DISTRICT COURT SUMMIT COUNTY, COLORADO 501 North Park Avenue PO Box 269, Breckenridge, CO 80424 970-453-2241	DATE FILED: October 21, 2014 2:55 PM CASE NUMBER: 2013CV101
Plaintiff(s): ANNE MARGARET HESFORD, v. **Defendant(s):** VAIL SUMMIT RESORTS, INC.	**σCOURT USE ONLYσ**
	Case Number: 2013 CV 101 Div.: T

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This MATTER was initially filed in Broomfield County District Court as Case No. 12CV243. Following its transfer to Summit County, the action is now captioned as indicated above. On May 29, 2014, Defendant Vail Summit Resorts, Inc. ("VSRI") filed a *Motion for Summary Judgment* ("Motion"). Plaintiff Anne Margaret Hesford ("Hesford") submitted her Response on June 27, 2014. VSRI filed its Reply on July 14, 2014. Having reviewed the foregoing as well as other relevant pleadings such as the Complaint, the Court is fully informed and hereby rules as follows. The Court begins by reviewing the standards for rendering a determination under Rule 56.

I. Standards for Determining Summary Judgment Motion

The purpose of summary judgment is to "permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with a trial when, as a matter of law, based on undisputed facts, one party could not prevail." A-1 Auto Repair & Detail, Inc. v. Bilunas-Hardy, 93 P.3d 598, 603 (Colo. App. 2004) (quoting Mt. Emmons Mining Co. v. Town of Crested Butte, 690 P.2d 231, 238 (Colo. 1984)). Summary judgment should be granted only if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Peterson v. Halsted, 829 P.2d 373, 375 (Colo. 1992). The Colorado Supreme Court has called summary judgment a "drastic remedy." Clementi v. Nationwide Mut. Fire Ins. Co., 16 P.3d 223, 225 (Colo. 2001). It has also stated that "a litigant is entitled to have disputed facts determined by trial, and it is only in the clearest of cases, where no doubt exists concerning the facts, that a summary judgment is warranted." Moses v. Moses, 180 Colo. 397, 402, 505 P.2d 1302, 1304 (Colo. 1972). Consequently, in determining

whether to grant summary judgment under Rule 56, trial courts have been directed to "exercise great care." Smith v. Mills, 123 Colo. 11, 14, 225 P.2d 483, 485 (Colo. 1950). It is only appropriate in those circumstances where there is no role for the fact finder to play. Mount Emmons Mining, 690 P.2d at 238 (Colo. 1984).

Where summary judgment is requested, the moving party has an initial burden to demonstrate an absence of evidence in the record that supports the non-moving party's case. Civil Serv. Comm'n v. Pinder, 812 P.2d 645, 649 (Colo. 1991). Once the moving party has met this initial burden, however, the burden shifts to the non-moving party to establish there is a triable issue of fact. Id. In making this showing, the party opposing the motion for summary judgment cannot rely on the allegations of the pleadings but must present specific facts establishing a genuine issue for trial. See C.R.C.P 56(e); see also Smith v. Mehaffy, 30 P.3d 727, 730 (Colo. App. 2000); Dileo v. Koltnow, 613 P.2d 318, 324 (Colo. 1980); Meuser v. Rocky Mtn. Hosp., 685 P.2d 776, 779 (Colo. App. 1984). As such, a genuine issue of fact cannot be raised simply by means of argument. People in Interest of J.M.A., 803 P.2d 187, 193 (Colo. 1990).

In determining whether summary judgment is proper, the party opposing the motion is entitled to the benefit of all favorable inferences that may reasonably be concluded from the undisputed facts presented. Peterson, 829 P.2d at 376. A trial court, however, has no alternative but to conclude that no genuine issue of material fact exists when an affirmative showing of specific facts is not contradicted by any counter-affidavits or other evidence established by the nonmoving party. Pinder, 812 P.2d at 649.

With the preceding standards established, the Court moves on to review the relevant undisputed factual circumstances established by the parties.

II. Review of Relevant Uncontested Factual Background

This action arises out of an accident on December 9, 2010 in which Hesford slipped and fell in a parking lot, called the Airport Lot, in Breckenridge, Colorado. Complaint, ¶¶ 9, 10, 18. At all times relevant to the accident at issue, VSRI leased the Airport Lot from the Town of Breckenridge. Id. at ¶ 6. VSRI used the Airport Lot as a free parking lot for the public to access the Breckenridge Ski Resort. Id. at ¶ 7. VSRI provided a bus service, free of charge, to the public between the Airport Lot and the Breckenridge Ski Resort. Id. at ¶ 8. Within the Airport Lot, VSRI designated an area where guests would board and de-board the bus. Id. at ¶ 9.

VSRI had retained Stan Miller, Inc. ("SMI") to perform snow removal operations at the Airport Lot. Response, Exhibit D, Deposition of Christopher Blackwell ("Blackwell Depo."), 59:10-24. No personnel other than SMI personnel performed snow removal and ice removal operations at the Airport Lot. Id. at 59:25–60:8. SMI only performed snow plowing services at the Airport Lot, such that it was drivable. Response, Exhibit 1, Deposition of Kermit Miller ("Miller Depo."), 24:15-25:2. VSRI did not request that SMI perform any other services, such as de-icing the Airport Lot. Id. at 23:3-25; 24:15–25:2; 25:19-25. However, other ski areas in Summit

County with dirt parking lots do not use ice melt or mats in the winter. Blackwell Depo., 98:2-23.

At the entrance of the Airport Lot, VSRI posted a sign stating "USE CAUTION SLIPPERY CONDITIONS MAY EXIST." Motion, Exhibit D; see also Blackwell Depo., 34:1-19. Where guests boarded the bus for transport out of the Airport Lot, VSRI placed a barricade in the area. Response, Exhibit A, Deposition of Anne Hesford ("Hesford Depo."), 36:20-25. Hesford attached photographs showing the barricade as well as the area where she fell. Response, Exhibits 2 and 3. VSRI did not take these barricades down when SMI plowed the Airport Lot. Response, Exhibit 4, Deposition of Dustin Hoerter ("Hoerter Depo."), 10:8-15. SMI plowed close to the barricades at the bus stop but did not remove any ice that might form as a result of snow melt from the area around the barricade. Id. at 11:16 – 12:8.

On December 9, 2010, it snowed very heavily. Hesford Depo., 30:12-19. Hesford decided to go skiing later in the day because of the weather. Id. at 30:20-23. Hesford believed the road into the Airport Lot was covered in snow when she entered. Id. at 43:8-11. She parked in the Airport lot, "guesstimating" that her car was about ten to fifteen feet from where the bus arrived. Id. at 44:25 – 45:11. While walking to the bus, Hesford knew she was going to be walking on snow and knew there was a risk of walking on a slippery surface. Id. at 51:15-23. Hesford put cat tracks on her boots to increase safety in snowy or icy conditions. Id. at 52:4-7.

Hesford then gathered her skis and poles and walked over to the area where guests board the bus from the Airport Lot to the resort. Id. at 36:7-25. While waiting for the bus, Hesford stood in an area, where the surface had snow on it, but it was not very even. Id. at 36:23-24; 55:23-25. Where she was standing, there was thick ice covered by snow. Id. at 55:9-22. Prior to falling, Hesford could not see the ice surface beneath the snow that had fallen that day; she could only see the ice that caused her to slip after she fell. Id. at 74:17-21; 76:9-17. It was snowing hard at that time, but Hesford could still see well. Id. at 37:6-7. When the bus arrived, Hesford stepped forward to put her skis in the external rack on the bus, and she slipped and fell. Id. at 37:1-3; 57:12-18.

With the foregoing background in place, the Court moves on to conduct its legal analysis based on the relevant undisputed factual circumstances established by the parties.

III. Legal Analysis

In her Complaint, Hesford asserted that she slipped and fell on ice, which had accumulated in the bus boarding area that was owned by VSRI. Complaint, ¶¶ 6-18. Hesford claimed that the accident was caused, either because the ice in the boarding area constituted a dangerous condition or because VSRI was negligent in breaching its purported duty to make the boarding area safe. Id. at ¶¶ 20-31. Following her slip and fall, Hesford alleged that she suffered significant injuries. Id. at ¶19.

More specifically, Hesford set forth two causes of action against VSRI in her Complaint. Hesford based her First Claim for Relief on the Colorado Premises Liability Act, C.R.S. § 13-21-115, *et. seq.* ("PLA"). Complaint, ¶¶ 20-25. Hesford grounded her Second Claim for Relief in negligence. The Court separately analyzes these causes of action, beginning with the former one first. Id. at ¶¶ 26-31.

A. Whether Summary Judgment is Warranted Regarding the First Claim for Relief in Hesford's Complaint

Returning to her First Claim for Relief, Hesford alleged that VSRI owed Hesford the duties associated with an invitee status under the PLA. Complaint, ¶ 21. Hesford asserted that "the ice at the designated bus loading area in the Airport Lot constituted a dangerous condition." Id. at ¶ 22. Hesford claimed that VSRI should have known about this dangerous condition. Id. at ¶ 23. Hesford alleged that VSRI failed to exercise reasonable care to protect her from this dangerous condition, which caused her injuries. Id. at ¶¶ 24-25.

In their various pleadings, the parties pointed to the PLA as having application to the circumstances at bar. Motion, 5; Response, 5. Turning to examine the PLA, the Court notes that following language "establishes the broad scope" of the statute:

> [i]n any civil action brought against a landowner by a person who alleges injury occurring while on the real property of another and by reason of the condition of such property, or activities conducted or circumstances existing on such property, the landowner shall be liable only as provided in [this statute].

Vigil v. Franklin, 103 P.3d 322, 326 (Colo. 2004) (quoting C.R.S. § 13-21-115(2)). As used in the PLA, a landowner includes:

> ...without limitation, an authorized agent or a person in possession of real property and a person legally responsible for the condition of real property or for the activities conducted or circumstances existing on real property.

C.R.S. § 13-21-115(1). As previously noted above, VSRI leased the Airport Lot from the Town of Breckenridge at all times relevant to the accident at issue in this action. Id. at ¶ 6. VSRI used the Airport Lot as a free parking lot for the public to access the Breckenridge Ski Resort. Id. at ¶ 7. In their respective pleadings, all of the parties explicitly acknowledged that VSRI was a "landowner" of the Airport Lot under the PLA. Motion, 2; Complaint, ¶ 6. Based on these facts and the parties' own representations, the Court finds as a matter of law that the PLA has application to the factual circumstances at bar and that VSRI was a "landowner" regarding the Airport Lot at the time of Hesford's accident.

In enacting the PLA, the Colorado legislature correlated the ability of the injured party to recover with their status on the property as trespasser, licensee and invitee. C.R.S. § 13-21-115(1.5)(a); see also Vigil, 103 P.3d at 326. In that regard, the PLA provides a "higher standard of care with respect to an invitee than a licensee, and a higher

standard of care with respect to a licensee than a trespasser." C.R.S. § 13-21-115(1.5)(c). More specifically, C.R.S. § 13-21-115(3) "outlines the respective duties that a landowner owes to trespassers, invitees, and licensees and provides that a breach of those duties may result in liability for damages caused." Lombard v. Colorado Outdoor Educ. Ctr., Inc., 187 P.3d 565, 574 (Colo. 2008).

The PLA defines an "invitee" as follows:

> (a) "Invitee" means a person who enters or remains on the land of another to transact business in which the parties are mutually interested or who enters or remains on such land in response to the landowner's express or implied representation that the public is requested, expected, or intended to enter or remain.

C.R.S. § 13-21-115 (5)(a). If a landowner invites a person to enter their land, and the landowner either expects a commercial benefit from that person or has extended an invitation to the public at large, the person is an invitee. Wycoff v. Grace Cmty. Church of Assemblies of God, 251 P.3d 1260, 1271 (Colo. App. 2010). From the parties' collective pleadings, it is clear that Hesford was in the Airport Lot at the time of her accident to utilize free parking and transport available to the public as a means of accessing the Breckenridge Ski Resort. Additionally, in their respective pleadings, the parties agreed Hesford was an invitee under the PLA. Motion, 2; Response, 5; Complaint, ¶ 21. Consequently, based on these facts and the parties' own representations, the Court finds as a matter of law that Hesford was an invitee in the Airport Lot at the time of her accident.

In analyzing the relevant liability provision in the PLA, it provides that an invitee "….may recover for damages caused by the landowner's unreasonable failure to exercise reasonable care to protect against dangers of which he actually knew or should have known." C.R.S. § 13-21-115(3)(c)(I). Considering this language, the Colorado Supreme Court approved a construction of it that sets forth the following two-part test for landowner liability: "(1) breach of duty to use reasonable care to protect against a danger on the property; and (2) actual or constructive knowledge of the danger." Springer v. City and County of Denver, 13 P.3d 794, 804 (Colo. 2000) (citing Sofford v. Schindler Elevator Corp., 954 F. Supp. 1459, 1461 (D. Colo. 1997)); see also Lombard, 187 P.3d at 570; Vigil, 103 P.3d at 328 (fn 11). The Court now separately analyzes each of these prongs.

(1) Breach of Duty to Use Reasonable Care to Protect Against a Danger on the Property

In its Motion, VSRI contended that Hesford failed to produce evidence demonstrating it breached a duty of care to protect against a danger within the Airport Lot. Motion, 7-8. VSRI asserted snow and ice are a "fact of life at high altitudes in Colorado in December," and Hesford failed to show specifically what VSRI should have done to prevent her from falling. Id. at 7-8. VSRI essentially argued that the available evidence demonstrates only that Hesford slipped and fell on ice, which had been covered on a snowy day. Id. at 7-8. As such, VSRI argued that the undisputed facts in this case

do not show any violation of a duty of care owed to Hesford under the prevailing circumstances. Id. at 7.

As previously noted above, where summary judgment is requested, the moving party has an initial burden to demonstrate an absence of evidence in the record that supports the non-moving party's case. Pinder, 812 P.2d at 649. Once the moving party has met this initial burden, however, the burden shifts to the non-moving party to establish there is a triable issue of fact. Id. By pointing to a lack of evidence regarding VSRI's alleged violation of the applicable standard of care, the Court finds that VSRI met its initial burden of demonstrating an absence of evidence in the record supporting Hesford's case. As a result, the Court finds the burden of production shifts to Hesford to establish there is a triable issue of fact regarding VSRI's alleged breach of duty to use reasonable care to protect against a danger in the Airport Lot.

In her Response, Hesford contended "there is substantial evidence upon which a jury could find that [VSRI] breached the duty of reasonable care." Response, 6. Hesford summed up her argument as follows:

> [VSRI] retained [SMI] to plow the Airport Lot when it snowed. However, the plowing activities caused snow to pile up next to the barricade where guests would board the bus. A reasonable inference is that this snow would melt on warm days - such as the day before [Hesford's] injury - and refreeze into ice in the bus boarding area. [VSRI] did not retain Stan Miller, Inc. to de-ice an area where [VSRI's] guests could safely board and de-board its buses.

Id. From the foregoing, it seems to the Court that there are two elements to Hesford's contention: first, VSRI had a duty to de-ice; and second, VSRI had a duty to prevent snow from piling up around the barricades in the boarding area for the bus.

Beginning with the first contention, "the essence of [Hesford's] claim is that [VSRI] breached the duty of reasonable care by failing to ensure that the area where passengers board and de-board the bus is clear of ice or otherwise made safe from slipping on ice." Id. However, in carefully examining the parties' argument, the Court observes there is no distinguishable difference between the bus loading area and the rest of the significantly sized Airport lot; the entire area is one where pedestrians toting skis & other equipment must regularly traverse and might slip and fall on naturally accumulating snow and ice. The notion of consistently keeping either the boarding area or the entire parking lot free of naturally accumulating ice is one that almost sounds in strict liability and is particularly inappropriate in a high alpine environment where snow and ice cover ground areas during a majority of the winter months.

The focus, of course, is whether a genuine issue of material fact remains as to whether VSRI breached a duty of reasonable care. The Court once again notes that it snowed very heavily on the day of the accident at issue. Hesford Depo., 30:12-19. In fact, Hesford decided to go skiing later in the day because of the weather. Id. at 30:20-23. At the entrance of the Airport Lot, VSRI posted a sign stating "USE CAUTION

SLIPPERY CONDITIONS MAY EXIST." Motion, Exhibit D; see also Blackwell Depo., 34:1-19. Regarding plowing, VSRI retained SMI to perform snow removal operations at the Airport Lot. Blackwell Depo., 59:10-24. SMI only performed snow plowing services at the Airport Lot, such that it was drivable. Miller Depo., 24:15-25:2. VSRI did not request that SMI perform any other services, such as de-icing the Airport Lot. Id. at 23:3-25; 24:15–25:2; 25:19-25. However, other ski areas in Summit County with dirt parking lots do not use ice melt or mats in the winter. Blackwell Depo., 98:2-23. It is certainly true that snow and ice are a fact of life in a high alpine environment during the winter months. To some extent, it is indeed these very conditions that attract visitors like Hesford to Breckenridge to partake in skiing and other winter recreational pursuits. Other than simply arguing that the boarding area should be clear of ice, Hesford failed to present any evidence that tended to show it was feasible, or even possible, to keep that area (or the remaining parking lot) clear of ice under the prevailing weather conditions at the time of the accident. And, to support the existence of a "reasonable" duty of care, Hesford failed to provide any evidence as to what reasonable steps should have been taken by VSRI to prevent the accident. Likewise, she failed to provide evidence regarding the existence of some other custom or practice in the industry as to dirt parking lots that demonstrates a lack of reasonable care by VSRI under the circumstances. Accordingly, the Court finds as a matter of law that Hesford failed to show VSRI breached a duty of reasonable care, simply and solely by pointing to the presence of naturally accumulating ice during the winter months in the boarding area of the Airport Lot, which is located in a high alpine environment.

Returning to Hesford's second contention above, she argued that VSRI had a duty to prevent snow from piling up around the barricades in the boarding area for the bus. Response, 6. More specifically, Hesford contended VSRI "failed this duty when the plowing activities of its contractor were contributing to the build-up of the ice that injured [Hesford]. Id. As previously noted above, Hesford attached photographs showing the barricade as well as the area where she fell. Response, Exhibits 2 and 3. VSRI did not take these barricades down when SMI plowed the Airport Lot. Hoerter Depo., 10:8-15. SMI plowed close to the barricades at the bus stop but did not remove any ice that might form as a result of snow melt from the area around the barricade. Id. at 11:16 – 12:8. It is significant to note that Hesford did not claim she fell on top of the unnatural pile of snow around the barricades. And, in scouring the evidentiary record, the Court is unable to find any evidence that the manner in which SMI plowed the lot contributed to an unnatural ice build-up in the precise location where Hesford slipped and fell. Likewise, there is no evidence that Hesford actually slipped and fell on an unnatural ice-build up or that an unnatural build-up otherwise proximately caused her injuries. Consequently, the Court finds as a matter of law that Hesford failed to show a causal link of any kind between the unnatural piles of snow present at the barricade and the slip-and-fall that caused her injuries. As a result, while her injuries are very unfortunate, there is no evidence on the record to demonstrate they resulted from anything other than the natural snow and ice conditions that are common in a high alpine environment during the winter months.

As previously explained above, the Court found that VSRI met its initial burden of demonstrating an absence of evidence in the record that supports Hesford's case. Pinder, 812 P.2d at 649. Once the moving party has met this initial burden, the burden shifted to Hesford to establish there is a triable issue of fact. Id. In making this showing, the party opposing the motion for summary judgment cannot rely on the allegations of the pleadings but must present specific facts establishing a genuine issue for trial. See C.R.C.P 56(e); see also Smith v. Mehaffy, 30 P.3d 727, 730 (Colo. App. 2000); Dileo v. Koltnow, 613 P.2d 318, 324 (Colo. 1980); Meuser v. Rocky Mtn. Hosp., 685 P.2d 776, 779 (Colo. App. 1984). As such, a genuine issue of fact cannot be raised simply by means of argument. People in Interest of J.M.A., 803 P.2d 187, 193 (Colo. 1990). In carefully reviewing Hesford's argument as well as the attendant evidentiary record, the Court finds that Hesford failed to present specific facts and evidence demonstrating a triable issue exists. The Court finds as a matter of law that no genuine issue of material fact remains regarding a lack of evidence as to VSRI's alleged breach of duty to use reasonable care to protect against a danger in the Airport Lot.

(2) Actual or Constructive Knowledge of the Danger

As previously noted above, the Colorado Supreme Court approved a construction that sets forth a two-part test for landowner liability to invitees under the PLA, and the second prong is "actual or constructive knowledge of the danger." Springer, 13 P.3d at 804 (citing Sofford, 954 F. Supp. at 1461); see also Lombard, 187 P.3d at 570; Vigil, 103 P.3d at 328 (fn 11).

In its Motion, VSRI argued that Hesford failed to provide any evidence suggesting VSRI knew or should have known the Airport Lot was dangerous. Motion, 10-12. Along those lines, VSRI observed that the only available testimony in this case was that there had been no prior slip-and-fall incidents in the Airport Lot. Blackwell Depo., 40:17 - 41:19. And, VSRI also argued that Hesford failed to produce any evidence regarding some past slip-and-fall incident of which VSRI was aware. Motion, 12. As noted above, where summary judgment is requested, the moving party has an initial burden to demonstrate an absence of evidence in the record that supports the non-moving party's case. Pinder, 812 P.2d at 649. Once the moving party has met this initial burden, the burden shifts to the non-moving party to establish there is a triable issue of fact. Id. By pointing to a lack of evidence regarding VSRI's actual or constructive knowledge of a danger, the Court finds that VSRI met its initial burden of demonstrating an absence of evidence in the record supporting Hesford's case. As a result, the Court finds the burden of production shifts to Hesford to establish there is a triable issue of fact regarding VSRI's actual or constructive knowledge of a danger in the Airport Lot.

Regarding VSRI's actual or constructive knowledge, Hesford argued in full as follows:

> [c]ontrary to [VSRI's] argument, there is a plethora of evidence showing that [VSRI] knew or should have known that there was ice at the Airport Lot when and where [Hesford] fell. [VSRI] retained a

> contractor to clear snow at the lot. [VSRI] placed a sign warning guests about slipping on ice. Perhaps most obviously, [VSRI] operates Breckenridge Ski Resort – a place that makes money from snow and the generally frigid conditions in which ice forms. [VSRI] cannot credibly claim a lack of knowledge.

Response, 8.

Speaking long ago in the negligence context, the Colorado Supreme Court observed that "[w]here there is snow on [a] sidewalk, and it is rendered slippery, there is danger of injury from slipping and falling even on the best constructed walks." City & Cnty. of Denver v. Dugdale, 127 Colo. 329, 334, 256 P.2d 898, 901 (1953); see also City of Boulder v. Niles, 9 Colo. 415, 419, 12 P. 632, 634 (1886). "At such times, there is imposed upon foot travelers the necessity of exercising increased care." Dugdale, 127 Colo. at 334, 256 P.2d at 901. The Court agrees with VSRI that snow and ice are a fact of life at high altitudes in Colorado in December. In reviewing the preceding argument from Hesford's Response, she appeared to equate knowledge that naturally accumulating snow and ice can be slippery with actual or constructive knowledge of a danger for purposes of PLA liability. However, solely because VSRI was aware that snow and ice can be slippery, the Court cannot find it therefore had actual or constructive knowledge of a danger in the Airport Lot.

Having found that VSRI met its initial burden of demonstrating an absence of evidence in the record that supports Hesford's case, the burden shifted to Hesford to establish there is a triable issue of fact. Pinder, 812 P.2d at 649. In making this showing, the party opposing the motion for summary judgment cannot rely on the allegations of the pleadings but must present specific facts establishing a genuine issue for trial. See C.R.C.P 56(e); see also Smith v. Mehaffy, 30 P.3d 727, 730 (Colo. App. 2000); Dileo v. Koltnow, 613 P.2d 318, 324 (Colo. 1980); Meuser v. Rocky Mtn. Hosp., 685 P.2d 776, 779 (Colo. App. 1984). As such, a genuine issue of fact cannot be raised simply by means of argument. People in Interest of J.M.A., 803 P.2d 187, 193 (Colo. 1990). In carefully reviewing Hesford's argument as well as the attendant evidentiary record, the Court finds that Hesford failed to present specific facts and evidence demonstrating a triable issue exists. The Court finds as a matter of law that no genuine issue of material fact remains regarding an absence of evidence as to VSRI's actual or constructive knowledge of a danger.

In light of the sum of foregoing in Section III(A) of this Order, the Court finds that no genuine issue of material fact remains regarding the non-viability of Hesford's PLA claim against VSRI. Consequently, the Court hereby PARTIALLY GRANTS the Motion and enters summary judgment against Hesford with regard to the First Claim for Relief in her Complaint.

B. Whether Summary Judgment is Warranted Regarding the Second Claim for Relief in Hesford's Complaint

In her Second Claim for Relief, Hesford alleged that VSRI owed her a duty of reasonable care to ensure "the designated loading area was safe for individuals who were boarding the bus at the Airport Lot." Id. at ¶¶ 27-28. Hesford asserted that VSRI breached this duty and was negligent. Id. at ¶¶ 29-30.

In its Motion, VSRI argued that the PLA establishes the only framework for analyzing the allegations at bar and that the Court should therefore dismiss Hesford's negligence claim against it. Motion, 5-6. Turning to examine the pertinent statutory language, the Court again observes that the PLA sets forth the circumstances under which a landowner can be liable for injuries that occur on real property. See generally C.R.S. § 13-21-115. And, in that regard, the PLA offers "the exclusive remedy available for injured parties against landowners." Vigil v. Franklin, 103 P.3d 322, 329 (Colo. 2004). As a result, a party plaintiff may recover against a landowner pursuant to the PLA but "not under any other theory of negligence, general, or otherwise." Id. (quoting Thornbury v. Allen, 991 P.2d 335, 340 (Colo. App. 1999); see also Henderson v. Master Klean Janitorial, Inc., 70 P.3d 612, 613 (Colo. App. 2003); Pierson v. Black Canyon Aggregates, Inc., 32 P.3d 567, 570 (Colo. App. 2000), rev'd on other grounds Pierson v. Black Canyon Aggregates, Inc., 48 P.3d 1215 (Colo. 2002); Teneyck v. Roller Hockey Colorado, Ltd., 10 P.3d 707, 709 (Colo. App. 2000); Casey v. Christie Lodge Owners Ass'n, 923 P.2d 365, 368 (Colo. App. 1996); Calvert v. Aspen Skiing Co., 700 F. Supp. 520, 522 (D. Colo. 1988) (premises liability statute "abrogates all common law claims for negligence"). In her Response, Hesford stated she "agrees with [VSRI] that the [PLA] provides the exclusive remedy in this case. Accordingly, the negligence claim should be dismissed." Response, 5.

In light of the sum of the foregoing in Section III(B) of this Order, the Court finds as a matter of law that no genuine issue of material fact remains regarding the non-viability of Hesford's negligence claim against VSRI. As a result, the Court hereby PARTIALLY GRANTS the Motion as it pertains to Hesford's Second Claim for Relief and enters summary judgment in favor of VSRI with regard to said claim.

IT IS THEREFORE ORDERED:

1. In light of the totality of the foregoing, the Court GRANTS the Motion and enters summary judgment in favor of VSRI regarding the entirety of Hesford's Complaint.

DATED at Breckenridge, Colorado on Tuesday, October 21, 2014.

BY THE COURT:

Mark D. Thompson
District Court Judge

SUMMIT COMBINED COURTS
BRECKENRIDGE, COLORADO