

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

LISA E. CROWE,

Plaintiff,

vs.

FRED'S STORES OF TENNESSEE, INC.
AND NARA PROPERTIES, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action Number: 2016-CP-42-504

**ORDER GRANTING DEFENDANT,
FRED'S STORES OF TENNESSEE,
INC.'S MOTION FOR SUMMARY
JUDGMENT**

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SC Court of Appeals

THIS MATTER CAME BEFORE THE COURT on the Defendant, Fred's Stores of Tennessee, Inc.'s (hereinafter "Defendant") Motion for Summary Judgment pursuant to South Carolina Rules of Civil Procedure Rule 56. The hearing on Defendant's Motion was held on June 1, 2017, in the Spartanburg County Courthouse in the Court of Common Pleas before the Honorable R. Keith Kelly. The Defendant, Fred's Stores of Tennessee, Inc. was represented by Matthew C. LaFave, Esquire and the Plaintiff was represented by Aimee V. Leary, Esquire.

FACTS

On or about January 24, 2016 Plaintiff presented to Defendants' store located at 200 Spartanburg Highway in Lyman, South Carolina to shop for certain merchandise she was in need of following a recent winter storm having passed through the area. Plaintiff contends that she had completed her shopping and exited the store, but while crossing the parking lot to her vehicle she slipped and fell on ice that was present in the area. Specifically, Plaintiff has alleged "as she was exiting the front doors of the store, she slipped on ice and/or packed snow under the store's awning and fell backwards landing onto her back and wrist on concrete." See

Plaintiff's Second Amended Complaint, ¶ 7. Plaintiff maintains that Defendant knew the “store’s entrance presented a hazard to its customers” and that they failed “to take safety precautions to warn of or eliminate risks.” *See Plaintiff's Second Amended Complaint*, ¶¶ 12 & 14. As a result of the fall Plaintiff sustained a fractured wrist, which required surgical intervention.

Plaintiff alleges Defendant was negligent under a standard premises liability theory contending Defendants knew or should have known of the existence of a dangerous condition and they failed to exercise reasonable care to warn of or eliminate the condition.

Upon completion of written discovery and after completion of Plaintiff’s deposition Defendant filed this Motion for Summary Judgment on January 11, 2017. Defendant contended that Plaintiffs lacked any evidence to establish that Defendant owned, operated or controlled the parking lot where the subject accident occurred. Moreover, Defendant argues that Plaintiff, through entering the store across the same condition she alleges to be dangerous, had knowledge of the condition and as such assumed the risks associated therewith. Plaintiff, however, contends that the lease agreement relied upon by Defendant was not controlling any longer as the property had been transferred since the most recent lease renewal without any corresponding assignment of the lease agreement.

LAW/ANALYSIS

Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Glover v. County of Charleston*, 361 S.C. 634 (2004). Since it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Helena Chemical v. Allianz Underwriters*, 357 S.C. 631 (2004). Summary judgment

is improper if the parties dispute the inferences to be drawn from the facts even if the facts themselves are not in dispute. *CEL Prods., LLC v. Rozelle*, 357 S.C. 125 (Ct. App. 2004). In determining whether summary judgment is proper, this court must view all evidence in the light most favorable to the non-moving party. *Silvester v. Spring Valley Country Club*, 344 S.C. 280 (Ct. App. 2001). Importantly, in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hutchinson v. Liberty Life Ins. Co.*, 393 S.C. 19, 24 (Ct. App. 2011).

Regarding slip and fall cases involving an alleged foreign substance, for a plaintiff to recover damages for injuries caused by an accident on a merchant's premises it must be show that the "substance was placed there by the defendant or its agent, 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 (2001), (*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)). Furthermore, "[i]t has long been the law in South Carolina that a merchant is not an insurer of the safety of his customers but owes them only the duty of exercising ordinary care to keep the premises in a reasonably safe condition." *Milligan v. Winn Dixie Raleigh, Inc.*, 273 S.C. 118, 120-21, 254 S.E.2d 798, 799 (1979). The Courts of South Carolina have held fast to this analysis despite numerous

challenges and different theories having been proposed. Moreover, it has been held by the Court of Appeals 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 Plaintiff has, through all discovery, failed to present any evidence to establish Defendant was the owner, operator, or in control of the parking lot where the subject incident occurred. In the prevailing case law in South Carolina a shopkeeper owes its invitees a duty to maintain its premises in a reasonably safe condition. The key aspect of the current law is that the duty owed by a shopkeeper extends to property it owns, operates, or is otherwise in control over. The undisputed evidence in this case reflects the subject incident having occurred in the parking lot in front of Defendant’s store as a result of accumulated ice and/or compacted snow following a winter storm. The record presented during this hearing through exhibits indicates Defendant is a lessee of its premises under a lease agreement originally entered into with Shops at Friendship, LLC in 2002 and renewed in 2013. Following the renewal of the lease agreement the title to property was transferred to Yellow Mama Music before later being transferred to the present owner, Nara Properties, LLC in 2015. Defendant continued up to and including the month in which the subject accident occurred continued to tender payments in accordance to the lease agreement to the current owner. It is further undisputed that the lease agreement clearly sets for certain particulars applicable to the facts of this case as it is noted that the lessor is responsible for the maintenance of certain areas on the exterior of the “demised premises,” which includes the sidewalk, curbs, ramps, and parking lot. Furthermore,

Rider 2 pertains to maintenance of common areas, which specifically obligates the lessor to take responsibility for removal of snow.

The chief argument by Plaintiff in opposition of this motion was that the transfer of the property after the renewal of the lease in 2013 effectively resulted in the renewed lease being rendered unenforceable. Counsel for Plaintiff contended that without any documentation reflecting an assignment of the lease from the initial lessor Defendant became a resident of the premises on a month-to-month basis without any controlling lease agreement. However, Defendant argued that evidence clearly reflected a seamless transfer of the title to the property across the owners to the ultimate owner Nara Properties, LLC. Furthermore, Defendant noted that Plaintiff presented no evidence to establish a revocation of the lease agreement by Defendant, Nara Properties, LLC such that they should be subjected to the terms and conditions of the lease agreement as was renewed in 2013.

Defendant further contended that Plaintiff was aware of the presence of the foreign substance as the surveillance video clearly showed her passing over the same patch of ice where she later fell. It is well settled that a shopkeepers' liability is largely a result of its superior knowledge of the conditions then and there prevailing on its premises. *Sides v. Greenville Hosp. System*, 362 S.C. 250, 607 S.E.2d 362 (2004). However, this case is one where the Plaintiff's knowledge of the condition is equal, if not superior, to the knowledge of the shopkeeper. As a result of her knowledge of the condition Plaintiff assumed the risk associated with walking over the substance. Furthermore, given the fact that Plaintiff's knowledge of the presence of the ice/snow was commensurate with the knowledge of Defendant there was no duty to warn her of the substance's presence. *Hackworth v. U.S.*, 366 F.Supp. 326 (U.S.D.C. 4th Cir. 2005).

CONCLUSION

Upon conclusion and consideration of the oral argument of the parties, a review of the pertinent portions of the file, and the applicable case law, the undersigned finds that Plaintiff stepped over the same patch of ice when she entered the building thereby relieving Defendant of a duty to warn her of the condition as she was already aware of its presence. Furthermore, the undersigned finds Defendant owed Plaintiff no duty to maintain the parking lot, which was where the subject incident occurred .

Based on the foregoing, IT IS ORDERED, ADJUDGED AND DECREED: that the Defendant's Motion for Summary Judgment is hereby granted relative to all causes of action presented in the Plaintiff's Complaint.

AND IT IS SO ORDERED.

The Honorable R. Keith Kelly
Judge of the Court of Common Pleas

This ____ day of June 2017
Columbia, South Carolina



Spartanburg Common Pleas

Case Caption: Lisa E Crowe VS Freds Stores of Tennessee Inc , defendant, et al
Case Number: 2016CP4200504
Type: Order/Summary Judgment

It is so Ordered.

s/ R. Keith Kelly - 2165