

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Patricia Diehl,

Plaintiff,

vs.

Home Depot Store SW #1127; Home  
Depot Management Company, LLC; HD  
Development of Maryland, Inc.; Charles  
Hilliard, Home Depot U.S.A., Inc.

Defendant.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Civil Case No. 2023-CP-23-01912

**ORDER**

**RECEIVED**

**Jun 06 2025**

**SC Court of Appeals**

This matter is before the Court on Defendant Charles Hilliard’s (“Hilliard”) Motion to Dismiss Plaintiff’s Amended Complaint; Defendants Home Depot Store SW #1127; Home Depot Management Company, LLC; HD Development of Maryland, Inc.; Home Depot U.S.A, Inc.’s (collectively “Home Depot”) Motion to Strike Plaintiff’s Amended Complaint; and Home Depot’s Motion for Summary Judgment. These Motions were heard before this Court on February 27, 2025. In attendance for the hearing (the “Hearing”) were William Chandler Bowers, Esq., on behalf of the Plaintiff Patricia Diehl (“Plaintiff”) and Kyle D. McGann, Esq., on behalf of Hilliard and Home Depot.<sup>1</sup> After careful consideration of the Motions, memoranda, submissions, and oral arguments by the Parties, the Court GRANTS Hilliard’s Motion to Dismiss, Home Depot’s Motion to Strike the Amended Complaint, and Home Depot’s Motion for Summary Judgment.

### **PROCEDURAL BACKGROUND**

This premises liability action arises out of a purported trip and fall incident (the “Incident”) occurring on May 18, 2021, in Greenville, South Carolina. (Pl. Compl. ¶ 16).

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<sup>1</sup> Home Depot and Hilliard shall altogether be referred to as “Defendants.”

On April 18, 2023, Plaintiff filed the initial Summons and Complaint. (See generally Pl. Compl.).

On February 8, 2024, this Court issued a Consent Scheduling Order (the “Scheduling Order”). The Scheduling Order stated that all discovery was to be concluded by August 10, 2024.

On September 12, 2024, Plaintiff filed an Amended Summons and Complaint, naming Hilliard as an additional Defendant. (See generally Pl. Am. Compl.). At the time of filing the Amended Complaint, Plaintiff’s Counsel had neither received leave of this Court nor requested consent for leave from Defendants’ Counsel.

On September 12, 2024, Home Depot filed a Motion for Summary Judgment as to the Complaint.

On September 23, 2024, Home Depot filed a Motion to Strike the Amended Complaint.

On September 23, 2024, Hilliard filed a Motion to Dismiss.

In addition to the prior filings made by the Parties, Defendants’ Counsel submitted a document outlining previous testimony offered by Plaintiff and Andrew McCue (“McCue”) during the course of the Hearing. Plaintiff’s and Defendants’ Counsel subsequently provided the Court with deposition transcripts of Plaintiff’s two (2) depositions and McCue’s deposition.

### **FACTUAL BACKGROUND**

Plaintiff alleges that Plaintiff tripped and fell over a wooden pallet (the “Pallet”) in Home Depot resulting in an “extreme high-impact collision with the floor.” (Pl. Compl. ¶¶s 18-19). As a result, Plaintiff suffered severe and acute injuries.” (Pl. Compl. ¶ 19).

Plaintiff contends that, as an invitee of Home Depot, Home Depot owed a duty of care and breached said duty by creating a dangerous condition, failing to observe the dangerous condition, and failing to take the necessary precautions in protecting Plaintiff from this dangerous condition.

(Pl. Compl. ¶ 22). Plaintiff maintained that Home Depot was responsible for Plaintiff's injuries as a result of the Incident. (Pl. Compl. ¶ 26).

Plaintiff was deposed on two (2) separate instances. During Plaintiff's depositions, Plaintiff testified that she entered Home Depot to purchase paint. (Diehl Dep. I, dated Feb. 6, 2024, 26:10-14). As Plaintiff walked down an aisle, Plaintiff's foot got caught beneath the Pallet. (Diehl Dep. I 40:1-4; Diehl Dep. II, dated Mar. 19, 2024, 72:9-20). Plaintiff fell to the ground, suffering injuries as a result of the Incident. Plaintiff stated that she did not lose consciousness as a result of the Incident. (Diehl Dep. II, 54:12-:14).

Plaintiff admitted that Plaintiff was looking at her feet, rather than where she was walking, while in Home Depot. (Diehl Dep. I 37:23-25; 38:23-24; 40:3-5). Plaintiff stated that she usually looks where she is walking and believes most people do as well. (Diehl Dep. II 74:21-74:1). Plaintiff then conceded that, had she been looking where she was walking, Plaintiff would have seen the Pallet. (Id.).

Plaintiff testified that she shopped in this particular Home Depot previously. (Diehl Dep. I 41:9-:10). Plaintiff acknowledged that Home Depot, similar to other stores, merchandised materials on wooden pallets, similar to the Pallet. (Diehl Dep. I 36:22-37:1). Plaintiff could not provide any testimony as to the condition of the Pallet being dangerous other than Pallet's mere existence. (Diehl Dep. I 37:15-:20).

Plaintiff's Counsel identified one (1) witness, McCue, concerning the Incident.<sup>23</sup> McCue executed an Affidavit claiming that merchandise was hanging over the Pallet, causing Plaintiff to fall. (McCue Aff. ¶ 8).

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<sup>2</sup> McCue claims that he was walking in front of Plaintiff at the time of the Incident. Plaintiff contends McCue was in a different aisle at the time of the Incident.

<sup>3</sup> McCue's Affidavit was not produced and McCue was not identified as a witness until after the discovery deadline elapsed.

During McCue's deposition, McCue refuted the statements contained in an affidavit concerning the condition of the Pallet. McCue agreed with Plaintiff and testified that the Pallet was neither messy nor had merchandise overhanging the Pallet's edges. (McCue Dep. 24:1-:4; 24:13-:17; 48:17-49:6). McCue stated that he could see the Pallet from about fifty (50) feet away, which was as soon as he entered Home Depot. (Id. 20:7-:15; 50:15-:18). McCue admitted he successfully walked around the Pallet. (Id. 18:23-:25; 19:1-:2). McCue then conceded that he did not actually witness Plaintiff fall, but only turned around after Plaintiff began to fall.

### **STANDARD OF REVIEW**

"Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011); Rule 56, SCRPC. "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Id. However, a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial. See Gauld v. O'Shaughnessy Realty Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008). "It is a fundamental rule that 'if the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the [trial] court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law.'" Higgins v. Medical University of South Carolina, 326 S.C. 592, 598, 486 S.E.2d 269, 272 (Ct. App. 1997). "Summary judgment is appropriate when the material facts are not in dispute." Nelson v. Piggly Wiggly Central, Inc., 390 S.C. 382, 389, 701 S.E.2d 776, 780 (Ct. App. 2010).

## Discussion

### **A. Hilliard's Motion to Dismiss Plaintiff's Amended Complaint is GRANTED**

At the onset of the Hearing, Plaintiff's Counsel consented to Hilliard's Motion to Dismiss Plaintiff's Amended Complaint. As a direct result, Hilliard's Counsel did not provide complete oral arguments on this Motion.

Based upon the following, Hilliard's Motion to Dismiss is GRANTED.

### **B. Home Depot's Motion to Strike Plaintiff's Amended Complaint is GRANTED**

At the onset of the Hearing, Plaintiff's Counsel consented to Home Depot's Motion to Strike Plaintiff's Amended Complaint. As a direct result, Home Depot's Counsel did not provide complete oral arguments on this Motion.

Based upon the following, Home Depot's Motion to Strike is GRANTED.

### **C. Home Depot's Motion for Summary Judgment as to Plaintiff's Complaint is GRANTED**

Plaintiff maintains that Home Depot is liable to her under the cause of action of Negligence. This Court finds that: 1) There is no evidence illustrating the existence of a dangerous condition; 2) Home Depot was not on notice of a dangerous condition; 3) *In arguendo*, even if the Pallet was a dangerous condition, the Pallet was open and obvious; 4) Plaintiff's contributory negligence exceeded fifty percent (50%), barring her recovery. For these reasons—both individually and collectively—Plaintiff's claim fails as a matter of law and Home Depot's Motion for Summary Judgment is GRANTED.

In South Carolina, a Plaintiff to recover damages allegedly resulting from the purported negligence of the defendant in a premises liability action, a plaintiff must prove: (1) a duty of care owed by the defendant to the plaintiff; (2) defendant's breach of that duty by a negligent act or

omission; and (3) damages proximately resulting from the breach of the duty. Singleton v. Shere, 377 S.C. 185, 201, 659 S.E.2d 196, 204 (Ct. App. 2005).

It is well established in South Carolina that a customer who seeks to recover for injuries caused by a dangerous or defective condition on a storekeeper's premises must prove 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 (2001); Bessinger v. Bi-Lo, Inc., 329 S.C. 617, 496 S.E.2d 33, 34 (Ct. App. 1998); Simmons v. Winn-Dixie Greenville, Inc., 318 S.C. 310, 457 S.E.2d 608, 609 (1995); Calvert v. House Beautiful Paint and Decorating Ctr., Inc., 313 S.C. 494, 443 S.E.2d 398, 399 (1994); Gillespie v. Wal-Mart Stores, Inc., 302 S.C. 90, 394 S.E.2d 24 (Ct. App. 1990); Dennis v. Wal-Mart Stores, Inc., 301 S.C. 529, 392 S.E.2d 810 (Ct. App. 1990).

***1. The Pallet Was Not A Dangerous Condition.***

Plaintiff failed to produce evidence that the Pallet is dangerous in and of itself. Therefore, Plaintiff's claims must be dismissed as a matter of law. Garvin v. Bi-Lo, Inc., 343 S.C. 625 (2001).

In Garvin, a customer ("Customer") entered a store ("Store") and saw canned items (the "Cans") stacked inside boxes (the "Boxes"), with the tops of the Boxes cut off, displayed in an aisle for sale. Id. at 628. Customer retrieved and placed multiple Cans in her shopping cart. Id. Before Customer could retrieve additional Cans, approximately fifteen (15) or so Cans struck Customer in the face. Id. Customer argued that the Store had created a dangerous condition. Id. The Store was granted summary judgment on the basis that the Store a) lacked notice of any alleged issue; and b) that there was no evidence that the Store created a dangerous condition. Id.

The Supreme Court of South Carolina held that summary judgment by the trial court was appropriate. Id. Customer failed to present any evidence that the Boxes were a dangerous condition in and of itself. Id. Customer further failed to present any evidence that, even if the Boxes and Cans were a dangerous condition, the Store was on notice of the dangerous condition. Id. The Supreme Court of South Carolina found that, “[t]o accept [Customer’s] contention would render [the Store] an insurer of its customers’ safety. This is **simply not the law in South Carolina.**” Id. at 629 (citing Felder v. K-Mart, 297 S.C. 446, 377 S.E.2d 332 (1989)).

Plaintiff’s theory as to liability are weaker than those contained in Garvin. The Pallet was a stationary object, visible upon entering Home Depot. The Pallet was not in a state of disrepair. Plaintiff and McCue acknowledged that the condition of the Pallet did not cause the fall, rather claiming the Pallet’s mere existence was the cause of the fall. Plaintiff could not produce any admissible evidence demonstrating how the Pallet, in and of itself, is a dangerous condition. Therefore, this Court finds that the Pallet was not a dangerous condition.

Plaintiff’s legal arguments, similar to Garvin, are reduced to asking this Court to make Defendant the insurer of Plaintiff’s health because Plaintiff was injured at Home Depot. As the Supreme Court of South Carolina previously held, “this is simply not the law in South Carolina.”

For this reason, Home Depot’s Motion for Summary Judgment is GRANTED.

***2. There Is No Evidence Home Depot Had Knowledge Of A Dangerous Condition.***

If a condition is not inherently a dangerous condition, then Plaintiff must illustrate that the Defendant had actual or constructive knowledge of the dangerous condition and failed to remedy it. See Legette v. Piggly-Wiggly, Inc., 368 S.C. 576, 579, 629 S.E.2d 375, 376-77 (Ct. App. 2006). In this case, Plaintiff failed to produce any evidence that Home Depot created the dangerous condition or had knowledge of the dangerous condition and failed to correct it.

It is well established in South Carolina that a merchant is not an insurer of the safety of his or her customers. Felder v. K-Mart, 297 S.C. 446, 377 S.E.2d 332 (1989). Rather, the storekeeper merely owes its customers the duty of exercising ordinary care to keep the premises in a reasonably safe condition. Moore v Levitre, 294 S.C. 453, 365 S.E.2d 730 (1988). “The landowner has a duty to warn an invitee only of latent or hidden dangers of which the landowner has knowledge or should have knowledge. Larimore v. Carolina Power Light, 340 S.C. 438, 445, 531 S.E.2d 535, 538 (Ct. App. 200) (quoting Callander v. Charleston Doughnut Corp., 305 S.C. 123, 406 S.E.2d 361 (1991)).

“A merchant is not liable for injuries caused by some defect or unsafe condition in the premises, in the absence of any evidence tending to show that he or his agents knew or should have known, by the exercise of reasonable diligence, of the defect or unsafe condition.” H. L. Green Co. v. Bowen, 223 F.2d 523, 524-25 (4th Cir. 1955) (quoting Anderson v. Belk-Robinson Co., 5 S.E.2d 732 (1930)). A merchant is chargeable only with actual knowledge or with knowledge that he should have known by the exercise of reasonable care. See Darter, 194 F. Supp. at 645 (The Court held that a motel owner was not liable for a woman being scalded by hot water in her bath. Further, the Court opined that “to hold [the motel] responsible for this unfortunate occurrence would be to hold it an insurer. Under South Carolina law the [motel] was not an insurer.”).

There is no evidence before this Court suggesting Home Depot had knowledge of any issues with the Pallet. There is no evidence that the Pallet caused injuries to any other customers on the date of the Incident. Therefore, to hold Home Depot liable would, once again, be holding Home Depot as the insurer of Plaintiff’s safety. This simply is not the law in South Carolina.

For this reason, Home Depot’s Motion for Summary Judgment is GRANTED.

**3. *The Pallet Was Open And Obvious.***

Plaintiff and McCue both agreed on one material fact: the Pallet was open and obvious.

In South Carolina, “[a] possessor of land is not liable to his invitees for physical harm cause to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.” Larimore v. Carolina Power & Light, 340 S.C. 438, 446, 531 S.E.2d 535, 539 (Ct. App. 2000) (citing Restatement (Second) of Torts § 343 A).

Plaintiff admitted that the Pallet was readily visible. McCue went as far as to say that the Pallet was visible from the entryway of Home Depot. Thus, Plaintiff could not refute that the Pallet, itself, was not known or obvious to Plaintiff upon entering the store.

For this reason, Home Depot’s Motion for Summary Judgment is GRANTED.

**4. Plaintiff’s Own Fault Bars Her Recovery.**

Plaintiff admitted that, had she been looking where she was walking, the Incident would not have occurred.

In South Carolina, “[a] plaintiff in a negligence action may recover damages if his or her own negligence is not greater than that of the defendant.” Ross v. Paddy, 532 S.E.2d 612, 614 (S.C. Ct. App. 2000). South Carolina courts have held no liability exists “for injuries resulting from dangers that were obvious or that should have been observed in the exercise of reasonable care.” Sides v. Greenville Hosp. Sys., 362 S.C. 250, 256, 607 S.E.2d 362, 365 (Ct. App. 2004) (citing Larimore v. Carolina Power & Light, 340 S.C. 438, 531 S.E.2d 535 (Ct. App. 2000)).

In Cerny v. Columbia Sussex Mgmt., the Horry County Circuit Court held that a change in elevation to an outdoor shower deck was a condition that a person should have discovered by reasonable care. Cerny v. Columbia Sussex Mgmt., 2019 S.C. C.P. LEXIS 10173, C/A No. 2018-CP-26-02552 (South Carolina Court of Common Pleas, June 14, 2019). Specifically, the Court

concluded that a person should have seen the change in elevation because “The exercise of reasonable care involves a person watching where he or she is walking.” Cerny v. Columbia Sussex Mgmt. at \*6.

Plaintiff’s own negligence was the primary cause of the Incident, as Plaintiff’s own testimony illustrates Plaintiff failed to exercise ordinary care when traversing Home Depot. Plaintiff testified that she was not looking where she was walking, a rare occurrence for Plaintiff. Plaintiff admitted that most people look where they are walking. Plaintiff stated that if she was looking where she was walking, Plaintiff would have seen the Pallet. Plaintiff’s own concessions illustrate that Plaintiff’s own negligence exceeded fifty percent (50%).

For this reason, Home Depot’s Motion for Summary Judgment is GRANTED.

**CONCLUSION**

**NOW, THEREFORE**, based upon the following

**IT IS HEREBY ORDERED** that

Defendant Hilliard’s Motion to Dismiss the Amended Complaint is GRANTED;

Defendant Home Depot’s Motion to Strike the Amended Complaint is GRANTED; and

Defendant Home Depot’s Motion for Summary Judgment is GRANTED.

**AND IT IS SO ORDERED**

\_\_\_\_\_  
The Honorable Patrick C. Fant III  
Thirteen Circuit Court of Common Pleas  
Presiding Judge

\_\_\_\_\_, 2025  
Greenville, South Carolina



Greenville Common Pleas

**Case Caption:** Patricia Diehl vs. Home Depot Store SW #1127 , defendant, et al

**Case Number:** 2023CP2301912

**Type:** Order/Summary Judgment

So Ordered

Patrick C. Fant, III