SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

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

October 7, 2010

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RE: Mary Boody and Robert Boody v. Harbor House Seafood, Inc.
C.A. No. S09C-11-022

DATE SUBMITTED: September 30, 2010
DATE DECIDED: October 7, 2010

Dear Counsel:

I have reviewed Defendant's summary judgment motion, and it is denied.

Plaintiffs have sued to recover for personal expenses allegedly incurred as result of a fall by Mary Boody ("Boody") at Defendant's restaurant and retail store. The discovery record shows too many issues of material fact that must be resolved by jury rather than a summary judgment fashion. One of Defendant's employees saw Boody fall as she entered the premises. When she opened the door, "she hit the step and went down. She had no chance to put her hands on the floor, you know, to stop her face, she just pretty much went face down straight hit the floor." (Plaintiff's Appendix at 26.)

There is conflicting testimony whether Boody saw the step or not. At the emergency room, apparently there is information that she did not, but at her deposition Boody indicated seeing it. The record shows other patrons had "minor" slips on the step that resulted in having it painted yellow. At some time yellow lettering of "step up" was placed on the door.

Mr. Boody testified that none of these precautionary signs were present at the time of the fall. Mrs. Boody denies their presence also. One of Defendant's employees reported that he had painted the step before the fall, and the door warnings were placed later. Defendant's president believed the step was painted and the warning sign was on the door beforehand. Obviously, these measures were taken to protect Defendant's customers from falling down.

The law is discussed in *Upshur v. Bodies Dairy Market*, 2003 WL 21999598 (Del.Super.), and is incorporated by reference.

Plaintiffs have shown evidence from which a jury could find that the step presented a dangerous condition, that the condition caused the injuries complained of, and that the condition causing the injury was placed there by the Defendant or permitted to remain after notice of its existence came or should have come to Defendant's attention.

Defendant points out that the Plaintiffs have not designated a slip-and-fall liability expert. The condition and risks associated with the step are well within the common knowledge and experience of jurors, and no expert is required to make out a *prima facie* case. *Ward v. Shoney's, Inc.*, 817 A2d 799 (Del. 2003).

Defendant asks that the Court follow the decision of *Manucci v. Stop n' Shop Companies, Inc.*, 1989 WL 48587 (Del. Super.). Summary judgment was entered against Manucci primarily because of a failure of proof to show the alleged slippery and dangerous condition of the floor beforehand. There are different facts in play here with other "minor" slips and the placing of the paint and the warning sign.

Defendant questions Boody's recollection of the mechanics of the fall. These are fair grounds for cross examination at trial, but not for summary judgment. A jury could reasonably find on this discovery record that Defendant breached its duty to provide safe ingress and egress to its business invitees, such as Boody. How the evidence is weighed and whether the witnesses are believed in whole or in part comprises the usual grist of the jury mill.

Considering the foregoing, the summary judgment is denied.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

oc: Prothonotary