SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
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GEORGETOWN, DE 19947
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April 1, 2014

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RE: *Brunhilde Wilcox v. 1776 Restaurant, L.L.C.*,
C.A. No. S13C-05-013 RFS

Dear Counsel:

Before the Court is Defendant 1776 Restaurant, L.L.C.'s ("Defendant's") Motion for Summary Judgment against Plaintiff Brunhilde Wilcox ("Plaintiff"). This Motion is **DENIED**.

This is a personal injury case. Plaintiff alleges that, while she was a business invitee in Defendant's restaurant, she fell while using a ramp in a hallway leading to the restaurant's restroom. She claims that she fell because she did not notice the ramp, and that there were no warnings of the ramp.

For purposes of this Motion, Defendant presumes that a fall occurred, although Defendant points out that no witnesses can confirm her fall. Regardless, Defendant

asserts that it is entitled to summary judgment because, acknowledging the duty a landowner owes a business invitee, the ramp was an open and obvious condition, thus negating any duty Defendant to warn Plaintiff of its existence. Furthermore, Defendant claims that even if it owed Plaintiff a duty to warn of the ramp's existence, it fulfilled that duty in that evidence exists that Plaintiff's waiter warned Plaintiff and those at her table of the ramp. Additionally, Defendant moves for judgment in its favor because, according to Defendant, Plaintiff has not produced an expert report or other requisite discovery disclosures necessary to support a *prima facie* case of negligence, in accordance with this Court's Pretrial Scheduling Order, dated August 12, 2013.

Summary judgment will be granted only if the moving party, who bears the initial burden, can establish that no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.[1] The Court examines all of the evidence, and the reasonable inferences therefrom, in the light most favorable to the non-moving party.[2] Using this lens, only if the moving party establishes that no factual questions indeed exist, the burden shifts to the non-moving party to establish the existence of such factual questions which must "go beyond the bare allegations

[1] *See, e.g.*, *Direct Capital Corp. v. Ultrafine Techs., Inc.*, 2012 WL 1409392, at *1 (Del. Super. Jan. 3, 2012) (citations omitted) (iterating the exacting standard of summary judgment).

[2] *Id.*

of the complaint."[3]

The Court denies this Motion because factual questions, including whether an adequate warning was given, make summary judgment inappropriate. "The existence or non-existence of a dangerous condition must depend on the facts and circumstances of each case and is generally a question of fact for the jury to determine *except in very clear cases*."[4] With this direction, the Court is reluctant to enter summary judgment.[5] Furthermore, in slip-and-fall cases, certain circumstances can sometimes negate open and obvious conditions, such as the existence of distractions.[6] Lastly, Plaintiff made the requisite expert disclosures on March 21, 2014, complying with the Court's order on March 7, 2014.

Therefore, this Motion is **DENIED**.

Very truly yours,

/s/ Richard F. Stokes
Richard F. Stokes

Cc: Prothonotary

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[3] *Id.*

[4] *Williamson v. Wilmington Hous. Auth.*, 208 A.2d 304, 306 (Del. 1965) (emphasis added) (citation omitted).

[5] At the close of Plaintiff's case, Defendant can move for judgment as a matter of law under this Court's Civil Rule 50 if the trial proof is deficient.

[6] *Howard v. Food Fair Stores, New Castle, Inc.*, 201 A.2d 638, 642 (Del. 1964) ("[I]t appears that a customer walking along an aisle of a store glancing at shelves displaying merchandise lining the aisle may be excused from keeping a constant lookout on the floor to observe a dangerous condition, particularly in view of the customer's right to assume a safe condition on the floor.").