

***Braganza v. Albertson's LLC*, 2021 Cal. App. LEXIS 620**

Where plaintiff fails to show diligent effort to complete discovery on time, Cal. Code Civ. Proc., § 437c, subh. (h) does not allow parties to obtain continuances to conduct discovery that could have and should have been undertaken earlier, so as to effectively oppose the summary judgment motion.

FACTS/PROCEDURE

On December 5, 2017, Plaintiff Lisa Braganza filed suit against Albertson's LLC (Albertson's) for a slip and fall that occurred on May 31, 2016, in one of Albertson's grocery stores. In her complaint, plaintiff alleged two causes of action: premises liability and general negligence.

Albertson's claimed plaintiff could not establish either causes of action given that at the time plaintiff fell, the floor was not unsafe because: (1) it was not wet with water from a tipped flower vase, as plaintiff alleged; (2) the floor was not unsafe, even if it was wet at the time of the fall, because Albertson's expert forensic engineer concluded based on a "coefficient of friction test" that the floor provided sufficient traction to prevent falls, even when wet with water; and (3) Albertson's had neither actual nor constructive notice that the floor was wet when plaintiff fell because its employees conducted hourly floor sweeps, and an employee found no water on the floor while inspecting it at 5:18 p.m., only 22 to 32 minutes before plaintiff fell.

When Albertson's filed a motion for summary judgment, plaintiff failed to file an opposition to the motion. Instead, the day before an opposition would have been due, plaintiff filed a motion for continuance. Plaintiff's counsel did not attempt to explain what evidence plaintiff had to oppose the first and third grounds of Albertson's motion, or explain why plaintiff waited six weeks after Albertson's motion was filed and served to serve an inspection demand. The trial court granted defendant's motion for summary judgment after denying plaintiff's request for a continuance in order to give plaintiff more time to collect discovery necessary to oppose the motion. The trial court then subsequently denied plaintiff's request for a new trial. Plaintiff appealed, claiming the trial court abused its discretion.

HOLDING/DISCUSSION

The Court of Appeal for the Fourth District affirmed. A party who seeks a continuance under Code Civ. Proc., § 437c, subd. (h). must show why the discovery necessary to oppose the motion for summary judgment could not have been completed earlier, and accordingly requires the trial court to grant the continuance. Most courts agree that lack of diligence may be a ground for denying a request for a continuance of a summary judgment motion hearing. (*Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 257.) "A motion for a new trial is appropriate following an order granting summary judgment." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 858.) "The new trial motion may seek reversal of the summary judgment on 'any available statutory ground for a new trial.'" (*Wall St. Network, Ltd. v. New York Times Co.* (2008) 164 Cal.App.4th 1171, 1176.) Generally, rulings on new trial motions are reviewed for an abuse of discretion. (*Aguilar, supra*, 25 Cal.4th at p. 859.) Plaintiff based her new trial motion on the sole ground that the trial court abused its discretion, or erred as a matter of law, in denying her request to continue the March 6, 2019, hearing on Albertson's motion for summary judgment or summary adjudication.

Here, the trial court did not abuse its discretion in denying plaintiff's request under Code Civ. Proc., § 437c, subd. (h), to continue the hearing on defendant's summary judgment motion because plaintiff's counsel made no attempt to show why the inspection and testing of the floor area by plaintiff's expert could not have been completed before plaintiff's opposition to defendant's motion was due. Thus, Plaintiff's new trial motion was also properly denied, as it was based solely on her unsuccessful claim that the continuance was wrongly denied.