No. 21-1586

In the Supreme Court of the United States

CHERYL ROMANO, WAYNE ROMANO,

Petitioners,

v.

JAZZ CASINO COMPANY, L.L.C., ET AL.,

Respondents.

On Petition for Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the lower courts violated Petitioners' Seventh Amendment rights, or the summary judgment guidelines outlined in *Tolan v. Cotton*, 572 U.S. 650 (2014) and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), by granting and affirming summary judgment for Respondents.

2. Whether the Petitioners presented, in the lower courts, any genuine issue of fact showing that Respondents' premises had a condition that presented an "unreasonable risk of harm" at the time of the subject incident, as required by applicable law.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 DISCLOSURE STATEMENT

Petitioners:

Petitioners, CHERYL and WAYNE ROMANO were plaintiffs in the district court and appellants in the Court of Appeals.

Respondents:

Respondents, JAZZ CASINO COMPANY, L.L.C., JCC HOLDING COMPANY II, L.L.C., HARRAH'S NEW ORLEANS CASINO, HARRAH'S NEW ORLEANS MANAGEMENT COMPANY, L.L.C., CEOC,L.L.C., CAESARS LICENSE COMPANY, L.L.C., CAESARS ENTERTAINMENT, INCORPORATED, CAESARS ENTERTAINMENT OPERATING COMPANY, INC., CAESARS ENTERPRISE SERVICES, L.L.C., CAESARS RESORT COLLECTION, L.L.C., PAUL FORCIER, and NICHOLAS REECE were defendants in the district court and appellees in the Court of Appeals.

Respondent, Jazz Casino Co., LLC is a limited liability company. At present, the sole member of Jazz Casino Co., LLC is Caesars Resort Collection, LLC, the sole member of which is Caesars Growth Partners, LLC, the sole member of which is Caesars Holdings, Inc. The sole shareholder of Caesars Holdings Inc. is Caesars Entertainment, Inc. There is no parent company of Caesars Entertainment, Inc., and presently no known publicly-traded entity that owns 10% or more of its stock.

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INTRODUCTION

This case involved a straightforward application of well-settled summary judgment principles to well-settled state law. There is nothing "cert.-worthy" about it. Petitioner Cheryl Romano claimed that she tripped on an electrical cord in Respondents' casino and sustained an injury. The district court and Court of Appeals found that the undisputed fact established by the contemporaneous video of the incident was that she tripped on a large, open and obvious prize display, and therefore failed to establish a condition that presented an unreasonable risk of harm in Respondents' casino. Because proof of an unreasonably dangerous condition was an essential element of Petitioners' claim under applicable state law, the district court granted summary judgment, and the Court of Appeals affirmed.

The Court of Appeals declined to publish its decision, based on its criteria governing publication of opinions. Pet. App. A, 2a, Fifth Cir. Rule 47.5. Those criteria discourage publication of "opinions that merely decide cases on the basis of well-settled principles of law," in favor of decisions that may "interest persons other than the parties to a case." *Id.* Rule 47.5.1. Thus, the Court of Appeals determined that its decision was of no consequence to anyone but the parties.

Petitioners have not raised any legitimate writ grant considerations. The only Rule 10 consideration they invoke is the allegation that the lower courts' decisions "so far departed from the accepted and

usual course of judicial proceedings" to call for this Court's supervisory review. Pet. 12. However, the alleged "departures" Petitoners invoke merely consist of alleged errors of fact or law. Pet. 12, 28. Even assuming that such an error occurred, which it did not, such alleged errors are rarely a basis to grant certiorari. RULES OF THE SUPREME COURT OF THE UNITED STATES, Rule 10. Petitioners have not identified any of the procedural irregularities typically required for resort to this rarely-invoked rule. See *Nguyen v. United States*, 539 U.S. 69, 73-74 (2003) (involving "highly unusual presence of non-Article III judge" on appellate panel), *Dick v. New York Life Ins. Co.*, 359 U.S. 437, 463, n. 34 (1959) (Frankfurter, J., dissenting) (citing "strong bias for or against a particular class of litigants" as an example of departure from "accepted and usual course of judicial proceedings").

In an effort to concoct a constitutional issue for this Court to review, Petitioners claim that the decision violates their substantive due process and Seventh Amendment rights, simply because the lower courts granted summary judgment. Pet. 30. They do not allege any procedural due process violation in the conduct of the proceedings. However, under the "more specific provision" rule, parties cannot resort to substantive due process arguments, when a specific constitutional provision governs a constitutional claim. *Cnty. of Sacramento v. Lewis,* 523 U.S. 833, 843 (1998). Therefore, the only real constitutional question Petitioners raise is whether granting summary judgment violates the Seventh Amendment.

For over a century, this Court has consistently held otherwise. The first decision from this Court to confirm that summary judgment does not violate the Seventh Amendment was *Fidelity Deposit Company of Maryland v. United States*, 187 U.S. 315 (1902). *Fidelity* pre-dated the Federal Rules of Civil Procedure, and concerned a "precursor to modern summary judgment." Edward Brunet, et al, SUMMARY JUDGMENT: FEDERAL LAW AND PRACTICE § 2:1 (2021). However, this Court later reaffirmed that "summary judgment does not violate the Seventh Amendment." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 336 (1979). Since then, courts of appeal considering the issue have also consistently held that summary judgment does not violate the Seventh Amendment. *See, e.g. Jones v. Mineta*, 150 F. App'x 893, 897 (10th Cir. 2005), *Koski v. Standex Int'l Corp.*, 307 F.3d 672, 676 (7th Cir. 2002).

Petitioners cite no decisions to the contrary. Instead, they rely primarily on Federal Rule 56 cases holding that courts must view summary judgment "in the light most favorable to the opposing party," *e.g. Tolan v. Cotton*, 572 U.S. 650 (2014), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Pet. 14, 26. Petitioners claim that the lower courts failed to follow that rule, and improperly "weighed the evidence" in reaching their decisions. Pet. ii, 32.

Petitioners' argument fails to recognize how courts apply that rule in the context of video evidence: courts may conclude that there is no genuine issue of material fact when video evidence blatantly contradicts a plaintiff's account. This Court expressly approved of this practice in *Scott v. Harris*,

550 U.S. 372 (2007). As the *Scott* Court recognized, facts must be viewed in the non-movant's favor only if there is a "genuine" dispute as to those facts. *Id*. at 381. If an opposing party's story is so blatantly contradicted by the record that no reasonable jury could believe it, the court should not adopt that version of the facts when ruling on summary judgment. *Id*. Courts should not rely on "visible fiction" fabricated by plaintiffs, but should view the facts in the light depicted by the video. *Id*. at 381-82.

The video of Ms. Romano's fall showed that she tripped over a prize display that was clearly visible, and that she was not looking where she was going when she walked into the display. Pet. App. B, 15a. Although she claimed to have tripped over an electrical cord that was outside the perimeter of the display, there was no evidence of an electrical cord in that condition prior to the incident. Pet. App. B, 16a.

Under those circumstances, the lower courts correctly determined, based on the video, that there was no genuine issue of material fact as to how the incident occurred. The lower courts' decisions did not violate *Tolan* or *Anderson*'s guidelines regarding deference to the non-moving party, and they did not violate the Seventh Amendment. For those reasons, the Petition should be denied.

In their Petition, Petitioners argue the merits of their position under state law, and suggest that the lower courts' decisions were "clear error." See Pet. 20, 29-30. However, this Court has long declined to review state law questions, and deferred to lower court judges on those questions. *Huddleston v.*

Dwyer, 322 U.S. 232, 237 (1944), *Butner v. U.S.*, 440 U.S. 48, 58 (1979). The reason for this Court's deference is that the lower federal judges "deal regularly with questions of state law in their respective districts and circuits," and "are in a better position…to determine how local courts would dispose of comparable issues." *Butner*, 440 U.S. at 58. Petitioners have failed to articulate any reason for the Court to depart from this well-established practice.

Even if this Court were inclined to wade into garden variety state law issues, there would be no basis to disturb the lower courts' decisions. The claim at issue was one for premises liability, based on allegations that plaintiff tripped over an electrical cord while attending an event on Respondents' casino floor. Pet. 9-10. However, the video evidence plainly contradicted Petitioners' account of the incident, and revealed that Ms. Romano tripped over a large display that was clearly visible to anyone paying attention. Pet. App. B, 15a. The video shows several other people passing near the display without tripping over it, and shows Ms. Romano looking toward her husband, her phone, or off in the distance, without ever looking at the display. Pet. App. B, 15a.

Based on that evidence, the lower Courts correctly found that the Petitioners failed to establish a condition that presented an "unreasonable risk of harm" at Respondents' casino. Because proof of such a condition is one of the essential elements of Petitioners' claims under applicable state law, the lower courts properly dismissed Petitioners' claims.

In sum, the Petition fails to establish any compelling reason to grant Certiorari, and fails to provide any support for its Seventh Amendment or summary judgment procedure arguments. Petitioners have not shown any basis to disturb the lower courts' decisions on the merits. Accordingly, the Petition should be denied.

STATEMENT

This case arises out of an incident that occurred on January 25, 2019, when Petitioner Cheryl Romano tripped over a prize display on Respondents' casino floor and fell. Pet. App. B, 7a. The incident was captured on surveillance video. *Id*. In the video, shortly before the fall, Ms. Romano can be seen observing and taking photographs of a second line parade that passed through the area. *Id*. In the area, there was a large prize vehicle display, which featured an illuminated red vehicle on a raised platform. *Id*., 15a.

Prior to Ms. Romano's fall, several people can be seen walking around the vehicle display without tripping over it. Pet. App. B, 15b. The video then shows Ms. Romano walking toward the display. *Id*. Ms. Romano looks at her husband, her phone, and off into the distance, but she never looks at the display. *Id*. She then trips over the left front edge of the display. *Id*.

Ms. Romano claimed that she tripped over an "unsecured electrical cord." Pet. 3, 10. However, there were no wires or cords visible in the video. Pet. App. A, 4a. The only evidence showing the cord

outside the perimeter of the display were photographs taken after the incident. *Id.* Ms. Romano and her husband, Wayne Romano, both testified they did not see an electrical cord on the ground prior to the incident. Record 562, 634-35.

In the district court, Respondents moved for summary judgment. Pet. App. B, 8a. The basis of the motion was that Petitioners presented no evidence of an unreasonable risk of harm, one of the essential elements of their claim, because the display Ms. Romano tripped over was open and obvious. *Id.* Respondents relied on the video surveillance evidence, which clearly showed several other people walking by the display without incident, and Ms. Romano looking elsewhere when she tripped over the display. Pet. App. B, 15a.

The district court granted summary judgment for Respondents. Pet. App. B, 17a. First, the district court discussed Petitioners' burden of proof under Louisiana's merchant liability statute. *Id.*, 11a, 11b. One of the essential elements of a claim under that statute is that plaintiffs must prove the presence of a condition that presented an unreasonable risk of harm. *Id.*, 12a. The district court then discussed the "risk / utility" test to determine whether a condition presents an unreasonable risk of harm. *Id.*, 13a. The risk / utility test in Louisiana examines the following factors:

1) the utility of the complained-of condition;

2) the likelihood and magnitude of harm, **including the obviousness and**

apparentness of the condition;

3) the cost of preventing the harm; and

4) the nature of the plaintiff's activities in terms of social utility or whether the activities were dangerous by nature.

Pet. App. B, 13a (emphasis added), citing *Dauzat v. Curnest Guillot Logging, Inc.*, 2008-0528 (La. 12/2/08), 995 So. 2d 1184, 1186-87. Regarding the "obviousness" factor, the district court noted that "a defendant generally does not have a duty to protect against that which is obvious and apparent." *Id.*, 14a, citing *Bufkin v. Felipe's La., LLC*, 2014-0288 (La. 10/15/14) 171 So. 3d 851, 856.

The district court found that the video footage was the "best and undisputed summary-judgment evidence documenting Cheryl's trip-and-fall accident." Pet. App. B, 14a. In support of its holding, the district court cited several pertinent facts, the most significant being:

- Shortly before Ms. Romano's fall, several people walked by the same display without falling;

- Ms. Romano never looked at the display as she was walking towards it; and

- The display was "open and obvious to everyone near it."

Pet. App. B, 15a.

Petitioners argue that Ms. Romano tripped over an electrical cord. Pet. App. B, 16a. Addressing that argument, the district court noted that there was no evidence the electrical cord was in plaintiff's pathway (outside the perimeter of the display) prior to the incident. *Id*. Accordingly, the district court concluded that "there simply was no hidden danger here on the undisputed facts, and Jazz Casino (on behalf of all named defendants) is entitled to summary judgment in its favor dismissing Plaintiffs' case." *Id*., 17a.

Petitioners appealed to the Fifth Circuit Court of Appeals, which affirmed the district court's decision. Pet. App. A. The Fifth Circuit briefly discussed the applicable standards under Louisiana's merchant liability statute, recognizing that Petitioners could not prove an essential element of their cause of action based on the video evidence. *Id*., 3a. Most of the Fifth Circuit's opinion focused on the video evidence, and Petitioners' failure to rebut its clear showing that the display was open and obvious. *Id*., 3a-5a. Petitioners claimed that they created a genuine issue of material fact by presenting evidence that Ms. Romano could have tripped on an electrical cord. *Id*., 4a. However, the Fifth Circuit found that Petitioners failed to present evidence that the cord was outside the perimeter of the display before the incident. *Id.* Citing *Scott v. Harris*, 550 U.S. 372 (2007), the Fifth Circuit found that Petitioners' account was contradicted by the video, and therefore did not create a genuine issue of material fact.

REASONS FOR DENYING THE PETITION

I. PETITIONERS' POSITION IS CONTRARY TO MORE THAN 100 YEARS OF PRECEDENT

This Court established over one hundred years ago in *Fidelity Deposit Company of Maryland v. United States*, 187 U.S. 315 (1902), that a dismissal by summary judgment does not violate a plaintiff's Seventh Amendment rights. Since then, courts of appeal have consistently followed suit. Petitioners demand that this Court overturn this precedent, on the basis that the "legal system has changed dramatically since 1902." Pet. 32. However, Petitioners cite no decision, or any compelling argument, for departing from the well-established rule that summary judgment does not deprive litigants of their Seventh Amendment right to a jury trial.

This Court long ago determined, when considering a precursor to Rule 56 of the Federal Rules of Civil Procedure, that a summary dismissal did not violate a party's right to trial by jury. *Fidelity Deposit Co. of Maryland v. United States*, 187 U.S. 315 (1902). *Fidelity* involved a procedure in which judgment could be awarded to a plaintiff on affidavits, if the defendant's affidavit was deemed deficient. It was the defendant who raised the Seventh Amendment challenge, after his affidavit was found insufficient and judgment was entered for the plaintiff. *Id*. at 318. The Court found that the procedure did not deprive the defendant of the right to trial by jury. *Id*. at 320. According to the Court,

"the purpose of the rule is to preserve the Court from frivolous defenses." *Id.* The Court found that this was a "salutary purpose, and hardly less essential to justice than the ultimate means of trial." *Id.*

Later, this Court confirmed the same rule applied to summary judgment, citing to *Fidelity*. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 336 (1979). The *Parklane* Court also noted that the same principle applied to other devices, such as directed verdicts, which allowed courts to decide cases as a matter of law when there was no real factual issue for the jury. *Id.* As the Court explained, "no one is entitled in a civil case to trial by jury, unless … there are issues of fact to be determined." *Id.*

Courts of appeals have consistently followed these precedents, and held that summary judgment procedure does not violate the Seventh Amendment. For example, in *Jones v. Mineta*, 150 Fed. Appx. 893, 897, 2005 WL 2644958 (10th Cir. 2005), the Tenth Circuit held that summary judgment did not violate plaintiff's due process or Seventh Amendment rights. Similarly, in *Koski v. Standex International*, 307 F.3d 672, 676 (7th Cir. 2002), the Seventh Circuit found that plaintiff's Seventh Amendment argument "flies in the face of firmly established law. The Seventh Amendment does not entitle parties to litigate before a jury when there are no factual issues for a jury to resolve." Likewise, in *Oglesby v. Terminal Transport Co.*, 543 F.2d 1111, 1113 (5th Cir. 1976), the Fifth Circuit found that there is no constitutional right to a trial by jury unless a party shows that "some dispute of material fact exists which a trial could resolve."

Petitioners' argument similarly flies in the face of well-established precedent. For over a century, this Court and courts of appeals have consistently held that summary judgment and similar procedures do not violate the Seventh Amendment. See *supra*. pp. 9-11 and cases cited therein. Petitioners have cited no cases to indicate that rule has ever been in controversy. Instead, they make conclusory statements that their "due process" rights have been violated, and rely mostly on cases that address summary judgment procedure.

Petitioners have not articulated any basis for departing from such a long and consistent line of precedent, and finding that their Seventh Amendment rights have been violated. Accordingly, there is no basis to grant the Petition.

Petitioners' grasping at straws argument ignores the express approval by this Court of the practice applied by the lower courts, in which the courts relied on video evidence to conclude that there is no genuine factual issue for a jury to try. See *Scott v. Harris*, 550 U.S. 372, 127 S.Ct. 1769 (2007).

In *Scott*, which concerned a claim of excessive force pursuant to 28 U.S.C. § 1983, the lower courts improperly denied summary judgment for the defendant police officer The lower courts incorrectly found that a disputed fact had been created by the differences between a plaintiff's self-serving testimony and video evidence that showed what actually happened. *Id.* at 376. The plaintiff had testified in deposition that during a police chase that preceded his arrest, he had remained in control of his

vehicle at all times, and slowed down and used turn signals at intersections. *Id.* at 378-380. By contrast, the video showed the plaintiff racing down the road at a very high speed, swerving around more than a dozen other cars, forcing cars onto the shoulder of the road, crossing the double yellow line and running multiple red lights. *Id.* at 378-380.

This Court corrected the mistake of the lower courts and held that the video was clear summary judgment evidence. *Id.* at 383-84. Although this Court acknowledged that for summary judgment purposes, courts should view the facts in the light most favorable to the non-moving party, that is only the case when there is a "genuine" dispute as to those facts. *Id.* at 380. Where the video showed no genuine dispute existed, it was sufficient evidence to support summary judgment. *Id.* at 380-381.

Both the district court and the Court of Appeals followed the teachings of *Scott* and applied a similar approach in this case. Petitioner Cheryl Romano alleged that she tripped on an electrical cord. Pet. App. B, 8a-9a. However, the video clearly showed that Ms. Romano walked into and tripped over a large, clearly visible prize vehicle display. *Id.*, 15a. Like the court in *Scott*, the lower Courts found that all suggestions that plaintiff had tripped over an electrical cord were so blatantly contradicted by the video evidence that no reasonable jury could believe them. Pet. App. A, 5a. Accordingly, no "genuine" issue of material fact existed and the lower courts properly granted and affirmed summary judgment for Respondents.

Petitioners repeatedly cite to *Tolan v. Cotton*, 572 U.S. 650 (2014), and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), to suggest that in summary judgment proceedings, courts must believe a plaintiff's story no matter what. Pet. 13-15. However, *Tolan* and *Anderson* have nothing to do with how to address situations where video evidence plainly shows a plaintiff's account to be false. Neither *Tolan* nor *Anderson* suggest that under such circumstances, courts are free to ignore irrefutable video evidence. In this case, as in *Scott* and many others like it, video evidence made it clear that there was no genuine issue for a jury to try. The lower courts properly granted and affirmed Respondents' Motion for Summary Judgment on that basis.

The lower courts' decisions were consistent with this Court's longstanding precedent, and did not violate the Seventh Amendment or the applicable rules of summary judgment procedure. Petitioners cite no authority to justify any departure from this Court's Seventh Amendment and summary judgment jurisprudence. They have presented no legitimate writ grant considerations, and no reason to disturb the rulings of the lower courts. For those reasons, the Petition should be denied.

II. ON THE MERITS THE LOWER COURTS CORRECTLY GRANTED AND AFFIRMED SUMMARY JUDGMENT FOR RESPONDENTS

As a rule, this Court seldom considers state law issues, and usually defers to lower federal courts with more experience applying local law in their

respective jurisdictions. *Huddleston v. Dwyer*, 322 U.S. 232, 237 (1944), *Butner v. U.S.*, 440 U.S. 48, 58 (1979). There is no reason why this Court should depart from that practice. However, even if this Court were to do so, the Petition should be denied, because the lower courts' decisions were correct on the merits based on applicable state law.

Pursuant to Louisiana law, to recover against a defendant for a defect in a thing in a defendant's custody, a plaintiff must prove, among other elements, that the thing had an unreasonably dangerous condition. *Foster v. Pinnacle Ent., Inc.*, 16-8 (La.App. 5 Cir. 4/27/16), 193 So. 3d 288, 295. Louisiana has several versions of this rule applicable to different situations, including La. R.S. § 9:2800.6 (West 2022) (merchant liability), La. Civ. Code Art. 660 (West 2022) (premises liability), La. Civ. Code Art. 2317.1 (West 2022) (premises liability), La. Civ. Code Art. 2322 (West 2022) (ruin of premises), and La. Civ. Code Art. 2315 (West 2022) (general negligence statute). However, each of those statutes require plaintiffs to prove an unreasonably dangerous condition as an essential element of its claim. Pursuant to Louisiana law, an open and obvious condition is not unreasonably dangerous. *Dauzat v. Curnest Guillot Logging, Inc.*, 2008-0528 (La. 12/2/08), 995 So. 2d 1184, 1186.

Louisiana Courts have repeatedly affirmed summary judgment on the basis that the condition complained of by plaintiff was an open and obvious condition. For example, in *Fluence v. Marshall Bros. Lincoln Mercury, Inc.*, 10-482 (La. App. 5 Cir. 11/23/10), 54 So. 3d 711, the plaintiff (an asphalt

subcontractor working on the premises of an automobile dealership) sued the dealership and a drainage subcontractor for injuries sustained when he fell into an open drainage hole while walking backwards as he smoothed freshly-laid parking lot asphalt. *Fluence*, 54 So.3d at 712. Both defendants won motions for summary judgment on grounds that they had breached no duty to the plaintiff as the open drainage hole did not present an unreasonable risk of harm given its 'open and obvious' nature, and they noted that the plaintiff had seen the hole earlier in the day and was aware of its existence. *Id.*

The Louisiana Fifth Circuit Court of Appeal affirmed the summary judgment, relying on the 'open and obvious' principles promulgated in *Dauzat* to sustain the district court's dismissal. The Court ". . . recognized that defendants generally have no duty to protect against an open and obvious hazard. If the facts of a particular case show that the complained-of condition should be open and obvious to all, the condition may not be unreasonably dangerous, and the defendants may owe no duty to the plaintiff." *Fluence*, 54 So. 3d. at 714. The Court found that the drain did not present an "unreasonably dangerous" condition, because the hazard was readily discoverable to a person exercising reasonable care under the circumstances, and that the defendants, therefore, violated no duty to the plaintiff. *Id*. at 715.

Similarly, in *Dowdy v. City of Monroe*, 46,693 (La. App. 2 Cir. 11/2/11); 78 So. 3d 791, 799, the Louisiana Court of Appeals for the Second Circuit affirmed summary judgment for the City of Monroe after a plaintiff tripped and fell in a parking lot

owned by the city. The Court found that "[d]efendants generally have no duty to protect against an open and obvious hazard. If the facts of a particular case show that the complained-of condition should have been obvious to all, the condition may not be unreasonably dangerous, and the defendant may owe no duty to the plaintiff." *Dowdy*, 78 So. 3d at 795. Since the irregular surface on the parking lot was an open and obvious condition that should have been visible to a prudent pedestrian, the city was not liable to the plaintiff for her injuries. *Id*. at 799.

Similarly, in this case, the large prize vehicle display Ms. Romano tripped over was open and obvious. The lower courts correctly relied on the video evidence to conclude that was the case. Therefore, the lower courts' decisions were correct on the merits, and the Petition should be denied.

Petitioners have not raised a genuine issue of material fact with the other testimony they pointed to. Petitioners cite to the testimony of several employees who testified that the electrical cord Ms. Romano claims to have tripped over was a "trip hazard." Pet. 11. However, none of those employees observed where the cord was immediately prior to the accident. Pet. App. B, 16a. The video shows that there was no cord in plaintiff's path. *Id*. The video clearly shows that Ms. Romano was not looking where she was walking, and that she walked into and tripped over a large and clearly visible prize vehicle display. Pet. App. B, 15a.

Pursuant to Louisiana law, Petitioners were required to show a genuine issue of material fact as to the presence of an unreasonably dangerous condition at the time of plaintiff's fall. The video evidence clearly showed that no such condition existed, and the lower courts were not required to believe plaintiff's self-serving claims to the contrary. Accordingly, the lower courts properly granted and affirmed summary judgment for the defendants.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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