IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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SC Court of Appeals

Case No. 2017-CP-34-00367

Sharon Thompson, Appellant,

v.

Sprint Food Store #728, Respondent.

BRIEF OF APPELLANT

Marshall S. Weaver
Post Office Box 3888
Florence, South Carolina 29502
(843) 407-4203
Attorney for Appellant

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STATEMENT OF THE CASE

On December 6, 2017, Plaintiff, Sharon Thompson, brought this action alleging Premises Liability and Negligence against the Defendant. The Defendant answered the Plaintiff's Complaint on January 23, 2018 and subsequently filed a Motion for Summary Judgment on June 14, 2018. Oral arguments for Defendants Motion for Summary Judgment were heard on September 25, 2018 and the Court entered an Order granting Summary Judgment on May 13, 2019. On May 24, 2019, Plaintiff filed a Notice of Appeal.

STANDARD OF REVIEW

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Legette v. Piggly Wiggly, 368 S.C. 576, 629 S.E.2d 375 (2006). In determining whether any triable issues of fact exist, the evidence and all the inferences that can be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Legette v. Piggly Wiggly, 368 S.C. 576, 629 S.E.2d 375 (2006).

FACTS

On July 28, 2016 at or around 8:45 p.m., the Plaintiff, Sharon Thompson (hereinafter referred to as Ms. Thompson), was an invitee at the Defendant's, Sprint Food Stores, Inc. Ms. Thompson initially parked her vehicle at the gas tank, walked across the parking lot, and entered the Defendant's store where she pre-paid for her gasoline. After paying for her gasoline, Ms. Thompson then returned to her vehicle and pumped the gasoline into her vehicle. While pumping the gasoline into her vehicle, numerous other individuals can be observed entering and exiting the Defendant store. The Defendant's parking lot was recently pressure washed by a third party, Allen Moore, and residual water remained on the ground in the parking lot. The Defendant had actual and constructive knowledge that Allen Moore pressure washed the parking lot, which is evidenced in the Store Incident Report which states, "parking lot was being pressure washed when lady walked in and fell. She slipped as she was walking in."

After pumping the gasoline into her vehicle, Ms. Thompson walked back across the parking lot, which was wet from the recent pressure washing, with the intent to purchase something to drink from inside Sprint Food Store. Ms. Thompson did not observe anyone pressure washing the parking lot, and rendered the following testimony in her deposition on P. 27, L2-24 (Exhibit 1):

> Q: When you entered the store the first time, did you observe anything going on in the parking lot:
>
> **A: No, that was—**
>
> Q: --any activity?

A: That was a busy night. That was just a busy night, just a lot of people, so I didn't observe nothing that was going on.

Q: Do you recall seeing an individual or a company doing some pressure washing of the parking lot?

A: I didn't see anything about a company. Nothing like that, just normal people.

Q: Okay. Did you see anybody cleaning the parking lot?

A: No. I haven't noticed people cleaning because the—where I was walking in—there was nobody there, where I was walking at.

Q: So you didn't see anybody in the parking lot doing any type of cleaning with water or a hose or anything when you were entering the store?

A: No.

After taking approximately 2 steps into the store, Plaintiff's left foot slipped from beneath her, causing her to fall to the floor, thereby resulting in significant injuries. Ms. Thompson's fall was captured on a video surveillance system maintained by Sprint Food Store. The video does not depict any mat at the door to reduce moisture tracked in by invitees. The video also does not depict any wet floor sign, which would be immediately visible to invitees upon entry into the premises at the time Ms. Thompson fell. The video does depict an employee placing the "wet floor" sign in front of the entrance to the store after Ms. Thompson fell and while Ms. Thompson is still on the floor in a seated position. Furthermore, Ms. Thompson testified in her deposition that she did not observe a "wet floor" sign at the time she fell. Finally, there has been no evidence submitted to the Court that the Defendant periodically mopped the floor to remove

moisture that was tracked into the premises from the wet parking lot or that Defendant took any remedial measures whatsoever to ensure the safety of its invitees on the wet floor.

ARGUMENTS

I. The Court erred when it found, "Plaintiff has failed to create a question of fact that Sprint Food knew or should have known of the alleged dangerous condition and there is no evidence that Sprint Food created any such condition."

Any party in possession or having control over the property, business operations, or activities conducted upon the property at the time of the accident, or when the dangerous condition was created, is a likely Defendant. See Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (Ct. App. 2001). The duty of care owed to invitees can flow from any person or entity that has control over the property. Id. at 729, 541 S.E.2d at 867-69. Property owners have an affirmative duty of reasonable care to properly inspect their premises in order to discover dangerous conditions and to take adequate safeguards to prevent injury to invitees. Hughes v. Children's Clinic, P.A., 269 S.C. 389, 399-400 (1977). The adequate safeguards include exercising due care to warn of or eliminate foreseeable unreasonable risks. Landry v. Hilton Head Plantation Prop. Owners Ass'n Inc., 317 S.C. 200, 203, 452 S.E.2d 619, 621 (Ct. App. 1994).

The lower court states in the Order Granting Summary Judgment, "[t]he Court finds that there is no competent evidence that Sprint Food created any alleged dangerous condition or had notice of the same (Exhibit 2, Court Order)." In this case, the Defendant, Sprint Food Store, hired a third-party vendor to pressure wash the parking lot during normal business hours, thereby creating the dangerous condition. Plaintiff contends that by hiring the vendor and acknowledging that the work was being done at the time of the fall, actual and constructive knowledge of the work being performed is inferred. Pursuant to Sims, the fact that Sprint Foods had control over the property, business operations, or activities conducted upon the property at the time of the

accident makes them a likely Defendant in this action. Furthermore, the front of the Sprint Food Store is clear glass allowing for observation of the gas tanks and parking lot, and therefore, Plaintiff contends it is not possible for the vendor to pressure wash the parking lot during business hours without the employees having actual notice that the work is being done.

Next, Plaintiff contends that the Defendant admits to having actual and/or constructive knowledge. In the incident report, completed by the Defendant's employee, the Defendant states, "parking lot was being pressure washed when the lady walked in and fell (Exhibit 3)." Therefore, based upon the stated facts, the Defendant both knew or should have known through inferred and actual knowledge the store was being pressure washed, thereby creating a duty to invitees.

Finally, this is a sizeable gas station that constantly has invitees entering and exiting the premises. It is a reasonably foreseeable risk that moisture will be tracked inside the store if the parking lot is being pressure washed with water, creating the probability of an individual slipping and falling. To minimize this risk, the Defendant could have had the work performed during the hours of least occupancy. Thus, due to the facts that: (1) the Defendant hired the third party vendor to pressure wash the parking lot, (2) the parking lot was pressure washed during normal business hours and was visible to employees through the glass front window of the store, (3) the incident report states, "parking lot was being pressure washed when the lady walked in and fell," and (4) it is reasonably foreseeable that the water and moisture from the pressure washer would be tracked inside the store causing someone to fall; there clearly exists several questions of fact as to whether Sprint Food knew or should have known of the alleged dangerous condition.

II. The Court erred when it found, "Sprint Food owed no duty to warn of the purported accumulated water."

Property owners have an affirmative duty of reasonable care to properly inspect their premises in order to discover dangerous conditions and to take adequate safeguards to prevent injury to invitees. Hughes v. Children's Clinic, P.A., 269 S.C. 389, 399-400 (1977). Adequate safeguards include exercising due care to warn of or eliminate foreseeable unreasonable risks. Landry v. Hilton Head Plantation Prop. Owners Ass'n Inc., 317 S.C. 200, 203, 452 S.E.2d 619, 621 (Ct. App. 1994). A possessor of land is not liable to his invitees for physical harm caused 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. Callander v. Charleston Doughnut Corp., 305 S.C. 123, 126, 406 S.E.2d 361, 362 (1991). The mere presence of moisture, even open and obvious moisture, does not nullify the storekeepers duty to take reasonable precautions to provide a safe premises for its customers; the storekeeper must take reasonable steps to protect its invitee's. See Legette v. Piggly Wiggly, 368 S.C. 576, 579-580, 629 S.E.2d 375, 377 (2006). Factors to be considered in determining if an owner took reasonable steps in a slip and fall case are: (1) the use of mats, (2) the periodic mopping of an area, and (3) the placement of at least one warning sign. Id. at 579-580, 629 S.E.2d 375, 377. In order to establish liability in a slip and fall case, a Plaintiff must show that the Defendant either: (1) created the defective condition or (2) had knowledge of the dangerous condition and failed to remedy it. Legette v. Piggly Wiggly, 368 S.C. 576, 579, 629 S.E.2d 375, 377 (2006).

The lower court states in the Order Granting Summary Judgment (Exhibit 2), "[t]he court finds the logic articulated in the above-cited cases regarding accumulated rain water is analogous to the purported dangerous condition alleged in this case. Accordingly, the Court analysis (analyzes) the facts of this case against the law articulated in the accumulated rainwater cases." The Plaintiff disagrees with the Courts analysis equating a vendor pressure washing the parking

lot to accumulated rainwater cases in that the Defendant created this dangerous condition, thereby establishing liability pursuant to Legette.

In this case, the danger was not known, open, or obvious to Ms. Thompson. In Ms. Thompson's deposition, the Plaintiff states that she did not see anyone pressure cleaning in the parking lot. Specifically, in the line of questioning transcribed from P. 35, L. 5 - 24 of Plaintiff's deposition, the Plaintiff makes it abundantly clear that she did not observe anyone pressure washing. The Plaintiff ends this line of questioning by stating, "not from where I was walking in. My area that I was going to, there was no machinery right there saying—nobody was pressure cleaning right there where I was entering the store (Exhibit 4)." Therefore, this case differs greatly from a rain case, because this was not an act of God. Ms. Thompson did not have notice of a natural occurrence, and the source of water which saturated the parking lot was not visible in the area that my client observed.

Furthermore, the video depicts the Plaintiff's fall, and when viewed, the front entrance can be observed. No pressure washing machinery is observed, which is an indication that the pressure washer had either moved to another area of the premises or had finished pressure washing the area immediately in front of the door. Therefore, this dangerous condition was not "open and obvious" to invitees entering Sprint Food.

Even if the Court were to find that the dangerous condition was open and obvious, which the Plaintiff does not concede, pursuant to Legette, "[t]he mere presence of moisture, even open and obvious moisture, does not nullify the storekeepers duty to take reasonable precautions to provide a safe premises for its customers; the storekeeper must take reasonable steps to protect its invitee's." In Legette, the Defendant, Piggly Wiggly, brought a motion for Summary

Judgment when the Plaintiff, Legette, on a rainy day, entered the Piggly Wiggly, shopped for a while, then fell on the wet floor as she was exiting the premises. In Legette, the Court first identified the aforementioned 2-prong test to use in the evaluation of liability in a "slip and fall" case; and second, the Court identified certain factors which must be considered when evaluating owner liability when the dangerous condition was "open and obvious."

In the case before the Court, the Defendant, Sprint Food Store, hired a third-party to pressure wash the parking lot, thereby creating the danger. Also, by hiring the third party, knowledge of the activity which was to be performed can be inferred. Therefore, in applying the 2 prongs that have been set forth in Legette, the Defendant both (1) created the defective condition by allowing the pressure washing to occur during business hours and (2) the Defendant had knowledge of the dangerous condition, and failed to remedy it, by not implementing any of the reasonable steps of (1) placing a mat at the entrance, (2) placing a wet floor sign at the entrance, or (3) periodically mopping the floor, as stated in Legette.

Thus, the Defendant, Sprint Foods Store, breached its duty to warn of or eliminate foreseeable risks, and there does exist a genuine issue of material fact for the jury to consider.

III. The Court erred when it found, "Sprint Food did not breach any duty as wet floor signs are observed, providing warning to Plaintiff."

Property owners have an affirmative duty of reasonable care to properly inspect their premises in order to discover dangerous conditions and to take adequate safeguards to prevent injury to invitees. Hughes v. Children's Clinic, P.A., 269 S.C. 389, 399-400 (1977). The adequate safeguards include exercising due care to warn of or eliminate foreseeable unreasonable risks. Landry v. Hilton Head Plantation Prop. Owners Ass'n Inc., 317 S.C. 200, 203, 452 S.E.2d 619, 621 (Ct. App. 1994).

The lower court states in the Order Granting Summary Judgment (Exhibit 2), "[a]s observed in the video surveillance, a wet floor sign was propped up in the doorway." In this case, the Plaintiff's fall was captured by video camera maintained by the Defendant, Sprint Food Store (Exhibit 5, available upon request pursuant to Rule 210(f)). The video evidences, that there was not a "wet floor" sign placed at the front entrance that would be visible to invitees. It is the Plaintiff's contention that by providing an inadequate warning, the Defendant failed to exercise due care to warn of or eliminate foreseeable unreasonable risks which is the standard provided in Landry. The video depicts an employee of the store moving and placing the sign at the front entrance after the Plaintiff had already fallen. The subsequent placement of the sign in front of the entrance is evidence that it was not placed properly when the actual fall occurred, and thus, Ms. Thompson was not warned of the water on the floor.

Furthermore, the question of whether the "wet floor" sign was properly placed is an issue of fact, and therefore, is a determination for the jury to make once they have heard all of the evidence and viewed the video depicting the fall.

CONCLUSION

The Plaintiff respectfully submits that the Circuit Court erred in the aforementioned manners, and there exist genuine issues of material fact for a jury's consideration.

Wherefore, based on the foregoing, the Plaintiff respectfully requests that the Order Granting Summary Judgment be reversed, and that the Plaintiff's claim be reinstated in the Circuit Court.

A. Okay.

Q. When you entered the store the first time, did you observe anything going on in the parking lot --

A. No, that was --

Q. -- any activity?

A. That was a busy night. That was just a busy night, just a lot of people, so I didn't observe nothing that was going on.

Q. Do you recall seeing an individual or a company doing some pressure washing of the parking lot?

A. I didn't see anything about a company. Nothing like that, just normal people.

Q. Okay. Did you see anybody cleaning the parking lot?

A. No. I haven't noticed people cleaning because the -- where I was walking in -- there was nobody there, where I was walking at.

Q. So you didn't see anybody in the parking lot doing any type of cleaning with water or a hose or anything when you were entering the store?

A. No.

Q. So you enter the store. You pay for

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF COMMON PLEAS
Sharon **THOMPSON**, Plaintiff, vs. **SPRINT** Food Store #728, Defendant.	)	**ORDER GRANTING SUMMARY JUDGMENT** Civil Action No.: **2017-CP-34-00367**

This matter comes before the Court pursuant to Defendant Sprint Food Store, Inc.'s Motion for Summary Judgment, which was filed on June 14, 2018. A hearing on Defendant's motion was held on September 25, 2018. Present at the hearing were Marshall Weaver, Esquire, on behalf of Plaintiff, and Kelsey J. Brudvig, Esquire, on behalf of Defendant. After consideration of the motion, written memoranda of law, store video surveillance, other materials submitted to the Court, and oral argument, the Court makes the following findings of fact and conclusions of law.

RELEVANT FACTUAL and PROCEDURAL BACKGROUND

This is a premises liability action sounding in negligence. Plaintiff avers that on or about July 28, 2016, while entering the Sprint Food Store in Bennettsville, South Carolina, she slipped and fell in water tracked on floor due to cleaning of the parking lot[.]" Plaintiff contends that as a result of her fall, she sustained injuries to her leg and back.

The subject incident was captured on store video surveillance. The secured video surveillance begins at 20:35:00. Plaintiff is observed entering the store the first time at 20:35:20. Plaintiff exists the store at 20:36:22. Prior to Plaintiff entering the store on the first occasion and when she re-enters the store, several individuals are observed traversing the area without issue.

Exhibit #2

Plaintiff re-enters the store at 20:39:39. Upon re-entering the store Plaintiff slips and falls. A wet floor sign is observed in the video, positioned in front of the doors.

Plaintiff testified that she went to Sprint Food to get gas. Plaintiff entered the store initially to pay for gas ahead of pumping her gas. Plaintiff did not have any issues navigating or traversing the entryway the first time she entered and exited the store. Plaintiff then exited the store, pumped her gas, and was re-entering the store to purchase a water. During the re-entry into the store, Plaintiff slipped and fell. Plaintiff could not affirmatively state that she fell in any liquid substance.

Plaintiff confirmed that at the time of the subject incident, the exterior parking lot was being pressure-washed. When asked if she noted the sidewalk or parking lot being wet at the time she entered the store, Plaintiff testified: "Okay. It was wet on – I thought maybe it had rained because, like, sometimes it rains in some spots. I thought maybe it had rained at that time." Plaintiff confirmed that at the time of the incident, the ground outside was wet and she observed that the ground was wet.

Plaintiff testified that it is reasonable to expect that water can be tracked in from outside to inside as individuals walk into a store.

In reviewing the surveillance video, Plaintiff confirmed that several customers are observed entering and exiting the store without any issues. Plaintiff also confirmed that a wet floor sign was present in the general area of the entryway, though she does not recall seeing the sign at the time of the incident. Based on the video surveillance, Plaintiff could not dispute that a wet floor sign was present.

Plaintiff further denied having any evidence or knowledge that Sprint Foods placed water or other substance on the floor or that Sprint Foods knew of water on the floor.

STANDARD OF REVIEW

A court will grant a moving party's motion for summary judgment when there exists no genuine issue of material fact, and that party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the court must view both the evidence and all reasonable inferences able to be drawn from the evidence in the light most favorable to the non-moving party. Simmons v. Tuomey Regional Medical Center, 341 S.C. 32, 533 S.E.2d 312 (2000). Nonetheless, a court, "cannot ignore facts unfavorable to [the non-moving] party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." Bloom v. Ravoira, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000). Accordingly, the court must search the proof to ascertain whether it discloses a real issue, rather than a formal, perfunctory or shadowy one. Saluda Motor Lines v. Crouch, 300 S.C. 43, 46, 386 S.E. 2d 290, 292 (Ct. App. 1989).

The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial. Bray v. Marathon Corp., 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001).[1] With respect to an issue on

[1] In Bass v. Gopal, Inc., 384 S.C. 238, 247 n.6, 680 S.E.2d 917, 921 n.6 (Ct. App. 2009), the Court of Appeals addressed the recent change in summary judgment standard. In granting the summary judgment motion, the South Carolina Court of Appeals noted:

> [I]n Hancock v. Mid-South Mgmt., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009), our Supreme Court stated that 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. However, in footnote 3 of the opinion, the Court was careful to point out that its pronouncement concerning a mere scintilla of evidence was not necessary for its determination of the outcome in the Hancock case. In any event, we must assume any evidence, even a scintilla, that is useful to withstand a summary judgment motion must meet the prerequisite of being probative.

which the non-moving party has the burden of proof, the moving party may point out to the trial court that there is an absence of evidence to support the non-moving party's case. Hedgepath v. AT&T, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001). The non-moving party must then "do more than simply show that there is some metaphysical doubt as to the materials facts[,]" but "must come forward with specific facts showing that there is a genuine issue for trial." Id. "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Moore v. Barony House Restaurant, LLC, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Plaintiff Failed to Adduce Any Evidence Sprint Food Created the Alleged Dangerous Condition or Had Notice of the Alleged Dangerous Condition

It is well-settled in South Carolina that a merchant is not the insurer of the safety of its customers. Milligan v. Winn-Dixie Raleigh, Inc., 273 S.C. 118, 254 S.E.2d 798 (1979). Rather, a merchant who invites the public to his premises owes them a duty to exercise due care to keep the premises in a reasonably safe condition. Garvin v. Bi-Lo, Inc., 343 S.C. 625, 541 S.E.2d 831 (2001). A merchant is responsible for the consequences of conditions arising from his own negligence, "provided he has actual or constructive notice of an unsafe condition and a reasonable opportunity to correct it." Mullen v. Winn-Dixie Stores, Inc., 252 F.2d 232, 233 (4th Cir. 1958) (applying South Carolina law).

The Hancock Court also cited McDowell v. Stilley Plywood Co., 210 S.C. 173, 179, 41 S.E.2d 872, 874-75 (1947), for the proposition "that although there was a scintilla of testimony that could be used to support the claimants' position, when the entire testimony of the witnesses was viewed as a whole, it was obvious the testimony in support of claimants' position rested on speculation and thus had no probative value." Id.

In South Carolina, a plaintiff must establish the following elements to plead a successful negligence claim:

(1) defendants owed plaintiff a duty of care;

(2) defendants breached this duty of care by a negligent act or omission; and

(3) plaintiff suffered damages proximately resulting from that breach.

Dorrell v. S.C. Dep't of Trans., 361 S.C. 312, 318, 605 S.E.2d 12, 15 (2004) (citation omitted). In addition, to establish liability under a premises liability theory, plaintiffs must meet the test set forth in Wintersteen v. Food Lion, 344 S.C. 32, 542 S.E.2d 728 (2001):

> In South Carolina, to recover damages for injuries caused by a dangerous condition or defective condition on a landowner's premises, the plaintiff must show either: (1) the injury was caused by a specific act of the landowner that created the dangerous condition; or (2) the landowner had actual or constructive knowledge of the dangerous condition and failed to remedy it. Anderson v. Racetrac Petroleum, Inc., 296 S.C. 204, 371 S.E.2d 530 (1988); Pennington v. Zayre Corp., 252 S.C. 176, 165 S.E.2d 695 (1969); Hunter v. Dixie Home Stores, 232 S.C. 139, 101 S.E.2d 262 (1957).

Id. at 35, 542 S.E.2d at 729.

Accordingly, "[a] plaintiff seeking to recover for injuries sustained in a fall caused by a foreign substance on a storekeeper's floor must prove that the storekeeper had actual or constructive notice that the foreign substance was on the floor." Gosnell v. U.S. Postal Service, 2007 WL 10344997 (D.S.C. 2007) (citing Calvert v. House Beautiful Paint & Decorating Center, 313 S.C. 494, 496, 443, S.E.2d 398, 399 (1994)). Further, Courts have refused to impute an ordinary person's knowledge as to moisture on the floor to the defendant. Gosnell, 2007 WL 10344997, *4 ("This Court declines to adopt a general awareness standard for proving constructive notice.").

Plaintiff has failed to articulate any evidence creating a question of fact that Sprint Food created any alleged dangerous condition. Plaintiff has further failed to articulate any evidence that Sprint Food knew of any water or other substance on the floor. Specifically, Plaintiff testified:

Q: Do you have any evidence or knowledge that Sprint Foods placed water or some other substance on the floor as you walked in the door?

A: No.

Q: Do you have any evidence or personal knowledge that Sprint Foods knew that there was water on the floor or any substance on the floor?

A: If they knew? .... I don't think they knew it was wet down there.

Q: Okay And, in fact, we observed on the video multiple customers coming and going from the front door, correct?

A: Correct.

Q: And no one that we observed on the video had trouble navigating that area –

A: Correct.

Q: -- where you fell, correct?

A: Correct.

Q: And you had entered the store on a prior occasion, before you fell, and you didn't have any issues navigating, correct?

A: Correct.

The Court finds that there is no competent evidence that Sprint Food created any alleged dangerous condition or had notice of the same. There is no evidence how long any alleged dangerous condition existed prior to Plaintiff's fall. Notably, Plaintiff entered the store initially without any issues and re-entered the store nearly three (3) minutes later, when the subject incident occurred. During those three minutes, several individuals are observed entering and exiting the store without issue. See Wintersteen, 344 S.C. 32, 542 S.E.2d 728.

Plaintiff is unable to satisfy the Wintersteen analysis with any evidence Sprint Food created the alleged dangerous condition or had notice of the same. Further, Plaintiff has failed to articulate any additional duty owed to her that Sprint Food allegedly breached. Accordingly, Plaintiff's claims fail as a matter of law.

II. Alternatively, Any Alleged Dangerous Condition Was Open and Obvious to Plaintiff

South Carolina law requires that a store owner use ordinary care to warn of latent or hidden dangers of which it has knowledge or of which it should have had knowledge. Larimore v. Carolina Power & Light, 340 S.C. 438, 531 S.E.2d 535 (Ct. App. 2000). However, a premises owner or occupier owes no duty to use reasonable care to take precautions against or to warn guests of open and obvious dangers, even where the premises owner has notice of the alleged hazard. Hackworth v. United States, 366 F. Supp. 2d 326 (D.S.C. 2005). Instead, guests have a duty to discover and avoid an open and obvious danger on the premises. Neil v. Byrum, 288 S.C. 472, 343 S.E.2d 615 (1986). This is because "[t]he entire basis of an invitor's liability rests upon his superior knowledge of the danger that causes the invitee's injuries." Larimore, 340 S.C. at 438 (Ct. App. 2000). "If that superior knowledge is lacking, as when the danger is obvious, the invitor cannot be held liable." Id.; Sides v. Greenville Hosp. Sys., 362 S.C. 250, 607 S.E.2d 362 (Ct. App. 2004).

Accumulated rainwater is a danger that is open and obvious as a matter of law. The South Carolina Court of Appeals has noted:

> Everyone knows that, when people are entering any building when it is raining, they will carry some moisture on their feet, which will render the floor near the door on the inside damp to some extent, and everyone knows that a damp floor is likely to be a little more slippery than a dry floor...

Young v. Meeting Street Piggly Wiggly, 288 S.C. 508, 510, 343 S.E.2d 636, 637-638 (Ct. App. 1986) (citing S.S. Kresge Co. v. Fader, 116 Ohio St. 718, 158 N.E. 174 (1927)). "Since it is

impossible to keep commercial premises entirely free of tracked-in-rain during bad weather, a merchant's liability may not be based solely on the presence of moisture." Young, 288 S.C. at 510, 343 S.E.2d at 637-38 (Ct. App. 1986).

Courts have held that where the condition is open and obvious, a premises operator need not warn. See Hess v. United States, 666 F. Supp. 666, 673 (D. Del. 1987) (cited favorably by Hackworth v. United States, and finding that although no wet floor signs or warnings were posted at the time of the accident, "the floor's slippery condition was obvious and easily discoverable" by the plaintiff).

Further, South Carolina does not impose a duty to warn under these conditions. See Lucas v. Sysco Columbia, LLC, 2014 WL 4976509 (D.S.C. October 3, 2014). In Lucas, the plaintiff entered a business, slipped, and fell in a puddle in the lobby. Plaintiff testified at length about the terrible weather conditions, and alleged that Sysco owed a duty to place warning signs or floor mats the entry of the business. However, the Court held:

> While the Court believes it is sound practice to place mats on the floor of an establishment during inclement water to avoid accidents such as this, South Carolina does not impose such a duty. Therefore, the Court finds that Sysco did not have a duty to warn under the conditions present here.
>
> Id. at *5.

The Court finds the logic articulated in the above-cited cases regarding accumulated rainwater is analogous to the purported dangerous condition alleged in this case. Accordingly, the Court analysis the facts of this case against the law articulated in the accumulated rainwater cases.

Plaintiff contends that she slipped and fell due to the tracking in of water from outside as a result of the pressure washing being performed on the parking lot. While Plaintiff ostensibly could not recall in her deposition that pressure washing was being performed at the time of the incident, Plaintiff's Complaint and discovery responses articulate that the water had been tracked into the

store and on the floor "due to cleaning of the parking lot." Specifically, Plaintiff's interrogatory response provides:

> 23. State in your own words how the incident alleged in the Complaint occurred including, but not limited to, the events leading up to the alleged incident.
>
> **ANSWER: The Plaintiff states that upon arrival at the Sprint Food Store #728, they were pressure washing the outside of the building. She entered the store and turned left to get a bottle of water. At that point she slipped and fell due to water on the floor tracked in by other customers from the wet parking lot.**

In the present matter, Plaintiff alleges there was no mat or warning signs present in the entry way. However, South Carolina law does not impose an actual duty upon premises operators to put down floor mats or provide warning signs. See Lucas, at *5. Contrary to Plaintiff's argument, there is no duty to place any floor mats or warning signs at all.

Further, it is undisputed that the ground was wet outside at the time of the incident due to the pressure washing of the parking lot.

> Q: Did you notice at all whether the sidewalk or the parking lot asphalt was wet before you entered the store, on either occasion; on your first occasion coming in, or the time you fell?
>
> **A: Okay. It was wet on – I thought maybe it had rained because, like, sometime it rains in some spots. I thought maybe it had rained at the time.**
>
> Q: You did notice that it was wet before you came into the store?
>
> **A: I was – it was wet – like I said, I thought it probably had rained at that time.**

Plaintiff further confirmed that it was reasonable that customers can track in excess water from the outside, and that the tracked in water can be left on the interior floor.

The accumulation of water, to the extent the same existed, was open and obvious as a matter of law. Young, 288 S.C. at 510, 343 S.E.2d at 637-638. Indeed, Plaintiff admitted to the same when she acknowledged that she knew the ground was wet outside and that it is reasonable

to believe that water can be tracked in from the outside to the inside. Further, despite such contention that there were no mats or wet floor signs present, South Carolina does not impose a duty to place the same. Lucas, at *5.

Because the alleged dangerous condition was open and obvious as a matter of law, the Court finds Sprint Food is entitled to summary judgment.

III. Alternatively, Plaintiff Was Warned of Any Alleged Dangerous Condition

To the extent Sprint Food knew of the alleged dangerous condition, i.e. accumulated water, and to the extent the condition was not open and obvious to Plaintiff, Plaintiff's claim fails because Plaintiff was warned of the alleged dangerous condition.

"The owner of property owes to an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of such duty. The landowner has a duty to warn an invitee only of latent or hiding dangers of which the landowner has knowledge or should have knowledge." Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (Ct. App. 2001).

The Court initially finds that Sprint Food neither created any alleged dangerous condition nor had notice of the same; alternatively, the Court finds that any alleged dangerous condition was open and obvious as a matter of law. The Court now addresses Defendant's third alternative argument entitling it to summary judgment. In response, the Court finds that there is no evidence Sprint Food breached any duty because a wet floor sign was present. As observed in the video surveillance, a wet floor sign was propped up in front of the doorway. Further, Plaintiff confirmed during her deposition that she did observe a wet floor sign present in the video surveillance. While she denied the existence of the same at the time of the incident, there is no evidence that Plaintiff was distracted in any way nor that she was not looking where she was walking. Indeed, upon her first entry into the store, Plaintiff walked past the wet floor sign.

Based on the aforementioned, because Plaintiff was warned, as an alternative ground, the Court finds Sprint Food is entitled to summary judgment.

CONCLUSION

The Court finds Plaintiff has failed to create a question of fact that Sprint Food knew or should have known of the alleged dangerous condition and there is no evidence Sprint Food created any such condition. Alternatively, the Court finds, as a matter of law, Sprint Food owed no duty to warn of the purported accumulated water. Alternatively, to the extent Sprint Food owed a duty to warn, the Court finds as a matter of law that Sprint Food did not breach any duty as wet floor signs are observed, providing warning to Plaintiff. Based on these alternative grounds, Sprint Foods is entitled to summary judgment.

The Defendant **MOTION** for summary **JUDGMENT** should be and **IS** therefore **GRANTED**.

AND IT IS SO ORDERED.

JUDGE J. DERHAM COLE
PRESIDING JUDGE, FOURTH JUDICIAL CIRCUIT

Spartanburg, South Carolina
May 7, 2019

Store Incident Report

Property Damage, General Liability Robbery, Shoplifting, Customer Accident/Injury

In the event of an incident the Store Manager must immediately notify the District Manager or to the VP-Retail Operations so that the proper procedure can be followed. Please complete the information listed below. Be sure all questions are answered to the best of your ability. Provide photos and secure video of the incident and attach additional information including statements from employees or witnesses as appropriate. Submit this form to the Augusta office and Wrens office via fax or email as soon as possible.

Date _____ Store# 7-8

Date of incident _____ Time of incident _____ ( ) AM (✓) PM

Police Notified: ( ) Yes (✓) No Police Case #:_____ County: _____

Type of Incident:
( ) Property Damage
(✓) Customer Injury
( ) Altercation customers or employee
( ) Robbery/Burglary
( ) Shoplifting
( ) Water in Fuel
( ) Gas Drive-off (receipt attached)

Individual Involved in Incident:

Name: [illegible] ( ) Employee (✓) Customer

Address:_____ Medical Treatment Offered (✓) Yes ( ) No
Medical Treatment (✓) Accepted ( ) Denied

City:_____ State_____ Zip_____

Phone #:_____ Email:_____

Insurance Company_____ Policy #_____ Phone #_____

Witnesses:

Name: Stacy Clarke Address: 301 Nelson Street

Phone #: 946 431 6841 City/State/Zip: [illegible]

Name:_____ Address:_____

Phone #:_____ City/State/Zip:_____

Provide a detailed explanation of the incident. Include exact location in the store or on the property, condition of the area, warning signs posted, time of day, and other specific factual data. If water in gas or car wash claim, indicate if other claims were made. If problems with fuel, attach tank gauge reading and stick tanks for water. If additional space is needed attach separate sheet.

Parking lot was being pressured washed when the lady walked in and fell. She slipped as she was walking in. But floor signs were up by the front door, visible when walking in.

Robbery Suspect Description:

Height:_____ Weight:_____ Gender:_____ Race:_____ Hair Color/Length:_____ Eye Color:_____
Facial Hair:_____ Glasses: ( ) Yes ( ) No Other distinguishing marks:_____
Vehicle Make:_____ Model:_____ Year:_____ Color:_____
License Plate:_____ State:_____ # of people in vehicle:_____

Signature of Preparer: [signature] Title Owner

Thompson, Sharon

DEF 0006

Exhibit #3

Carolina 38. Plaintiff slipped and fell in a water trail on the floor due to cleaning of the parking lot, resulting in the plaintiff's injuries.

Oh, okay.

Q. Does that refresh your memory at all about anything that may have been going on in the parking lot?

A. Okay. That's the reason it was wet, the cleaning of the parking lot. I didn't see -- I didn't see a company -- I didn't see company uniforms or nothing like that, that -- to notice if cleaning was going on.

Q. I guess my question for you, regardless if it was a company or an individual doing it separately by themselves --

A. Right.

Q. -- did you notice any pressure washing going on in the --

A. I didn't see --

Q. -- front of the store?

A. Not from where I was walking in. My area that I was going to, there was no machinery right there saying -- nobody was pressure cleaning right there where I was entering the store.

Q. Did you notice at all whether the

Respectfully submitted,

December 2, 2019

/s/ Marshall S. Weaver
Marshall S. Weaver
S.C. Bar No. 78752
Post Office Box 3888
Florence, South Carolina 29502
(843) 407-4203
Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that this Initial Brief complies with Rule 209, SCACR.

December 2, 2019

/s/ Marshall S. Weaver
Marshall S. Weaver

PROOF OF SERVICE OF BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No.: 2017-CP-34-00367

Sharon Thompson, Plaintiff, Appellant

v.

Sprint Food Store #728, Defendant, Respondent.

PROOF OF SERVICE

I certify that I have served the Brief of Appellant on Kelsey J. Brudvig, Esq., attorney of record for the Respondent, by depositing a copy of it in the United States Mail, postage prepaid on December 2, 2019, addressed as Kelsey J. Brudvig, Esq., Collins & Lacy, P. C., Post Office Box 12487, Columbia, South Carolina 29211.

December 2, 2019

Marshall S. Weaver

Marshall S. Weaver, Esquire
Weaver Law Firm, LLC
P.O. Box 3888
Florence, South Carolina 29502
(843) 407-4203
Attorney for Appellant