to establish that the District had been on notice of the danger posed by the shoulder press machine. But, the plaintiff has admitted that she could not identify what had caused her injuries. As for Berlin, he died in August of 2005 without ever having testified in a deposition or submitted an affidavit. The District strenuously objects to the testimony about his statements as hearsay which would be inadmissible at trial. We do not reach that issue, for Berlin's statements established, at best, that "it" had happened twice before and he had told the District about it. We do not know what "it" was, nor do any factual allegations presented by the plaintiff in this record identify the nature of the danger or flaw in the shoulder press machine. Absent any evidence of what the alleged dangerous condition was that the District should have known about, summary judgment was properly granted to the District. Zonta v. Village of Bensenville, 167 Ill. App. 3d 354, 357, 521 N.E.2d 274, 277 (1988).

The plaintiff's theory of liability for DFS was that they it was charged with maintaining the District's equipment at the club and therefore was negligent in allowing a dangerous condition to persist in the shoulder press machine. Again, there is no evidence to establish what this dangerous condition was. Furthermore, two months before the accident occurred, DFS's maintenance contract with the District lapsed, and they then proceeded to do maintenance work to certain equipment only upon direct instructions from the District. DFS asserts that the prior contract did not cover

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maintenance of the shoulder press machine. This is not relevant because it is undisputed that in the two month time period after the contract lapsed and before the accident happened, the District never told DFS to monitor or service the shoulder press machine. Absent facts establishing such proof, summary judgment for DFS was also properly granted. Dunbar v. Latting, 250 Ill. App. 3d 786, 794, 621 N.E.2d 232, 239 (1993).

For all of the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

Affirmed.

CUNNINGHAM, J., with GREIMAN and THEIS, JJ., concurring.