CITATION: Traina v. Pioneer Family Pools (Hamilton) Inc., 2025 ONSC 3533
COURT FILE NO.: CV-22-00079852-0000
DATE: 2025-06-13

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ROSE TRAINA

Plaintiff

AND:

PIONEER FAMILY POOLS (HAMILTON) INC., GLI POOL PRODUCTS, INC. and GEORGE BEVERIDGE

Defendants

BEFORE: The Honourable Justice A. Spurgeon

COUNSEL: N. Anand, counsel for the Plaintiff (Respondent)

E. Tomas, counsel for the Defendant Pioneer (Moving Party)

M. Rozsa, counsel for the Defendant GLI (Moving Party)

George Beveridge representing himself (Not appearing)

HEARD: June 9, 2025 at Hamilton

ENDORSEMENT

Introduction

[1] This is a simplified procedure case under rule 76. Two of the three defendants, Pioneer Family Pools (Hamilton) Inc. ("Pioneer") and GLI Pool Products, Inc. ("GLI"), move for summary judgment. The third defendant, Mr. Beveridge, has not moved for judgment. All defendants have been discovered.

[2] On October 26, 2020, the plaintiff, while cleaning leaves in her own backyard, fell and broke both of her ankles. She fell when she inadvertently walked too far onto the pool cover covering her backyard pool. She had stepped past the concrete edge of the pool under the overlapping pool cover. The surface of the cover bent and yielded under her weight, and she fell, causing her ankles to break.

[3] The pool cover was a high-tension product that was anchored all around the pool with a system of straps and buckles fastened with bolts into holes in the concrete deck around the pool.

[4] The pool and pool cover had been supplied to her by Pioneer four years previous. The pool cover was manufactured by GLI. The cover was installed each winter by Mr. Beveridge.

[5] The plaintiff has alleged in her claim that her injury was caused by the negligence of the defendants. They failed to design and install the pool cover properly. She highlights several points:

a. Though the cover has a warning sign stitched onto it, which the plaintiff acknowledges reading and understanding, she alleges that the warning sign should have been more prominent;

b. The pool cover should have had a prominent marker of exactly where, under the cover, the edge of the pool was actually located; and

c. She should have been warned more forcefully that the tensile nature of the pool cover did not equate with rigidity and that it did pose a hazard to her to step onto the cover off the concrete over the water.

[6] She further alleges that Pioneer breached its obligation to her under the *Sale of Goods Act*, R.S.O. 1990, c. S.1, in that its lack of rigidity in terms of excessive flexibility over the water portion of the pool made it unsafe, defective, and/or unfit for purpose.

Evidence

[7] In this case, there is remarkably little in dispute. The parties agree on the following facts:

a. That Pioneer sold and supplied the pool cover to the plaintiff in 2016.

b. That Pioneer measured the pool and supplied the measurements to GLI, which manufactured the cover which Pioneer in turn delivered to the plaintiff.

c. Pioneer then installed the pool cover when it was delivered. It was first used in the winter of 2016-17 on the plaintiff's pool.

d. The pool cover was used annually by the plaintiff up to and including the 2020-21 winter season (when the incident occurred) and continues to be used annually in the winter seasons to this day.

e. The pool cover featured a warning label. That warning label said:

! WARNING
AVOID DROWNING RISK
- **STAY OFF COVER.**
- **SUPERVISE CHILDREN.**
- **REMOVE COVER COMPLETELY BEFORE USE.**
- **IMPROPERLY SECURED COVERS ARE A HAZARD.**
- **FAILURE TO FOLLOW ALL INSTRUCTIONS MAY RESULT IN INJURY OR DROWNING.**

- **MEETS OR EXCEEDS STANDARD PERFORMANCE SPECIFICATION SET FORTH IN ASTM: F1346-91 FOR MANUAL SAFETY COVER.**
- **INSPECT COVER ANNUALLY FOR DAMAGE.**
- **DO NOT REMOVE THIS LABEL.**

f. The plaintiff acknowledged reading and understanding this warning label before the incident.

g. The plaintiff acknowledged that the warning label was always facing up and readable each year the pool cover was installed.

h. That the plaintiff fell and injured herself when she, during leaf raking and fall clean-up work, inadvertently walked along the edge of the pool on the pool cover in order to retrieve a bag to put leaves in when, with her left foot, she stepped onto a part of the cover unsupported by the concrete of the pool deck.

i. As she proceeded on the pool cover, she felt the cover bend downward under her weight. Experiencing this instability, she tried to stabilize herself but failed. Her body fell leftward into the pool where she landed on the pool cover. She had broken both ankles.

j. The plaintiff's husband was nearby in the yard when the incident occurred. He, however, did not see the incident. Immediately after it happened, the plaintiff was in distress and her husband came to her aid. He called 9-1-1. The plaintiff was removed from the surface of the pool and taken by ambulance to hospital where emergency treatment was administered.

k. The plaintiff admitted that she did not intend to step on the pool cover at all – doing so was inadvertent on her part.

l. The plaintiff knew in advance of the incident that the pool cover was not to be walked on. Moreover, she had never purposefully stepped on the pool cover in the past.

m. The plaintiff knew prior to the incident that the pool cover overlapped the concrete deck surrounding the pool. Nevertheless, there was sufficient space on the pool deck not covered by the pool cover for her to safely walk around the pool unimpeded.

n. The plaintiff acknowledged on discovery that the pool cover was not meant to be rigid, but rather was flexible and meant to dip downward when weight was applied to it.

[8] The plaintiff had her neighbour, Mr. Beveridge, open and close the pool each year, taking off the cover in the spring and reinstalling the cover in the fall.

[9] There is no allegation that the plaintiff's injury is attributable to negligent annual installation of the pool cover by Mr. Beveridge, and the parties before me in court advised that there was an agreement to discontinue the action against Mr. Beveridge.

[10] The plaintiff has procured two expert reports from a forensic engineer named Robert Shirer. In those two reports, Mr. Shirer opined that the manufacturer or installer of the pool cover could have taken alternative and further steps to mitigate risk of an individual inadvertently stepping onto the part of the pool cover not supported by the concrete pool deck underneath. These included:

a. application of a large, visible "**STAY OFF COVER**" warning label to the pool cover; and

b. application of yellow marks or hash lines to delineate the actual boundary between the concrete deck and pool edge beneath the overlapping pool cover along with a large written warning on the pool cover saying: "**TRIP HAZARD – NO STEP Beyond the Hashed Lines**".

[11] These were recommendations made by the engineer retained by the plaintiff that in the engineer's opinion were reasonable. They were not identified by the engineer as an industry standard or a defined standard of care.

[12] The production manager of GLI, Mr. Brian Frost, was examined for discovery in the matter. He also provided an affidavit outlining the testing and industry standard applied to GLI's products, including the pool cover which is the subject of this matter. In his evidence, he provided testing reports and documents outlining industry standards of the American Society for Testing and Materials ("ASTM") applicable to pool covers, specifically ASTM: F1346-91.

[13] In an engineering report attached to Mr. Frost's report, the authors of the report indicate that testing done on pool cover samples manufactured by GLI which were of the same model, make, and material as the one that is the subject of this case met the published ASTM standard in terms of material integrity and safety labelling.

[14] Counsel for GLI submits that the industry standard published by ASTM is the best evidence of what is to be expected of a reasonable manufacturer or person in the circumstances.

The Positions of the Parties

A. The Defendants/Moving Parties

[15] Counsel for the moving defendants seek summary judgment on the basis that the plaintiff has failed to produce any evidence which would support a conclusion that the defendants' collective behaviour created an objectively unreasonable risk of harm to the plaintiff. They cite the Supreme Court of Canada in *Ryan v. Victoria (City)*:

> Conduct is negligent if it creates an objectively unreasonable risk of harm. To avoid liability, a person must exercise the standard of care that would

> be expected of an ordinary, reasonable and prudent person in the same circumstances. The measure of what is reasonable depends on the facts of each case, including the likelihood of a known or foreseeable harm, the gravity of that harm, and the burden or cost which would be incurred to prevent the injury. In addition, one may look to external indicators of reasonable conduct, such as custom, industry practice, and statutory or regulatory standards.[1]

[16] They submit that there is no evidence that the pool cover itself was defective in any way, and that it performed in accordance with its design and purpose which was to prevent objects and people from falling into the pool and being submerged under water in the winter months when the pool was closed.

[17] Counsel for the defendants further submit that, even if the pool cover posed a hazard to users of the plaintiff's backyard, the plaintiff herself acknowledged that the cause of her injury was her own inadvertence. She acknowledged and admitted that she mistakenly walked on the pool cover:

a. Having previously read and understood the warning label on the pool cover advising users to not walk on it;

b. Having been regularly mindful in her normal behaviour to abide by that warning and not walk on the pool cover; and

c. Unfortunately, by her own inadvertence, having forgotten about that risk and ventured onto the pool cover.

[18] The defendants further submit that the injury suffered by the plaintiff must be one that causally flowed from an objectively unreasonable hazard caused or created by the defendants. They submit that that is not the present case because the pool cover which caused the injury – even if it was a hazard:

a. was highly visible to the plaintiff;

b. was familiar to and within the knowledge of the plaintiff;

c. did not feature a history of being a danger to the plaintiff;

d. was admitted by the plaintiff to have been easily avoidable – she could walk around it without difficulty; and

e. it was the plaintiff's admitted inadvertence that caused her to walk onto the pool cover and suffer the injury.

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[1] *Ryan v. Victoria (City),* [1999] 1 S.C.R. 201, at para. 28.

[19] The defendants submit that where the foregoing circumstances are present, it is open to a court to conclude that there is no genuine issue which requires a trial to resolve.

B. The Plaintiff/Respondent's Position

[20] The plaintiff's counsel submitted that the opinion of the engineer proffered by the plaintiff in his reports was not contradicted by any expert opinion tendered by the defendants. She suggested that the expert's opinion that it was advisable to take certain warning steps not actually taken by the defendants raises a triable issue as to duty and standard of care applicable in the case. Specifically, counsel for the plaintiff pointed to Mr. Shirer's report where he suggested the defendants in manufacturing or installing the pool cover, could have:

a. provided enhanced visual cues warning of the hazard of stepping onto the pool cover; and/or

b. delineated on the pool cover a visual cue in the form of a yellow broken line indicating the exact location beneath the cover as to where the outer perimeter of the pool and pool deck was located. This would provide an appropriate warning of the trip hazard that was the lip of the pool deck under the pool cover.

[21] On this basis, counsel for the plaintiff submits that there is an issue in dispute requiring a trial.

Law and Analysis

A. Test for Summary Judgment

[22] The authority for granting summary judgment in an action is set forth in rule 20 of the *Rules of Civil Procedure*. The court, on motion of a party – in this case the defendants – with supporting affidavit material or other evidence, shall grant summary judgment if it is satisfied that there is no genuine issue requiring a trial.[2]

[23] The test for summary judgment is often repeated and well stated. A recent recapitulation of the test, which I quote, comes from Kohen J.:

> The Rules provide that the court *shall* grant summary judgment if "the court is satisfied that there is no genuine issue" that *requires* a trial. Put another way, the court must grant summary judgment unless a trial is required.
>
> In determining whether a trial is required, Rule 20.04(2.1) allows the court to weigh evidence, evaluate credibility and draw any reasonable inference from the evidence, unless it is "in the interest of justice for such power to be exercised only at a trial". If these expanded fact-finding powers do not

[2] *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rules 20.01(3) and 20.04(2)(a).

> enable me to decide the matter, I may direct that a mini-trial be conducted if doing so will allow me to resolve the matter.
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> On a motion for summary judgment: (a) each party must put its best foot forward; (b) the responding party "must lead trump or risk losing"; and (c) the motion judge is entitled to assume that all evidence that might be adduced by the respondent at trial has been adduced on the motion.
>
> The responding party on summary judgment motion must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial. Self-serving affidavits that merely assert defences without providing some detail or supporting evidence are insufficient to create a genuine issue for trial.[3]

[24] The Supreme Court of Canada in the leading case of *Hryniak v. Mauldin*[4] sets out a roadmap for summary judgment hearings as follows:

> On a motion for summary judgment under Rule 20.04, the judge should first determine if there is a genuine issue requiring a trial based only on the evidence before her, *without* using the new fact-finding powers. There will be no genuine issue requiring a trial if the summary judgment process provides her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure, under Rule 20.04(2)(a). If there appears to be a genuine issue requiring a trial, she should then determine if the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2). She may, at her discretion, use those powers, provided that their use is not against the interest of justice. Their use will not be against the interest of justice if they will lead to a fair and just result and will serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole.[5]

[25] To enable a judge to follow this roadmap, both parties are to put their best foot forward such that the court can have confidence that the parties have placed before the court in some form all the evidence that will be available at trial.[6]

[26] Assuming that is the case, the court may then determine whether it can find facts, apply the law to those facts, and achieve a fair and just adjudication of the case on the merits. If it cannot do that, it must then decide what can be decided and identify the additional steps necessary for the court to come to a just adjudication of the remaining issues in the matter

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[3] *Wei v. Ye-Hang Canada (EH-C) Technology & Services Inc.*, 2025 ONSC 546, at paras. 7 to 10.
[4] *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 66
[5] *Hryniak*, para. 66
[6] *Da Silva v. Gomes,* 2018 ONCA 610, at para 18, citing *Sweda Farms v. Egg Farmers of Ontario,* 2014 ONSC 1200, at para. 27, aff'd 2014 ONCA 878.

and, absent a compelling reason not to, remain seized of the matter, implementing the steps it has prescribed to bring the matter to a conclusion.[7]

[27] In this case, based on the evidentiary record proffered, the court is capable of finding the necessary facts and applying the relevant legal principles so as to resolve the dispute without a trial of this action.

B. No Identifiable Breach of a Duty or Standard of Care

[28] The fist issue is whether the defendants GLI and Pioneer may have breached any duty or standard of care owed to the plaintiff.

[29] GLI, the manufacturer of the pool cover – through the affidavit and discovery transcript of its product manager, Mr. Brian Frost – gave evidence that:

a. The pool cover is known as a "*Secur-A-Mesh Safety Cover*" made of polypropylene mesh material and commonly used in the pool industry;

b. Each cover sold is twice inspected and tested individually in its manufacturing process;

c. The product's materials are voluntarily tested and measured against specific standards set by the ASTM;

d. The specific standard which the "*Secur-A-Mesh Safety Cover*" was tested for was ASTM standard F1346-91 which among other things meant that the pool cover could withstand a static load of 485 pounds and remain intact.

e. The warning label described above is affixed to the pool cover and visible to observers.

f. Upon testing by an organization called IAPMO EGS, the Secur-A-Mesh Safety Cover was reported to have been found to meet the proscribed industry standards as published by the ASTM.

[30] The pool cover was a flexible, mesh product. It flexes or gives way under pressure. It is not a rigid, solid product. The plaintiff knew that.

[31] The purpose and function of the pool cover is to prevent objects and people from going into the water and being submerged in the pool when the pool is closed, especially in winter. The plaintiff was aware of its purpose; that is why she bought it. In her examination for discovery, the purpose she cited for buying and having it installed was keeping her godchildren safe from falling in the water and drowning.

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[7] *Sweda Farms*, at para 33.

[32] There is no evidence tendered by the plaintiff that the manufacturer (GLI) or the seller of the pool cover (Pioneer) fell below any identifiable standard of care. The mere fact that the plaintiff fell and hurt herself on the pool cover does not *ipso facto* imply that there was negligence on the part of the defendants.[8]

[33] The duty of one person to avoid causing reasonably foreseeable harm to another depends on the facts of each case. The measure of what is reasonable in any case depends upon different factors, including the likelihood of foreseeable harm, the possible gravity of the harm, as well as the burden and cost that would be incurred in preventing injury.[9] Perfection is not the required standard. The standard is ordinary and reasonable prudence.[10]

[34] The plaintiff's expert opinion report from the engineer, Mr. Shirer simply contains Mr. Shirer's assertion that the defendants "could" have made the pool cover safer by:

a. affixing larger and more prominent warnings on the pool cover advising people to stay off; or

b. installing a broken yellow line delineating the lip of the concrete decking and the water under the pool liner.

[35] He did not, however, provide any support in his report that such measures were consistent with the "ordinary prudence" expected of a reasonable person (which is standard of care) as opposed to that of an "extraordinarily conscientious person" which is not the standard of care. This is in contrast to a clear industry standard cited by the defendants and provided under the aegis of the ASTM.

[36] Mr. Shirer cited no competing industry standard or common standard of care to rival that proffered in Mr. Frost's affidavit. He merely offered his opinion that more and bigger warnings would have been better.

[37] On this footing, it is apparent that the best evidence of the standard of care applicable to the manufacture and provision of a flexible pool liner is that the liner support 485 pounds of static weight without collapsing and causing an object on the pool cover to sink into the water.

[38] In this case, the pool cover appeared to perform as per its intended purpose and function. When the plaintiff fell onto the pool cover, she did not sink into the water but remained on the surface of the cover, safe from drowning.

C. Causal Connection

[39] Assuming that there was a duty to have enhanced, larger, and more prominent warnings on the pool cover surface, designed to deter stepping on the pool cover, such as those

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[8] *Paul Porchak v. Pizza Pizza Limited,* 2016 ONSC 4551, at para. 32
[9] *Ryan v. Victoria (City),* at para 28.
[10] *Paul Porchak*, at para 32.

advocated by the plaintiff's expert engineer, Mr. Shirer – there is no evidence tendered by the plaintiff that it would have made any difference.

[40] The plaintiff admitted on discovery that she was aware that it may not be safe to walk on the pool cover; that it was flexible. She was not certain how flexible. Nevertheless, she was aware it was a flexible cover which, if she stood on it, may not provide a rigid and stable surface upon which to walk. That is why she said she, as a matter of course, avoided walking on the pool cover.

[41] The reason she in fact walked on the pool cover on the day in question, she admitted, was because of her own inadvertence. She was cleaning up fallen leaves in her yard. She had a pile of leaves in one place in the yard and went to get a bag located in another part of her yard in order to collect the leaves and dispose of them. In attempting to retrieve the bag, she stepped on the pool cover in a location over the pool, not the deck. Consequently, the surface under foot was not solid and therefore less stable. That is why she fell and injured herself.

[42] Several photos of the pool cover were in evidence. It is clear from those photos that there was ample space on the concrete pool deck for the plaintiff to walk on safely without stepping upon any part of the pool cover.

[43] The plaintiff, during her examination for discovery, admitted that there indeed was ample space for her to walk on the concrete pool deck without stepping on the pool cover.

[44] The plaintiff had not, in her evidence on discovery or in her affidavit, professed any issue of prior complaints or problems with her pool cover in the years before the incident when the pool cover was installed over the pool in her yard.

[45] The photos of the dark-coloured pool cover *in situ* tendered as evidence show a stark visual contrast of the pool cover from the surrounding light grey, concrete pool deck. It is clear that the colour contrast provided a strong visual cue as to the differing surface areas – and therefore, a warning not to step on the pool cover.

[46] The court concludes that the pool cover, properly installed over the plaintiff's pool as it was at the time of the incident, was:

a. visible;
b. identifiable;
c. avoidable;
d. familiar to the plaintiff;
e. had no history of causing danger or injury; and
f. known to be avoided by the plaintiff in order to maintain her safety.

[47] There was no negligent defect in the object itself or in its installation which caused the injury. Injury was caused to the plaintiff entirely by inadvertence on the part of the plaintiff.

[48] The court is fortified in this conclusion by reviewing other cases where courts have dismissed claims by way of summary judgment in similar circumstances such as:

a. *Paul Porchak v. Pizza Pizza Limited*, where the plaintiff fell over a bicycle rack in front of a pizza restaurant. The bike rack was in plain view and posed no hidden or unusual danger. In other words, it was visible, identifiable, and avoidable. On summary judgment, no liability was found.

b. *Mirsoltani v. Canadian Memorian Chiropractic College*,[11] where the plaintiff fell while walking on a heavy mat wearing high heels. In that case, the mat was highly visible,[12] there was no history of prior incidents,[13] and the evidence was not capable of showing that the mat caused the plaintiff's fall.[14] Summary judgment was granted.

Summary Judgment – Curtailment of Process?

[49] The primary thrust of the plaintiff's argument in response to the summary judgment motion is two-fold:

a. First, this action was commenced as a simplified procedure matter under rule 76. Given the truncated nature of that procedure, the proceeding should be allowed to play itself out in a trial. The leading case of *Combined Air v. Flesch*[15] suggests that it is rare that summary judgment is appropriate in simplified procedure cases.

b. Second, the lack of ability to fully test evidence via cross-examination on an affidavit or of a witness in the context of rule 76 actions as per subrules 76.04(1)2 and 3 undermines the capacity of parties to put their best foot forward as is required by rule 20.

[50] Therefore, counsel argues, this motion should be dismissed, and the matter should be allowed to proceed to trial.

[51] In respect of both arguments, the Court of Appeal's judgment in *Combined Air* at paragraphs 254 through 257 canvasses this issue. The Court's views on the issue culminate in the following passage:

> [W]e are not saying that a motion for summary judgment should never be brought in a simplified procedure action. There will be cases where such a motion is appropriate and where the claim can be resolved by using the powers set out in rule 20.04 in a way that also serves the efficiency rationale in Rule 76. For example, in a document- driven case, or in a case where there is limited contested evidence, both the full appreciation test

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[11] *Mirsoltani v. Canadian Memorian Chiropractic College*, 2018 ONSC 5639
[12] *Mirsoltani*, at para. 29
[13] *Mirsoltani*, at para. 41
[14] *Mirsoltani*, at para. 102
[15] *Combined Air v. Flesch*, 2011 ONCA 764, 108 O.R. (3d) 1

> and the efficiency rationale may be served by granting summary judgment in a simplified procedure action.[16]

[52] In this case, there is remarkably little contested evidence. The plaintiff by her own admission was inattentive in stepping on the pool cover which was visible, avoidable, familiar, and something she knew to avoid.

[53] Given the state of evidence presented in the case, as discussed above, and cognizant of the law as discussed, the court is confident that it can conclude that there is no genuine issue in this action which requires a trial.

[54] Further, in terms of the issue of judicial economy and efficiency contemplated by the Court of Appeal in *Combined Air*, this court is persuaded that this is a case where the already efficient process set out in rule 76 is not frustrated but indeed enhanced by the overlay of a rule 20 motion.

Conclusion

[55] For the reasons set out herein, the defendants' motion for summary judgment is granted.

[56] The parties may address the issue of costs in writing within 14 days release of these reasons for judgment.

A. Spurgeon, J.

Date Released: June 13, 2025

[16] *Combined Air*, at para. 257