

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Annie Pelzer,

Plaintiff,

vs.

Dolgencorp, LLC d/b/a Dollar General,

Defendant.

COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No. 2021-CP-40-05931

**ORDER GRANTING SUMMARY
JUDGMENT**

This matter came before the Court on Defendant Dolgencorp, LLC d/b/a Dollar General's Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure filed on July 27, 2022. On January 26, 2023, the Court held a hearing on the matter, at which Paige George was present as counsel for Plaintiff, and Sara Brakmann was present as counsel for Defendant Dolgencorp, LLC d/b/a Dollar General (hereinafter, "Defendant" or "Dollar General"). Having duly considered the pleadings and memoranda filed with the Court, the evidence presented, the arguments of counsel, and the applicable case law, the Court hereby grants Defendant's Motion for Summary Judgment.

FACTUAL BACKGROUND

This case arises out of an incident that occurred on June 5, 2021, at the Dollar General store located at 931 Longtown Road, Columbia, South Carolina. At 4:58 P.M., an unidentified customer knocked over a floral display that was situated near the store entrance, causing water to spill onto the floor. A Dollar General employee immediately responded to the scene and placed two wet floor signs around the water at 5:01 P.M. After placing the signs, two Dollar General employees addressed the spill by placing paper towels on the ground and then an employee mopped the area. The employees cleaned the area for a total of approximately ten minutes, and re-situated the two wet floor signs in the area. Throughout this time period, customers continued to navigate through

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the area. At 5:11 P.M., approximately thirteen (13) minutes after the spill, Plaintiff entered the store and slipped while navigating around the wet floor signs. Plaintiff claims she did not see the wet floor signs and testified at her deposition that she did not pay the signs any notice. However, it is undisputed by the parties that Dollar General mopped the spill in the minutes prior to Plaintiff's incident and placed two wet floor signs in the area.

Plaintiff filed the present action against Defendant on December 7, 2021, alleging causes of action for negligence, gross negligence, and negligent hiring, training, and supervision. Plaintiff alleges that Defendant (1) failed to maintain the premises in a safe condition; (2) failed to warn the Plaintiff of the unsafe condition; (3) failed to inspect the premises; (4) created an unsafe condition; (5) failed to properly clean the premises; (6) failed to discover and remove the hazard; (7) failed to train and supervise its employees; (8) negligently hiring unqualified staff; and (9) failed to warn of or eliminate unreasonable risks within the area of invitation.

STANDARD OF REVIEW

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Ellis v. Davidson*, 358 S.C. 509, 517-18, 595 S.E.2d 817, 821 (Ct. App. 2004). In determining whether a genuine issue of fact exists, a court must assume as true the evidence of the nonmoving party and draw all reasonable inferences in favor of that party. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006); *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 392, 593 S.E.2d 183, 186 (Ct. App. 2004). The purpose of summary judgment is "to expedite disposition of cases which do not require the services of a factfinder." *S. Glass & Plastics Co. v. Duke*, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

Summary judgment is appropriate “where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Ellis*, 358 S.C. at 517-18, 595 S.E.2d at 821. All ambiguities, conclusions, and inferences arising from the evidence “must be construed most strongly against the moving party.” *Id.* at 518, 595 S.E.2d at 821. However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Id.* at 518, 595 S.E.2d at 822; *Rumpf*, 357 S.C. at 393, 593 S.E.2d at 186.

DISCUSSION

After careful consideration of the record and the arguments of counsel, the Court concludes that Plaintiff failed to establish that Defendant violated any duty owed to Plaintiff. Based upon the established case law, this Court declines to impose a duty upon merchants that they must effectively ensure the safety of all customers by both warning of any known hazard and fully remedying all hazards from the premises. Accordingly, Defendant Dollar General is entitled to summary judgment on all of Plaintiff’s causes as a matter of law.

Under South Carolina’s well-settled law, in slip and fall cases involving a foreign substance, a Plaintiff must show either: (1) that her injury was caused by a specific act of Defendant which created the hazardous condition; or (2) that Defendant had actual or constructive notice of the hazardous condition and failed to remedy it. *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32, 542 S.E.2d 728, 729 (2001)(citing *Anderson v. Racetrac Petroleum Inc.*, 296 S.C. 204, 371 S.E.2d 530, 531 (1988)). Furthermore, “it has long been the law in South Carolina that a merchant is not an insurer of the safety of his customer but owes them only the duty of exercising ordinary care to keep the premises in reasonably safe condition.” *Milligan v. Winn Dixie Raleigh, Inc.*, 273 S.C.

118, 120, 254 S.E.2d 798, 799 (1979); *Pennington v. Zayre Corp.*, 252 S.C. 176, 165 S.E.2d 695 (1969)). Our Court of Appeals has held that the mere “fact that one slips and falls on a floor [does not] indicate negligence.” *Howard v. K-Mart Discount Stores*, 293 S.C. 134, 137, 359 S.E.2d 81, 82 (Ct. App. 1987); *see also Case v. Cato's of North Carolina, Inc.*, 252 N.C. 224, 113 S.E.2d 320 (1960); *Grimes v. Home Credit Co. of Kinston*, 271 N.C. 608, 157 S.E.2d 213 (1967).

The crux of Defendant’s argument in support of this motion was that Dollar General met its duty to maintain the premises in a reasonably safe condition. Dollar General both warned Plaintiff of a potentially hazardous condition and reasonably remedied the condition. The prevailing case law in South Carolina states that a shopkeeper only has a duty to invitees to maintain its premises in a reasonably safe condition. The parties do not dispute that Plaintiff was an invitee on Defendant’s premises and that it owes Plaintiff the duty of reasonable care. Further, the parties do not dispute that Defendant had actual notice of the foreign substance on Defendant’s premises.

This Court must consider whether Defendant failed to take reasonable precautions in responding to the hazardous condition. Based on the totality of evidence presented, in particular the surveillance video of the incident, as well as the testimony of Plaintiff, Defendant properly warned Plaintiff of the hazardous condition; thus, relieving Defendant from liability.

Plaintiff argues that Defendant’s failure to fully remedy the hazardous condition constitutes negligence. In effect, Plaintiff alleges there is a question of fact as to whether Defendant’s actions in cleaning the floor were reasonable because some water still existed on the floor at the time of Plaintiff’s fall. Plaintiff does not dispute that there were two warning signs in the immediate area of her incident. In her deposition, Plaintiff testified that she did not see the signs until after the incident, though she later testified that she paid no attention to the signs. Further, Plaintiff did not

present any evidence to dispute the surveillance video evidence showing that Defendant's employees took measures to address the hazardous condition in the area of incident for more than ten (10) minutes before her incident. Plaintiff's argument is not persuasive.

A merchant owes customers only a duty of exercising "ordinary care to keep the premises in reasonably safe condition." *Milligan v. Winn-Dixie Raleigh*, 273 S.C. 118, 120, 254 S.E.2d 798, 799 (1979). When determining liability, South Carolina courts look at whether defendants "'took reasonable precautions to provide safe premises for [their] customers," such as any warning cones or mats near the store entrances." *See Nolan v. Seawatch Plantation Master Ass'n*, 2011 WL 5878137 *4 (D.S.C. Nov. 23, 2011)(citing *Legette v. Piggly Wiggly, Inc.*, 368 S.C. 576, 579-80, 629 S.E.2d 375, 377 (Ct. App. 2006).) The court in *Legette v. Piggly Wiggly, Inc.* held that the addition of mats at a store's entrance, the periodic mopping of the area, and the placement of at least one warning sign were all reasonable steps taken by the store to protect its customers. *Legette*, 368 S.C. at 579-80 (citing *Young v. Meeting Street Piggly Wiggly*, 288 S.C. 508, 512, 629 S.E.2d 375, 377).

It is the law of South Carolina that in the course of exercising ordinary care, "a landowner owes an invitee a duty of due care to discover risks and to warn of or eliminate foreseeable unreasonable risks." *Landry v. Hilton Head Plantation Property Owners Ass'n, Inc.*, 317 S.C. 200, 203, 452 S.E.2d 619, 621 (Ct. App. 1994). Further, the courts have repeatedly held that where a property owner knew of a dangerous condition that is unknown to an invitee, "the owner is required to give proper warning in order to relieve himself from liability for injuries incurred by reason thereof." *Bruno v. Pendleton Realty Co.*, 240 S.C. 46, 51, 124 S.E.2d 580, 582 (1962).

Here, it is undisputed that the Defendant provided a proper warning to Plaintiff in the form of a wet floor sign. The store placed two signs in the area and mopped the area. Defendant

provided both a warning and took reasonable steps to remedy the hazardous condition. However, it is Plaintiff's position that Defendant should have done better in remedying the spill and warning Plaintiff. Plaintiff cannot furnish any case law that states a storekeeper, once on notice of a hazardous condition, must fully remedy the condition and warn an invitee. Case law does not require that a shopkeeper is the insurer of customer safety. What the law does require is that if a shopkeeper has actual or constructive notice of a hazardous condition and is able to remedy the condition, there is no longer a need to warn customers of a condition. However, in cases involving both foreign substances and other hazardous conditions, there are many examples of when a condition cannot be immediately remedied, or a shopkeeper knows a customer may encounter the condition while it is being remedied. In such situations, a shopkeeper warns customers of a potentially hazardous condition.

Plaintiff also argued that Defendant actually created the hazardous condition in the course of cleaning and mopping the area of Plaintiff's incident. While the Court does not agree with this characterization of events; even if true, Defendant still placed Plaintiff on notice of a wet floor. South Carolina courts have routinely ruled that in matters where a merchant's mopping operation leaves a floor to be slippery there is only actionable negligence when the merchant fails to give some form of a warning. *Gillespie v. Wal-Mart Stores, Inc.*, 302 S.C. 90, 394 S.E.2d 24 (Ct. App. 1990); *Lowrimore v. Fast Fare Stores, Inc.*, 299 S.C. 418, 385 S.E.2d 218 (Ct. App. 1989); see 62A Am. Jur. 2d *Premises Liability* § 564 at 124 (1990) ("Where [a mopping] operation leaves a floor dangerously slippery, and the hazard is not so obvious that a person would reasonably be expected to notice it without some form of warning, the failure to give such warning may constitute actionable negligence.") The language used both in creation and notice case law clearly states that a property owner exercises ordinary care by giving warnings of a situation *or* taking other

precautions.

Although Plaintiff testified in her deposition that she did not take note of the two wet floor signs, she made no contention that the signage was deficient. The mere presence of water on the floor, without more, is insufficient to establish liability. *See Gillespie v. Wal-Mart Stores, Inc.*, 302 S.C. 90, 394 S.E.2d 24, 25 (Ct. App. 1990); *see also Young v. Meeting Street Piggly Wiggly*, 288 S.C. 508, 343 S.E.2d 636, 638 (Ct. App. 1986). Further, it is well-established that “[n]ot every accident that occurs gives rise to a cause of action upon which the party injured may recover damages from someone.” *See Young*, 288 S.C. at 511. Here, it is clear that the store took reasonable precautions in responding to the hazardous condition by mopping the spill and by placing wet floor signs in place to warn of any additional water that may be on the floor. Accordingly, Defendant met its duty to warn of or eliminate foreseeable unreasonable risks and cannot be held liable.

ORDER

Upon consideration of the oral arguments of the parties, a review of the pertinent evidence, and the applicable case law, Defendant satisfied its duty to warn of or eliminate the known hazardous condition by placing a warning sign in the area of a water spill, thereby relieving Defendant of liability. Further, Plaintiff failed to present any genuine issue of material fact showing that Defendant breached any duty owed to Plaintiff.

Therefore, Defendant’s Motion for Summary Judgment on all causes of action is **GRANTED** and Plaintiff’s Complaint is **DISMISSED**.

AND IT IS SO ORDERED.

Electronic signature to follow



Richland Common Pleas

Case Caption: Annie Pelzer vs Dolgencorp Llc , defendant, et al

Case Number: 2021CP4005931

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IT IS SO ORDERED!

s/ Alison Renee Lee