STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO. 2011-CP-08-2598
ALPHONSO CHICO,	)	
PLAINTIFF,	)	**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**
vs.	)	
BI-LO, LLC,	)	
DEFENDANT.	)	

This matter comes before the Court on the Defendant's motion for Summary Judgment. The Plaintiff Alphonso Chico, by and through his own counsel, has opposed this motion. Both parties submitted memoranda of law in support of their respective positions. On January 18, 2013, this Court heard arguments from both parties. After having fully reviewed the written and evidentiary submissions from both parties and having considered the arguments from both sides, this Court hereby GRANTS Defendant's Motion for Summary Judgment.

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law. Rule 56(c), SCRCP. Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact; however, the moving party need not support its motion with affidavits or other similar materials negating the opponent's claims but must clearly establish by the record the absence of a triable issue of fact. Baughman v. American Tel & Tel. Co., 306 S.C. 101, 115,410 S.E.2d 537, 545 (1991). With respect to an issue upon which the non-moving party bears the burden of proof, the

moving party may discharge his initial responsibility by pointing out to the Court the absence of evidence to support the non-moving party's case. Id.

After the moving party has met his initial burden, Rule 56(e) of the South Carolina Rules of Civil Procedure requires the opposing party to "do more than simply show that there is some metaphysical doubt as to the material facts." Id. In response to a properly supported motion for summary judgment, the opposing party "must come forward with specific facts showing there is a genuine issue of material fact." Id. Thus, "the non-moving party may not rest on the mere allegations or denial of pleadings, but must set forth or point to specific facts showing there is a genuine issue of material fact." Thomas v. Waters, 315 S.C. 524, 526,445 S.E. 2d 659,661 (Ct.App. 1994) (*quoting* Dickert v. Metropolitan Life Ins. Co., 306 S.C.311, 313, 411 S.E.2d 672, 673 (Ct. App. 1993), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993)).

Plaintiff filed suit against BI-LO arising out of an alleged slip and fall at a BI-LO store on August 7, 2010. The Complaint alleges that he slipped and fell in a puddle of liquid detergent that was present on the floor of the store. According to Mr. Chico, he was nearing the end of his trip to the grocery store when he decided to go down one final aisle in search of a dog deodorant. Chico pushed his cart halfway down the aisle, stopped, and began looking for the product. As he was doing so, he noticed a BI-LO employee entering the opposite end of the aisle with a cart of her own. Although the employee did not ask him to move, as she walked in his direction Mr. Chico "moved [his] cart a little bit, and stepped back to get out of her way." As he explained it, his decision to move aside was not related to the fact that the person approaching him was an employee. That is, if the person approaching had been a customer, he would have done the same thing. As he stepped back, he stepped into a puddle of liquid detergent, falling to the ground.

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Mr. Chico conceded that, if he had looked down at his feet before the fall, he would have observed the puddle of detergent. Importantly, Chico also testified that he had no information suggesting that any BI-LO employees were aware the liquid was on the floor prior to his fall, or that any customers reported the liquid to the store prior to his fall. On this topic, both the Customer Service Manager and Co Store Manager for BI-LO testified that they did not have any knowledge of the substance on the floor prior to Chico's fall, and that no customer reported the substance to BI-LO prior to the fall.

During discovery, the Defendant produced footage from the store's surveillance system. This video was presented to the Court as an exhibit to the instant motion, and Plaintiff did not challenge its authenticity or accuracy. The video was captured by a camera positioned at the end of the aisle where the fall occurred. The only testimony in the record indicates that BI-LO did not monitor the surveillance system in real time.

In the surveillance video, two customers can be seen in the area of the liquid detergent. At 16:47:31 of the video, one of these customers knocks a bottle of liquid detergent from a shelf, causing a significant amount of the liquid to spill out on the floor. However, instead of cleaning up the spill or notifying anyone, the customer appears to simply place the broken bottle back on the shelf and walk away. The puddle of liquid is clearly visible on the video. Over the course of the next few minutes, several customers walk down the aisle, appear to encounter the puddle, but successfully navigate around it. At 16:55:00 on the video, Mr. Chico enters the aisle with his cart. He appears to look in the direction of the puddle, but then turns his attention to the other side of the aisle. At 16:55:13, approximately 8 minutes after another customer created the hazard, Chico steps back and into the puddle of detergent and falls to the ground. Still photographs of the video,

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provided by the Plaintiff at the hearing, confirm that the BI-LO employee is still several feet away from Mr. Chico when the fall occurs.

Defendant now argues it is entitled to summary judgment because the Plaintiff is unable to provide any evidence to suggest that BI-LO created the hazard or had actual or constructive notice of its presence prior to the fall.

To recover damages for injuries caused by a dangerous or defective condition on a storekeeper'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, 542 S.E.2d 728 (2001). In the case of a foreign substance, the plaintiff must demonstrate either 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. at 35, 542 S.E.2d at 729-30. The mere fact the substance was on the floor is insufficient standing alone to charge the storekeeper with negligence. Calvert v. House Beautiful Paint & Decorating Ctr., Inc., 313 S.C. 494, 443 S.E.2d 398 (1994).

It is well established in South Carolina that a store owner is not an insurer of the safety of its customers. Garvin v. Bi-Lo, Inc., 343 S.C. 625, 541 S.E.2d 831 (2001); Gilliland v. Pierce Motor Co., 235 S.C. 268, 111 S.E.2d 521 (1959). The duty owed to customers is the duty to exercise ordinary care to keep the store in a reasonably safe condition.

In the instant matter, the Plaintiff has not identified or produced a scintilla of evidence even suggesting that BI-LO either placed the foreign substance on the floor or had actual or constructive notice that the substance was on the floor prior to his fall. In fact, the video evidence establishes that another customer spilled the liquid, and then simply walked off rather

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than notifying anyone of its presence. On the issue of actual notice, Plaintiff himself conceded he did not have any evidence to suggest any customers notified BI-LO of the spill prior to his fall, or that BI-LO otherwise had actual knowledge of its presence. Finally, it cannot be argued that the liquid detergent was on the ground for such a period of time that BI-LO should be charged with constructive notice, as the spill occurred approximately 8 minutes before the Plaintiff's fall. Under the circumstances, to deny the instant motion would be to require merchants to inspect and maintain their floors more frequently than every 8 minutes. Such a result would render them insurers of their customer's safety. This is simply not the law of this State. Olson v. Faculty House of Carolina, Inc., 354 S.C. 161, 165-66, 580 S.E.2d 440, 442 (2003) (holding that to impose a duty on merchants to continuously inspect and maintain floors to ensure their freedom from foreign substances would effectively render them insurers of customer safety).

The opponent of a summary judgment motion must have some evidentiary support for the claims he or she asserts in order to establish that there is a genuine issue of material fact. In this case, the Plaintiff has not put forth any evidence by way of experts, deposition testimony, or written discovery to demonstrate that BI-LO either placed the foreign substance on the floor or had actual or constructive notice that the substance was on the floor before Plaintiff's fall. Wintersteen, supra. As a result, Defendant's Motion for Summary Judgment is GRANTED.

IT IS HEREBY ORDERED.

By: _____
The Honorable R. Markley Dennis

Moncks Corner South Carolina
March 1, 2013

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