

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1438

CHARLIE L. JACKSON

VERSUS

HOME DEPOT, INC. AND/OR HOME DEPOT, U.S.A., INC.

Judgment Rendered: May 4, 2007

On Appeal from the Nineteenth Judicial District Court
In and For the Parish of East Baton Rouge
State of Louisiana
Docket No. 481,939

Honorable R. Michael Caldwell, Judge Presiding

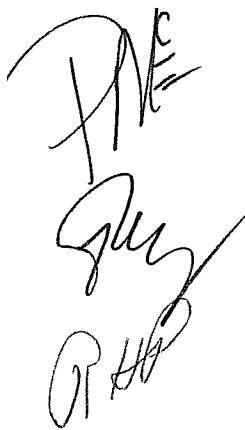
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BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.



McCLENDON, J.

In this personal injury case, the plaintiff, Charlie L. Jackson, appeals the trial court's grant of summary judgment in favor of the defendant, Home Depot, Inc. and/or Home Depot, U.S.A., Inc. (Home Depot).¹ We affirm.

An appellate court's review of a summary judgment is *de novo* based upon the evidence presented at the trial court level and using the same criteria used by the trial court in deciding whether a summary judgment should be granted. **Walston v. Lakeview Regional Medical Center**, 99-1920, p. 3 (La.App. 1 Cir. 9/22/00), 768 So.2d 238, 240, writ denied, 00-2936 (La. 12/15/00), 777 So.2d 1229. Summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact, and that the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966B.

The theory of spoliation of evidence refers to an intentional destruction of the evidence for the purpose of depriving the opposing parties of its use. **Randolph v. General Motors Corp.**, 93-1983 (La.App. 1 Cir. 11/10/94), 646 So.2d 1019, 1027, writ denied, 95-0194 (La. 3/17/95), 651 So.2d 276. A plaintiff asserting a claim for spoliation of evidence must allege that the defendant intentionally destroyed evidence; allegations of negligent conduct are insufficient. **Quinn v. RISO Investments, Inc.**, 03-0903, p. 5 (La.App. 4 Cir. 3/3/04), 869 So.2d 922, 927, writ denied, 04-0987 (La. 6/18/04), 876 So.2d 808.

A thorough review of this record, including plaintiff's third and fourth supplemental and amending petitions, reveals a lack of well-pleaded facts

¹ The factual and procedural background of this case is fully described in this court's earlier opinion in this matter. See Jackson v. Home Depot, Inc., 04-1653 (La.App. 1 Cir. 6/10/05), 906 So.2d 721.

that would support a spoliation of evidence claim. Plaintiff never identified any particular piece of evidence that Home Depot intentionally destroyed in order to deprive him of its use. Thus, in the absence of any genuine issue of material fact, defendant is entitled to judgment as a matter of law. LSA-C.C.P. art. 966B.

For these reasons, we affirm the judgment of the trial court in accordance with Uniform Court of Appeal Rule 2-16.2.A(2) and (6). Costs of this appeal are assessed to the plaintiff, Charlie L. Jackson.

AFFIRMED.