

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
COURT OF COMMON PLEAS

The Honorable George C. James, Jr., Circuit Court

Case No. 2012-CP-14-207446

Cynthia RichardsonAppellant,

v.

Piggly Wiggly Central, IncRespondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

DID THE TRIAL COURT ERR BY DENYING THE PLAINTIFF/APPELLANT'S MOTION FOR RECONSIDERATION AND BY GRANTING THE DEFENDANT/RESPONDENT'S MOTION FOR JUDGMENT NOT-WITHSTANDING THE VERDICT?

FACTS

On or about October 11, 2008, a rainy day, the Plaintiff-Appellant was a customer shopping at the Piggly Wiggly **R. p. 57, lines 15-16**). After completing her shopping and upon exiting the door her foot slipped on the concrete sidewalk just outside the door (**R. p. 58 lines 10-15**).

ARGUMENTS

The un-contradicted testimony of the Plaintiff-Respondent was: that she fell at the Piggly Wiggly on a rainy day; it was raining when she entered and exited the store; that she slipped on the concrete sidewalk, just outside the door, as she exited the building; and, that the concrete sidewalk where she slipped was uncovered, and wet from the rain (**R. p. 72, line 5 – p. 73, Line 9**). No other evidence was presented as to the surface condition of the concrete.

Plaintiff-Appellant's testimony was that she slipped on the concrete sidewalk, outside the building, yet there was no evidence introduced as to any defect in the sidewalk, or any unreasonable risk of harm due to the condition of the sidewalk. That the Plaintiff-Appellant slipped is insufficient to prove the existence of an unreasonably dangerous condition.

Howard v Kmart Discount Stores, 293 S.C. 134, 359 S.E. 2d 81 (SC App. 1987). In Howard, the Plaintiff was awarded damages for injuries received when she slipped and fell in the Defendant's store. The claim was that the floor was slick because of the manner in which it was waxed. The court held that she could not establish that the floor was unreasonably dangerous by showing nothing more than that she slipped on the floor.

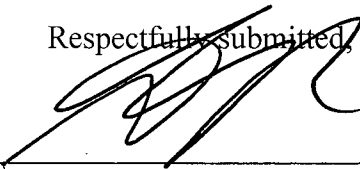
The courts of Georgia have held that a slippery condition on an outdoor surface caused solely by rainwater presents no unreasonable risk of harm. Paggett v. Kroger Co. 311 Ga.App. 690, 716 S.E.2d 792, (Ga.App., 2011)

The Lower Court references a Georgia case, Cavin v Warehouse Home Furnishings Distributors, Inc., 209 GA App. 706 434 S.E. 2d 532 (1993), which involved a fall on a wet sidewalk, resulting a leg fracture. The theory of liability was that a portion of the concrete sidewalk upon which she fell was painted and the paint made it slick when wet. The court, in upholding a grant of Summary Judgment, held that the Plaintiff had the burden of showing that the paint was defective or unsuitable for the purpose or that the sidewalk was otherwise defective. The fall, in and of itself, was not sufficient evidence of a dangerous condition.

CONCLUSION

The Circuit Court was correct in issuing an Order reversing the Magistrate Court's judgment denying the Defendant-Respondent's Motion for Direct Verdict and Judgment Not Withstanding the Verdict due to the absence of evidence from which it could be reasonably be informed that dangerous conditions caused the Plaintiff's fall.

Respectfully submitted,



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August 21, 2012

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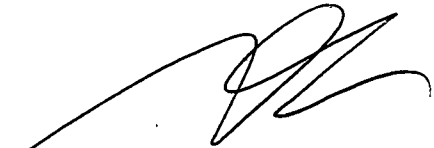
v.

Piggly Wiggly Central, IncRespondent.

CERTIFICATE THAT RESPONDENT PIGGLY WIGGLY CENTRAL, INC.'S
FINAL BRIEF COMPLIES WITH RULE 211(b)

I certify that the Final Brief of Respondent Piggly Wiggly Central, Inc. complies with the requirements of South Carolina Rules of Appellate Procedure 211(b).

August 21, 2012



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