STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Camille Bird, Plaintiff, vs. PetSmart, LLC and FreshPet, Inc., Defendants.	IN THE COURT OF COMMONS PLEAS THE THIRTEENTH JUDICIAL CIRCUIT Civil Case No. 2022-CP-23-00564 **ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT PETSMART, LLC**

This matter was before the Court on January 10, 2024, for a hearing on Defendant PetSmart, LLC's [hereinafter referred to as "PetSmart"] Motion for Summary Judgment as to Plaintiff's sole cause of action for negligence in premises liability. Present at the hearing were Thomas M. Creech, counsel for Plaintiff, Matthew C. LaFave, counsel for Defendant PetSmart, LLC, and David L. Moore, counsel for Defendant FreshPet, Inc. Having taken the matter under advisement and considered the filings and evidence, as well as the arguments of counsel, the Court finds that there is no genuine issue as to any material fact as there was insufficient evidence establishing PetSmart either placed the water on the floor or had actual or constructive notice of the water at the time of the fall. As such, Defendant is entitled to judgment as a matter of law.

BACKGROUND AND FACTS

This case arises from a September 6, 2019, incident in which Plaintiff slipped and fell after having retrieved food from a refrigerator owned by Defendant FreshPet, Inc. Following her fall Plaintiff noticed water on the floor appearing to be coming out from under the refrigerator. Employees of PetSmart responded to the location of the fall, aided Plaintiff, and also viewed the

water on the floor. Plaintiff alleges a sole cause of action for negligence in premises liability and demands both actual and punitive damages.

There is no dispute that Plaintiff fell on the aforementioned date and location or that there was water on the floor in the area of the fall. Plaintiff was discovered in a seated position leaning against the refrigerator. Likewise, there is no dispute that water was on the floor or the source and origin of the water. Employees of PetSmart investigated the water and discovered a drain pan under the refrigerator had become full and was overflowing.

PetSmart submitted, numerous exhibits, in support of the motion, which included numerous deposition transcripts along with the incident report prepared by the assistant manager, a work order dated July 23, 2019, addressing a leaking issue with a refrigerator, and a ticket reflecting the aforementioned leaking issue had been resolved. In light of the prevailing evidence counsel for PetSmart argued it is irrefutable that the water was not placed on the floor by its employee. Likewise, it was argued, that the record was devoid of any evidence indicating an employee had actual knowledge of the water prior to Plaintiff's fall. Counsel argued that, for Plaintiff to survive the instant motion, she was left only with the option of presenting evidence, or asserting a reasonable inference drawn therefrom, that supported an assertion that PetSmart had constructive notice.

Plaintiff in opposition to Defendant's Motion for Summary Judgment also submitted numerous exhibits. Specifically, Plaintiff introduced specific excerpts of deposition testimony, a photograph of the location of the fall, a work order regarding the leaking refrigerator indicating repairs required, portions of Defendant FreshPet, Inc.'s Answers to Plaintiff's First Set of Interrogatories, an email exchange involving PetSmart employees regarding the incident giving rise to this lawsuit and the leaking refrigerator issue, the incident report prepared by PetSmart's

assistant manager, and an Affidavit of Bryan R. Durig, Ph.D. and P.E. At the hearing Plaintiff's counsel handed to the Court, subject to a confidentiality agreement, a copy of a specific PetSmart policy and procedure regarding their response to a spill once one is discovered. Plaintiff's counsel argued that there was evidence in the record sufficient to establish PetSmart had either actual or constructive knowledge of the water prior to the fall. In support of this argument Plaintiff's counsel focused largely on two points. First, it was argued that language in the incident report, along with the internal email, supported an argument that PetSmart knew of a leaking issue with the refrigerator prior to the fall. Second, Counsel claimed that PetSmart knew of the water as evidenced by references to a wet floor sign having been placed in the area prior to the fall.

STANDARD OF REVIEW

"Rule 56(c) of the South Carolina Rules of Civil Procedure provides that the moving party is entitled to summary judgment if the evidence before the court shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (internal quotations omitted) (also clarifying that "mere scintilla of evidence" was not correct standard of proof for deciding motions under Rule 56(c)). To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006).

"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing

that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRCP. Thus, "to survive a motion for summary judgment, the plaintiff must offer some evidence that a genuine issue of material fact exists as to each element of the claim unless that element is either uncontested or agreed to by stipulation; otherwise, the plaintiff cannot meet his burden of proof and the claim may be determined as a matter of law by the trial judge." *Eadie v. Krause*, 381 S.C. 55, 64 n.5, 671 S.E.2d 389, 393 n.5 (Ct. App. 2008). "Conjecture and speculation… does not create any genuine issue of material fact." *McKnight v. S.C. Dep't of Corr.*, 385 S.C. 380, 390, 684 S.E.2d 566, 571 (Ct. App. 2009).

ANALYSIS

To establish negligence on the part of a merchant in South Carolina, a plaintiff must prove: (1) a duty of care owed to the plaintiff by the defendant; (2) a breach of that duty by some act or omission; and (3) that the plaintiff suffered damages proximately caused by the breach. *See Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 391, 701 S.E.2d 776, 780 (Ct. App. 2010). Where a Plaintiff is attempting to recover for damages or injuries allegedly resulting from the presence of a foreign substance on the floor of a shopkeeper's premises, the plaintiff is required to show "either that the substance was placed there by the defendant or its agents, or that the defendant had actual or constructive notice the substance was on the floor at the time of the slip and fall." *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32, 35, 542 S.E.2d 728, 729-30; (see also *Calvert v. House Beautiful Paint & Decorating Ctr., Inc.*, 313 S.C. 494, 443 S.E.2d 398 (1994); *Wimberly v. Winn-Dixie Greenville, Inc.*, 252 S.C. 117, 165 S.E.2d 627 (1969); *Pennington v. Zayre Corp.*, 252 S.C. 176, 165 S.E.2d 695 (1969); *Orr v. Saylor*, 253 S/C/ 155. 169 S.E.2d 396 (1969); *Hunter v. Dixie Home Stores*, 232 S.C. 139, 101 S.E.2d 262 (1957); *Gilliland v. Pierce*, 235 S.C. 268, 111 S.E.2d 521 (1959); *Gillespie v. Wal-Mart Stores, Inc.*, 302 S.C. 90, 394 S.E.2d 24 (Ct.App. 1990)).

In South Carolina, a merchant owes a customer a duty of ordinary care to keep his premises in a reasonably safe condition. *Wimberley v. Winn–Dixie Greenville, Inc.*, 252 S.C. 117, 165 S.E.2d 627 (1969). Regarding slip and fall cases generally, "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, 120-121, 254 S.E.2d 798, 799 (1979).

Here, the plain and undisputed evidence is that the water, in the area of the fall, came to be present on the floor when the drain pan located under the refrigerator filled with water and began to overflow. The overflowing water then spread from under the refrigerator onto the floor of the aisleway. Therefore, it is clear PetSmart did not place the water on the floor. Plaintiff, to survive this Motion for Summary Judgment is obligated to show the existence of evidence or a reasonable inference drawn from the evidence that PetSmart had actual or constructive knowledge of the water prior to the fall and failed to remedy the condition. Counsel for Plaintiff repeatedly and primarily referenced two (2) documents, which were the incident report and the internal email exchange. In relying on these documents Plaintiff's counsel argued that a reasonable inference could be drawn from the language contained therein that the refrigeration leaking on September 6, 2019, had prior leaking issues and those issues were known by PetSmart. PetSmart acknowledged a prior leaking issue but directed the Court to evidence that plainly established an isolated leaking issue from July 23, 2019, that was fixed and resolved without any further issues.

Finally, Plaintiff's counsel, while not admitting the presence of a wet floor sign, claimed PetSmart employees were adamant it had been placed prior to Plaintiff's fall. In reliance on this Plaintiff's counsel argued its placement established knowledge, on the part of PetSmart, of water on the floor prior to Plaintiff's fall. Unfortunately, there is insufficient evidence, relative to the

placement, that is sufficient to establish the sign, if placed there, was placed in response to the puddle of water Plaintiff claims to be the cause of her fall.

Therefore, this Court finds that there is no genuine issue of material fact and PetSmart is entitled to a judgment as a matter of law.

CONCLUSION AND ORDER

IT IS, THEREFORE, ORDERED AND ADJUDGED, the PetSmart's Motion for Summary Judgment is GRANTED, judgment is hereby entered for and on behalf of PetSmart as to all claims, and this cause is hereby DISMISSED with prejudice.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE ON FOLLOWING PAGE]

Greenville Common Pleas

Case Caption: Camille Bird vs. PetSmart LLC , defendant, et al

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So Ordered

G.D. Morgan Jr.