

**Lewis v. RAM MLC Holdings, Inc., et al, No. 2072CV330**

**Order on Defendant's Motion for Summary Judgment**

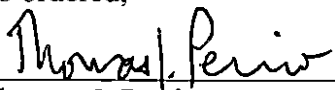
The plaintiff, Marcia Lewis, alleges negligence against the defendant RAM MLC Holdings, Inc., a landscaping company, and the defendant, The Wilder Companies, LTD., a property management company. The Plaintiff asserts she tripped and fell on the root of a shrub located in a landscaped island within the parking lot of the Hyannis Home Depot.

The manner in which she tripped is undisputed and described in detail by the plaintiff. The plaintiff decided to walk across a small, landscaped island adjacent to the handicapped parking space that her husband parked their car. The plaintiff got out of the car and decided to retrieve a shopping cart located on the opposite side of the landscaped island. She crossed the island with her left foot and she "got caught under this root, and this root was really stuck into the ground." The plaintiff testified that the root on which her foot caught was located under a round shrub or extended out in close proximity to the round shrub. While not expressly stated as an undisputed fact, neither defendant contests that in the spring, shrubs would have been pruned back, if necessary, and that about one inch of mulch covering would have been applied to the island by the defendant RAM. This incident happened on August 31, 2020. The plaintiff, in her detailed description of the offending root and account of how she tripped, does not describe the existence of mulch covering the root. The defendants now for summary judgment, arguing that if a hazardous condition existed, it was open and obvious, and in any event, the defendants breached no duty owed to this plaintiff.

Viewing the undisputed facts in the light most favorable to the plaintiff, she tripped on an exposed root, in close proximity to a shrub, located in a landscaped island within a parking lot of a retail store. An exposed root in close proximity to a shrub is not a dangerous condition which, under the circumstances presented here, imposes a duty on these defendants. See *Ponte v. DaSilva*, 388 Mass. 1008 (1983) (rescript); *Gallant v. Indian Ranch, Inc.*, 2002 Mass. App. Div. 12. Nor does the record contain evidence of a factual dispute that any conduct attributable to these defendants either changed or otherwise altered the natural condition of the root or that any conduct attributable to these defendants was careless or unreasonable. Additionally, assuming an actionable defect, the summary judgment record contains no evidence these defendants were put on notice or were otherwise made aware of the existence of the assertedly defective condition.

It is the plaintiff's burden in a negligence action to show that the defendant breached its duty of care. Here, Lewis has not presented evidence giving rise to a material issue of fact supporting her claim, and therefore has failed to show there is a genuine issue of fact precluding the entry of summary judgment. As such, the Defendant's Motion for Summary Judgment is **ALLOWED**.

So ordered,

  
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Thomas J. Perrino  
Justice of the Superior Court

10/14/2022