

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2008

GLEN KIRK,
Appellant,

v.

TJ PALM BEACH ASSOCIATES LIMITED PARTNERSHIP d/b/a **THE
MALL AT WELLINGTON GREEN,**
Appellee.

No. 4D07-1262

[March 19, 2008]

PER CURIAM.

Plaintiff was injured while working for a sign company when a ladder slipped on an allegedly slippery floor. The parties agree that the plaintiff was a business invitee; however, the trial court granted defendant's motion for summary judgment concluding that plaintiff had not presented any evidence from which a jury could find that the defendant had breached a duty to plaintiff.

It appears that the trial court failed to understand that the burden on motion for summary judgment was on the defendant to conclusively prove no genuine issue of material fact as to whether this floor was slippery, *Dade County Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638 (Fla. 1999), and in this case the defendant did not sustain that burden. Although a jury could well find that plaintiff, who was placing an extension ladder on the floor and against the side of a wall, had as much knowledge of the slippery condition of the floor as the defendant, that merely raises the issue of comparative negligence. *Fenster v. Publix Supermarkets, Inc.*, 785 So. 2d 737 (Fla. 4th DCA 2001). Reversed.

KLEIN, HAZOURI and DAMOORGIAN, JJ., concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Kenneth D. Stern, Judge; L.T. Case No. 502005CA005055AE.

Rosenthal & Levy, P.A., West Palm Beach and Bard D. Rockenbach of Burlington & Rockenbach, P.A., West Palm Beach, for appellant.

Candace Moss of Wadsworth, King & Huott, LLP, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing