SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

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Re: ***Norton v. Food Lion, Inc.***
C.A. No. 08C-02-015-RFS

Upon Defendants' Motion for Summary Judgment. Denied.

Submitted: March 25, 2009
Decided: June 4, 2009

Dear Counsel:

This is my decision regarding Food Lion, LLC, Food Lion, Inc., and Food Lion of Delaware's ("Defendants") Motion for Summary Judgment. This is a negligence case against Defendants for personal injuries suffered in a slip and fall incident. For the reasons set forth herein, the Motion is denied.

BACKGROUND

Christine Norton ("Plaintiff") was a customer at Defendants' Food Lion store in Harrington, Delaware on September 24, 2006. While shopping in the detergent aisle, Plaintiff slipped and fell on dish detergent. The Assistant Store Manager, Chad Roberts ("Roberts"), was in charge of the store and came to the scene to assist Plaintiff after the fall. Roberts saw clear

dish detergent on the floor. Roberts wrote in an incident report that an Ajax bottle had fallen into the aisle, leaving a liquid area of approximately 2 feet square. The report indicated that the fall occurred about 4:10 p.m.

According to Roberts, the store is routinely inspected by management twice a day for problems, once in the morning between 7:00 a.m. - 11:00 a.m. and another in the afternoon between 4:00 p.m. - 7:00 p.m. Employees were always expected to keep their eyes open for obvious problems. The times of inspection might be delayed depending upon if the store was too busy. Although forms are used to document the times of inspection, Roberts failed to keep the one for the afternoon of the fall. He did not feel it was necessary. Consequently, Roberts could not say when the last inspection was done before the accident. The store did not post any warnings about the dangerous condition beforehand. He called an ambulance to take Plaintiff to a hospital, and the possibility of litigation existed.

STANDARD OF REVIEW

Summary judgment can only be granted when there is no material issue of fact. *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979). The moving party bears the initial burden of showing that no such issue is present. *Id*. If the moving party is able to meet this burden, it then shifts to the non-moving party to demonstrate a material issue of fact. *Id.* 681. If the non-moving party can show that an issue of material fact is disputed, summary judgment will not be granted. *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962). To meet its burden, the non-moving party may not simply rest on its pleadings; evidence must be provided to show an issue of material fact. *Brandt v. Rokeby Realty Co.*, 2004 WL 2050519 at *4, (Del. Super. Sept. 8, 2004).

DISCUSSION

In order to prevail, Plaintiff must show that Defendants had a dangerous condition in the store, that the dangerous condition caused Plaintiff's injury, and that the condition was caused by Defendants or their employees or allowed to remain after notice to Defendants' employees or after they should have discovered the danger. *Manucci v. Stop n' Shop Companies, Inc.*, 1989 WL 48587 at *2 (Del. Super. 1989). Defendants argue that Plaintiff has not produced evidence to show how long the detergent was present, that Defendants' employees knew or should have known of it, or that the condition was in any way caused by Defendants' employees.

Defendants cite *Collier v. Acme Markets, Inc.*, 1995 WL 715862 (Del. Super. 1995) to support this position. There, summary judgment was granted to Acme Markets, Inc. ("Acme") and affirmed on appeal. There was no evidence that Acme knew of the slippery substance which allegedly caused the fall or should have reasonably known about it. *Id.* at *1. The plaintiff, in *Collier*, ("Collier") claimed to have fallen on something " as slippery as ice;" however, no water, debris, or substance was observed. *Id.* There was no record evidence to show how noticeable the condition was or how long it had been on the sidewalk. *Id.* Acme had cleaning procedures, but it was not known when the last scrubbing took place. *Id.*

Consequently, Acme was entitled to summary judgment because Collier could not establish what proximately caused the fall, and there was nothing to charge Acme with reason to know of the problem. Unlike that situation, Roberts observed that there was dish detergent on the ground where Plaintiff fell. Plaintiff related that she slipped on a big pile of detergent. There is sufficient evidence to show that there was a slippery, dangerous substance on the floor which caused Plaintiff's fall. Defendants' argue that she cannot show that Defendants had

responsibility to rectify it.

Viewing the evidence in the most favorable light to Plaintiff, a question of fact is presented for a jury to decide. In *Hazel v. Delaware Supermarkets, Inc.*, 953 A.2d 705 (Del. 2008), the plaintiff fell near a wooden pallet containing ice cream. By showing that there was water on the floor near the fall and testifying that she felt water on her calf after the fall, the plaintiff made a sufficient showing to defeat summary judgment. *Id.* at 709-710. Although she had not seen any water before the fall, the Court made clear that a "customer coming into a store has the right to assume that the floor is suitable and safe to walk upon, and is free from obstacles and defects which might cause a fall." *Id.*

In *Burris v. Penn Mart Supermarkets, Inc.*, 2006 WL 2329373 (Del. Super. 2006), the Court also denied summary judgment in a case with similar facts. The plaintiff in that case slipped on drops of dish liquid which he had not seen before he slipped. *Id.* at *1. Even though the supermarket had evidence that it complied with established inspection procedures, there were discrepancies in the testimony as to whether the inspections had taken place. *Id.* at *2. The Court found that the question of whether the inspection had taken place and whether the inspection procedure itself was reasonable was a question of fact for a jury and not appropriate for summary judgment. *Id.*

Here, a jury could find that there was dish detergent on the floor which created a dangerous condition which caused Plaintiff's fall. A jury could determine that Defendants should have discovered the dangerous condition through reasonable inspections by management and employees beforehand. The two foot area is sufficiently noticeable to require corrective action.

As counsel is aware, negligence claims involving alleged dangerous conditions are the

usual grist for the jury mill.

> Summary judgment is rare in a negligence case, because the moving party must demonstrate "not only that there are no conflicts in the factual contentions of the parties but that, also, the only reasonable inferences to be drawn from the uncontested facts are adverse to the plaintiff."

Upshur v. Bodie's Dairy Market, 2003 WL 21999598 at *3 (Del. Super. 2003). On the present record, a jury could infer that the spilling of the detergent was caused by a customer and that Defendants' employees failed to make a timely and reasonable inspection of the area. The ". . . reasonableness of the inspection procedure is a classic question for the fact finder." *Burris* at *2.

Defendants argue that the jury cannot be allowed to speculate as to whether they should have known about the spill. Again, viewing the record favorably to Plaintiff as the nonmoving party, the store's routine was for management to inspect the area between 4:00 p.m. - 11:00 p.m. The accident occurred about 4:10 p.m. - 11:00 p.m. It is within the window of management's usual inspections. In addition, Defendants' employees were expected to protect customers as well. Roberts lost the business record which would have shed light on the time. Like the questions about inspections in *Burris*, a jury's role is to separate the wheat from the chaff.

CONCLUSION

Considering the foregoing, Defendants' Motion for Summary Judgment is DENIED.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

RFS/cv

cc: Prothonotary