VERMONT SUPERIOR COURT
Chittenden Unit
175 Main Street, PO Box 187
Burlington VT 05402
802-863-3467
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 20-CV-00603

Holly Rivers v. Brinker International

DECISION ON MOTION FOR SUMMARY JUDGMENT

Plaintiff Holly Rivers sues Defendant Pepper Dining Vermont, Inc. d/b/a Chili's ("Pepper Dining") for injuries she sustained when she tripped and fell in the parking lot at the Tafts Corner retail shopping plaza in Williston, Vermont. Pepper Dining moves for summary judgment, arguing that it owed no duty with respect to the condition of the parking lot. The court grants the motion.

The following facts emerge as undisputed from the parties' motion papers. At about 6:00 p.m. on the evening of November 4, 2017, Ms. Rivers arrived for dinner at the Chili's restaurant at Tafts Corner owned and operated by Pepper Dining. She parked in the parking lot and made her way towards the restaurant. As she walked toward the restaurant's side entrance, she passed through a vacant parking space located near the sidewalk, tripped over the "unoccupied" parking curb at the end of the space, and thereby suffered injuries.

Defendant Cypress Equities Managed Services, LP ("Cypress") owned, maintained, and controlled the common areas of the Tafts Corner shopping plaza complex, including the parking lot at issue. Pepper Dining leased the property on which its restaurant sat; the leased premises included the "pad" on which the Chili's restaurant building was located and the concrete sidewalk area that surrounded it, but not the adjacent parking lot areas. Pepper Dining owned and controlled lights positioned on the exterior walls of the Chili's restaurant building, as well as a light on a freestanding pole located on the leased premises, but at the time of Ms. Rivers' injury, those lights were not on. The lights within the parking lot, owned and controlled by Cypress, were also off. Ms. Rivers later testified that because of the dark conditions, she was unable to see the parking curb and that it simply "blended in" with the background surface.

On these facts, as a matter of law, Pepper Dining owed Ms. Rivers no duty of care. Ms. Rivers suggests a duty unknown in the law of Vermont—or anywhere else, as far as the court can determine: a duty with respect to areas neither owned nor controlled by the defendant. Rather, Vermont law is clear that the foundation of any premises liability is the defendant's control of the area where an accident

occurs. *See Grann v. Green Mtn. Racing Corp.*, 150 Vt. 232, 234 (1988) ("In [slip and fall] cases . . . , unless the area where the accident occurs is under the control of the defendant at the time of the accident, a plaintiff cannot make out a cause of action in negligence against the defendant, because there is no proof that the defendant owes the plaintiff any duty of care."); *Crosby v. Great Atl. & Pac. Tea Co.*, 143 Vt. 537, 539 (1983) (mem.) ("Burger King did [not owe duty of care because it did] not own or control the A&P parking lot where the bottle [over which plaintiff tripped] was located"). This is fully consistent with case law from other jurisdictions, which absolves a commercial retail tenant from liability for injuries suffered on adjacent common areas, such as shopping center parking lots, if the common areas are owned and controlled by a separate commercial landlord. *See Leary v. Lawrence Sales Corp.*, 275 A.2d 32, 34-35 (Pa. 1971) ("shopping centers . . . do not call for something more than the application of the venerable principles of landlord-tenant law," which resolves the question of legal duty "by answering the interrogatory: Who had control of these premises?"); *Underhill v. Schactman*, 151 N.E. 2d 287, 289-90 (Mass. 1958) ("[T]he passageways and parking area here involved were maintained for the benefit of [commercial tenant] and other stores in the [shopping] center, but it is clear from the terms of the letting that the control of these areas . . . was in the [commercial landlord's]."); *Millman v. Citibank*, 627 N.Y.S. 2d 451, 452 (N.Y. App. Div. 1995) (commercial tenant not liable since it "had no exclusive right to possession of the parking lot, which it was merely permitted to use in common with its landlord and other tenants, and … [tenant] has no obligation or right to perform repairs to the parking lot"); *cf. Lewis v. Sears, Roebuck & Co.*, 826 N.Y.S. 2d 243, 243-44 (N.Y. App. Div. 2006) (landlord of shopping center not liable to patron who slipped on portion of sidewalk that abutted retail tenant's store, since that portion of sidewalk was part of lease and not in landlord's possession).

That Pepper Dining controlled lights on its leased premises that—when in operation—might have cast some light on the adjacent parking lot does not change this conclusion. The "policy rationale" of premises liability law is to place legal duty of land maintenance "on those who own or control it," as they have "expertise and opportunity to foresee and control hazards" and "[t]hey alone can properly maintain and inspect their premises." *Dalury v. S-K-I Ltd.*, 164 Vt. 329, 335 (1995). Thus, the relevant point is that Pepper Dining had no ability to maintain and operate parking lot lighting, alter parking lot design or curb placement, or control signage or surface painting within the lot that might have warned customers like Ms. Rivers of otherwise hidden and dangerous conditions.

Similarly, Ms. Rivers's notions of foreseeability are untenable. She implies through her argument that Pepper Dining should be charged with inspecting and knowing the lighting and walking conditions

on Cypress's property, and charged further with determining the timing and amount of illumination that must be given by Pepper Dining (from its leased premises) to make the adjacent, non-leased parking lot areas reasonably safe. There is no support in the law for the extension of a legal duty to this degree. Moreover, the record does not show that Pepper Dining's employees or agents knew that conditions in the adjacent parking lot required that the lot be further illuminated to be reasonably safe for customers using it. If there had been prior trip-and-fall incidents in the parking lot under similar circumstances, or even instances of customer complaints to Chili's that the parking lot was poorly lit, there is no indication that any employees or agents of Chili's (or Cypress, for that matter) learned of these events, or should have known of them.

Nor does Pepper Dining's provision of exterior lighting on its leased premises constitute a voluntary assumption of a legal duty toward patrons using the adjacent parking lot. *Cf. Restatement (Second) of Torts* § 323 ("One who undertakes . . . to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking . . . ."). Ms. Rivers cites no provision of the lease suggesting any such undertaking. Nor is there any support in the record for the suggestion that Pepper Dining undertook in any way to safeguard patrons with respect to conditions in the parking lot. Rather, the obvious purpose of its exterior lighting was to illuminate the adjacent sidewalk—which it did control and therefore owed a duty to make safe. Beyond that, the restaurant's exterior lights may have served a purely commercial purpose; for example, to give the restaurant building and its exterior signage greater visibility and aesthetic attraction after dark. The lights might have been a way of saying to potential customers: "Welcome, we're open." There is no basis for inferring, however, that in illuminating the exterior of its premises, Pepper Dining undertook any duty to anyone off premises.

ORDER

The court grants the motion for summary judgment. All claims against Pepper Dining are dismissed with prejudice. The parties having previously dismissed all other claims, the clerk will now enter judgment for Defendants.

Electronically signed pursuant to V.R.E.F. 9(d): 7/6/2022 4:03 PM

Samuel Hoar, Jr.
Superior Court Judge