SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

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Submitted: November 4, 2002
Decided: January 22, 2003

RE: ***Karen Upshur v. Bodie's Dairy Market and Coin Laundries, Inc.,***
C.A. No. 01C-02-007

Dear Counsel:

This is my decision on Bodie's Dairy Market and Coin Laundries, Inc. ("Bodie's") Motion for Summary Judgment. The motion is denied for the reasons set forth herein.

FACTS

At approximately 10:00 a.m., on November 10, 1999, plaintiff, Karen Upshur ("Upshur") arrived at defendant's business, Bodie's to do her laundry. Upshur could not get one of the dryers to operate in the Laundromat. She went next door to the adjoining convenience store, also owned by defendant, to seek assistance. A Bodie's employee, Mari Reynolds ("Reynolds") went to the Laundromat to inspect the dryer, and returned to the convenience store to issue a refund to Upshur, for the coins deposited in the broken dryer. There were no Bodie's employees present in the Laundromat, while Upshur was doing her laundry.

Later, Upshur's friend William Thomas ("Thomas") entered the Laundromat and carried one of her hampers out to the car. Thereafter, Upshur picked up the other hamper and walked around a table and slipped on a wet substance on the floor, falling on her knees. Upshur noticed that there was a dark liquid detergent on the floor. Upshur did not see the detergent spill before she fell. Upshur sustained injuries as a result of the fall, which occurred between 11:30 and 11:45 a.m.

Thomas testified that he noticed a dark liquid spill on the floor alongside the table, when he entered the Laundromat. Thomas stepped over the spill, before picking up the hamper and exiting the Laundromat down the other aisle.

Reynolds testified that she did not notice any spills, when she entered the Laundromat to check on the defective dryer. However, Reynolds did not walk in the area where the fall subsequently occurred. Reynolds job duties included periodically checking for spills and taking out the trash in the Laundromat. However, there were no written procedures for the inspection of the Laundromat and Reynolds' written check list does not include inspection of the Laundromat floors. Reynolds admitted that there were no Bodie's employees stationed in the Laundromat and stated that Bodie's relied on customers to report spills. Reynolds observed the blue liquid spill, after Upshur notified her that she had fallen.

ISSUE PRESENTED

Should summary judgment be granted in favor of defendant, on the grounds that there are no genuine issues of material fact and judgment is warranted as a matter of law, pursuant to Superior Court Civil Rule 56?

DISCUSSION

A. Standard of Review

This Court will grant summary judgment only when no material issues of fact exist, and the moving party bears the burden of establishing the nonexistence of material issues of fact. *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979). Once the moving party meets its burden, the burden shifts to the nonmoving party to establish the existence of material issues of fact. *Id.* at 681. The court views the evidence in a light most favorable to the nonmoving party. *Id.* at 680.

Where the moving party produces an affidavit or other evidence sufficient under Superior Court Civil Rule 56 in support of its motion and the burden shifts, the nonmoving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial. *Super. Ct. Civ. R.* 56(e); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). If, after discovery, the nonmoving party cannot make a sufficient showing of the existence of an essential element of his or her case, summary judgment must be granted. *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991.), *cert. denied*, 504 U.S. 912 (1992); *Celotex Corp.*, *supra*. If, however, material issues of fact exist or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, then summary judgment is inappropriate. *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

B. Bodie's Negligence

Summary judgment is inappropriate in this case, since there are material issues of fact regarding Bodie's alleged negligence. A storekeeper does not insure the safety of his patrons. *Robelen Piano Co. v. DiFonzo*, 169 A.2d 240, 243 (Del. 1961). Rather, a storekeeper must "exercise the same standard of care reasonably prudent storekeepers would exercise under like circumstances to keep the store premises in a reasonably safe condition for the use of customers." *Id.* at 243-244. The storekeeper's standard of care requires that the portion of the premise ordinarily used by "customers [is] kept in a reasonably safe condition for their use." *Id.* at 244.

This duty extends only to injuries caused by those defects, actually known to the shopkeeper or discoverable by reasonable inspection. *Id.*

In a negligence action for a breach of this duty, "the plaintiff must show that there was a condition in the defendant's store of a dangerous or defective nature; that the condition caused the injuries complained of, and that the condition or defect causing the injury was placed there by the defendant or its employees, or was permitted to remain after notice of its existence had come or should have come to the attention of the defendant, or its employees." *Howard v. Food Fair Stores, New Castle, Inc.*, 201 A.2d 638, 640 (Del. 1964). In order to prevail on a motion for summary judgment, "the defendant must offer proof negating that showing." *Id.* A customer is entitled to assume that the floor of a store "is suitable and safe to walk upon, and is free from obstacles and defects which might cause a fall." *Id.* at 642. However, a landowner does not have a duty to warn of dangers known to the plaintiff or when the danger is "so obvious that plaintiff would be expected to discover the danger." *Horton v. Lempesis*, Del. Super, C.A. No. 90A-12-3, Taylor, J. (Jan. 28, 1992) (ORDER). Thus, if the condition is so apparent, then the condition itself constitutes adequate warning. *Niblett v. Pa. R.R. Co.*, 158 A.2d 580, 582 (Del. Super. 1960).

Generally, summary judgment is inappropriate for negligence actions. *Ebersole v. Lowengrub*, 180 A.2d at 468. Summary judgment may only be granted, when the moving party establishes that there are no genuine issues of any material fact respecting negligence. *Id.* Ordinarily, questions of proximate cause are questions of fact to be determined by the jury. *Id.* Moreover, the question of whether or not a dangerous condition existed is generally a question of fact for the jury, since it depends upon the facts and circumstances of each case. *Callaway v. Scrivner, Inc.*, Del. Super., C.A. No. 90C-AP1, Lee, J. (June 12, 1991) (Mem. Op.). Questions of

contributory negligence are to be determined by the jury, except in rare instances. *Frelick v. Homeopathic Hosp. Assoc. of Del.*, 150 A.2d 17, 19 (Del. Super. 1959).

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." *Watson v. Shellhorn & Hill, Inc.*, 221 A.2d 506, 508 (Del. 1966). However, summary judgment should be granted, when the facts permit a reasonable person to draw only one inference, which clearly establishes negligence. *Wooten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

In the instant case, Upshur alleges that Bodie's was negligent by failing to maintain a safe floor in the Laundromat, failing to properly clean & inspect the floor in the Laundromat and failing to warn of the dangerous condition on the floor of the Laundromat. Storekeepers have a duty to keep their store in a reasonably safe condition for use by their customers. *Robelen Piano Co. v. DiFonzo*, 169 A.2d at 244. Bodie's had a duty to keep the floor free from any known defects, or those defects discoverable through reasonable inspection. *Id.*

Upshur testified that she slipped and fell on dark colored detergent that had spilled on the floor. Upshur's friend, Thomas, also noticed a blue detergent spill on the floor. Reynolds, an employee of Bodie's, claims that she did not notice any spills on the floor, when she went in prior to Upshur's fall, to inspect a broken dryer. Whether or not the detergent spill is a dangerous or defective condition is a question of fact for the jury. *Callaway v. Scrivner, Inc.*, Del. Super., C.A. No. 90C-AP1, Lee, J. (June 12, 1991) (Mem. Op.).

Moreover, questions of fact remain as to how long the spill was on the floor and whether the spill should have been discovered through inspection by Bodie's, prior to the accident. *See*

McDonald v. Wal-mart Stores, Inc., Del. Super., C.A. No. 00C-09-005, Witham, J. (Jan. 18, 2002) (ORDER) (finding summary judgment inappropriate where questions of fact remained as to whether defendant should have known about the alleged hazard). Thus, there are genuine issues of material fact, with respect to, whether Bodie's breached their duty to keep the Laundromat in a reasonably safe condition.

Bodie's counters that Upshur was contributorily negligent in failing to avoid the spill, which Bodie's maintains was an obvious danger. *See Niblett v. Pa. R.R. Co.*, 158 A.2d at 582. Upshur asserts that she picked up her laundry basket filled with clothes, and walked around the table, before she slipped and fell on the detergent in the aisle. Upshur had a right to assume that the floor was safe and suitable to walk upon. *Howard v. Food Fair Stores, New Castle, Inc.*, 201 A.2d at 642.

Furthermore, the jury might conclude that a customer's view of the floor might reasonably be obstructed by carrying filled hampers in and out of the Laundromat. *See Jones v. Ingles Markets, Inc.*, 498 S.E.2d 365, 368 (Ga. Ct. App. 1998) (finding summary judgment inappropriate where genuine issues of material fact existed as to whether invitee exercised ordinary care). The question of whether Upshur was contributorily negligent, under these circumstances, is a question of fact for the jury. *Frelick v. Homeopathic Hosp. Assoc. of Del.*, 150 A.2d at 19. Viewing the facts in a light most favorable to Upshur, the nonmoving party, there are genuine issues of material fact that remain, and summary judgment should not be granted. *Ebersole v. Lowengrub*, 180 A.2d at 468.

CONCLUSION

Summary judgment is denied, since material questions of fact remain respecting Bodie's alleged negligence in maintaining the Laundromat.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary