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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable G.D. Morgan, Jr., Circuit Court Judge

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Appellate Case No. 2024-000678

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Camille Bird, ..... Appellant.

v.

PetSmart, LLC, and FreshPet, Inc., ..... Defendants,

Of which PetSmart, LLC is the ..... Respondent.

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SUPPLEMENTAL RECORD ON APPEAL

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Appellant, with written consent from Respondents counsel, hereby supplements the Record on Appeal with Plaintiff’s Memorandum in Opposition to Defendant Petsmart’s Motion for Summary Judgement (R. pp. 452-460), and also attaches an Amended Designation of Matter reflecting this supplemental filing.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No. 2022-CP-23-00564
	)	
Camille Bird,	)	
Plaintiff,	)	<b>PLAINTIFF’S MEMORANDUM</b>
	)	<b>IN OPPOSITION</b>
vs.	)	<b>TO</b>
	)	<b>DEFENDANT PETSMA</b>
PetSmart, LLC, and FreshPet, Inc.	)	<b>MOTION FOR SUMMARY JUDGMENT</b>
Defendants.	)	

Before the Court is the defendant PetSmart’s motion for Summary Judgment. Because there exist numerous genuine issues of material fact, the court should deny the motion.

PetSmart has moved the court to grant Summary judgment to it because according to its motion, “[s]pecifically, Plaintiff cannot establish, through any admissible evidence any support for the allegations that Defendant knew or should have known of the presence of a foreign substance on its floor.” And further that Plaintiff has presented no evidence “to substantiate” her assertion that “the water was leaking form [sic] the FreshPet Fridge ... for some time.’ Also in its motion, PetSmart contends that plaintiff has failed to produce any evidence that PetSmart failed to properly inspect a heavily traveled customer area for potential dangers and hazards.” For the reasons set forth below, the Court should deny this motion.

On September 6, 2019, around 9:30AM, soon after the store opened at 9:00AM, plaintiff went to the PetSmart Store #1300 located at 1125 Woodruff Road in Greenville, SC, to purchase FreshPet dog food for her pet dog. Prior to Ms. Bird’s

arrival at the store, and prior to opening the store that day, PetSmart employees had walked all aisles of the PetSmart store conducting an inspection of the floors for any hazards. **Exhibit 1** Deposition of Jordan Coates pp29-30. Present that day was water in front of a FreshPet Fridge refrigerator that was located on Aisle 6 of the store. The water had leaked from a defective and malfunctioning FreshPet Fridge refrigerator, which caused plaintiff to slip and fall. The FreshPet Fridge refrigerator was owned and maintained by co-defendant FreshPet. Plaintiff suffered serious injuries, including injuries to her lower back and spine, as a result of the fall, requiring the implantation of a spinal stimulator. PetSmart has produced a picture of the area where Ms. Bird fell, **Exhibit 2**, which indicates the size and location of the puddle. The puddle appears to be approximately 3 feet x 1.5 feet and in front of the middle FreshPet Fridge. Unbeknownst to plaintiff, the FreshPet Fridge refrigerator had a history of leaking water onto the floor in front of it, a history of which PetSmart was well aware.

Plaintiff has testified that she fell because of water in front of a FreshPet Fridge refrigerator. **Exhibit 3** , Deposition of Camille Bird p 16 ln 12 -15. Ms. Bird has further testified that the water puddle was in front and under the refrigerator and that the puddle extended the width of the refrigerator; Id. Page 21:15 to 21:19. The water that she slipped in was in front of the center refrigerator of the three FreshPet Fridges. Id. Page 17:16 to 17:19. The first time that Ms. Bird became aware of the water was after she fell. The water that caused her to fall was located

in front and right under the refrigerator. Id. Page 16:9 to 16:15. According to plaintiff, there was no wet floor sign. Id. Page 70:2 to 70:3.

As noted above, PetSmart employees conducted safety inspections of its floors prior to store opening at 9:00AM. Moreover, PetSmart employees are required to be constantly looking for, identifying, and removing or cleaning up any wet spills on the floor, including pet urine or other liquids and to remain with the liquid until the liquid is cleaned up.

It is undisputed in this case that the water on the floor was emanating or leaking from the FreshPet Fridge in the store. PetSmart assistant store manager Jordan Coates testified in his deposition that he reported to the location where plaintiff fell very soon after she fell and he observed water on the floor in front of the FreshPet Fridge. He has further testified that he and the store manager looked under the refrigerator at that pan and that the pan was overflowing with water onto the floor where plaintiff fell. **Exhibit 4** Deposition testimony of Jordan Coates p24 ln 17 - p25 ln 24; Id. p36 ln 13 - p37. Ln 8.

A few days after the plaintiff's falling and becoming injured, PetSmart reported the defective cooler to FreshPet, who eventually sent a vendor, Konop, out to repair the cooler. A service order for that repair job dated September 17, 2019 stating that the FreshPet Fridge was leaking badly and "was a danger to associates and PP". **Exhibit 5.** FreshPet has stated in its answers to Interrogatories that wicking pads in the refrigerator pan were causing the leaking problem and thereafter the wicking pads were replaced. **Exhibit 6.**

Since it is a drastic remedy, summary judgment “should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.” Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)(quoting Watson v. Southern Ry. Co., 420 F.Supp. 483, 486 (D.S.C.1975). Moreover, when a court considers a motion for summary judgment, and “[i]n determining whether any triable issue of fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” Singleton v. Sherer, 377 S.C. 185, 196, 659 S.E.2d 196, 202 (Ct. App. 2008). If triable issues exist, those issues must go to the jury. Id.

In order for a plaintiff to recover damages for personal injuries caused by a dangerous or defective condition on a store’s premises, the plaintiff must show either (1) that the injury was caused by a specific act of the defendant which created the dangerous condition; or (2) that the defendant had actual or constructive knowledge of the dangerous condition and failed to remedy it. Wintersteen v. Food Lion, Inc., 344 S.C. 32, 35, 542 S.E.2d 728, 729–30 (2001) In the case of a foreign substance, the plaintiff has to show 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. Id.

### ARGUMENT

Plaintiff has produced reasonable evidence that creates a genuine issue of material fact for a jury to decide as to whether defendant PetSmart (1.) created or allowed the hazard to exist or (2.) that it knew or should have known of the

presence of water on the floor prior to the plaintiff falling, but failed to adequately remedy the hazard.

Documentary evidence produced in this case shows that PetSmart knew, or should have known, prior to Ms. Bird falling, that the FreshPet Refrigerator was leaking water onto the floor in the store. According to an internal corporate email regarding this plaintiff's fall in this case, PetSmart knew about the leaking FreshPet Fridge prior to the plaintiff falling. In that email, PetSmart risk management employee Michelle Krause states “[t]he incident occurred on **9/6/2019. However, the store is saying that they reported a leak from the refrigerator to corporate before 9/6 because apparently it had been leaking before the customer fell.**” Exhibit 7 email produced by PetSmart DEF-0023. (emphasis added)

Additionally, the incident report reveals that PetSmart knew the FreshPet refrigerator was leaking. Immediately after the plaintiff fell, Assistant Store Manager Jordan Coates was alerted of the fall and he reported to the area where plaintiff fell. Mr. Coates wrote an incident report. In the incident report, Mr. Coates wrote that “Customer slipped on water. . . . **Pet food fridge has been leaking.**” Exhibit 8 PetSmart Incident Report Form DEF – 0002. (emphasis added). From this written statement, in a light most favorable to the plaintiff, it is reasonable to infer that prior to Ms. Bird falling, the refrigerator was in a defective condition, leaking water and this was known to PetSmart.

Plaintiff has further produced the Affidavit of mechanical engineer Brian During. **Exhibit 9**. In his affidavit, Dr. During that a problem with the wicking pads would have caused a “continuous leaking problem [for the refrigerator] every time the refrigeration system operated to cool the inside of the temperature of the cooler - water could spill out of the condensate drain pan onto the floor.” Thus due to the nature of the leaking problem - the inadequate, worn-out wicking pads - this leak would have been continuous and ongoing. Assistant store manager Mr. Coates testified that when he arrived to the location of the fall after Ms. Bird feel, he did not see water gushing out or flowing out of the refrigerator like water flowing out of a faucet. Deposition of Jordan Coates pp 39-40 ln 4-11. **Exhibit 10**. Thus, a slow, continuous leak, by its very nature, would be frequently present and require PetSmart employees to remove or clean up water frequently. A slow continuous leak that caused a 3 foot by 1.5 foot puddle would have taken enough time that store employees would have observed the puddle during their daily and constant floor inspections.

When faced with a continuous leak, PetSmart employees should have turned off the refrigerator. Indeed, in his affidavit, Dr. During states that the machine should have been cut off and removed from service.

Faced with this knowledge of a leaking defective refrigerator in its store, and the potential danger that it caused to customers, PetSmart should have turned the refrigerator off and removed the refrigerator from service in the PetSmart store. **Id.** The assistant store manager Mr. Coates testified in his deposition that he knew

there was a switch and that he could have turned off the refrigerator to prevent further leaks and spills from occurring. Mr. Coates testified as follows:

7 Q. Okay. Was there -- if -- if you had seen a leak

8 coming from a FreshPet fridge, was it within your

9 ability to go and take the machine out of service?

10 A. **We could, yes, if it was -- if it was a high risk,**

11 **we could -- we could absolutely shut off the**

12 **machine.**

Deposition of Jordan Coates (Page 72:7 to 72:12)(emphasis added) **Exhibit 11.**

And later in his deposition, again when he was asked if PetSmart could cut off the FreshPet Fridge, Mr. Coates testified as follows:

13 Q. All right. But if there had been an ongoing or

14 problematic leak or problem with the FreshPet

15 fridge, you -- anyone at PetSmart could go in and

16 take that -- shut the fridge down. Is that right,

17 if you felt like it presented a danger to

18 customers?

19 A. **Yes.**

**Exhibit 12.** Coates, Jordan, (Page 74:13 to 74:19) (emphasis added)

Thus, in failing to take action knowing that the FreshPet Fridge was leaking and creating a danger to customers, PetSmart allowed a dangerous condition to exist on its premises. As a result, the defendant PetSmart's motion for summary judgment should be denied.

Finally, PetSmart is adamant that one of its employees placed a wet floor sign near the area where the plaintiff fell before she fell. Plaintiff disputes the presence of the sign and has testified that there was no sign present. However, in a light most favorable to the plaintiff, and while not conceding the presence of a wet floor sign, assuming arguendo, the presence of said sign is further evidence of PetSmart's knowledge of water on the floor. Simply placing a wet floor sign while not cleaning up or removing the dangerous wet condition on the floor violates the Store Appearance Policy.

### **CONCLUSION**

Because there is evidence in this record that PetSmart either caused or allowed a hazard to exist and because it knew or should have know of a foreign substance on its floor, the defendant PetSmart's motion for summary judgment should be denied.

Respectfully submitted,

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