superior court
of the
state of delaware

mary m. johnston
judge

new castle county courthouse
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November 7, 2003

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RE: ***Charles E. Wise v. Wilmington Housing Authority***
C.A. No. 01C-12-044-MMJ

Dear Counsel:

On October 22, 2003, the Court heard argument on the Motion for Summary Judgment of Defendant Wilmington Housing Authority ("WHA"). This is the Court's decision on that Motion.

For purposes of addressing this Motion, the following facts are not in dispute. On Sunday, September 17, 2000, at approximately 12:25 p.m., Charles Ellen Wise ("Plaintiff") was injured when she slipped and fell on coffee near the elevator on the lobby floor of Herlihy Apartments. The Herlihy Apartments are owned and operated by Wilmington Housing Authority ("Defendant" or "WHA").

Plaintiff left her 5th floor apartment and took the elevator to the lobby. She walked across the lobby floor and did not notice any spillage on the floor. After retrieving some balloons from her vehicle, Plaintiff came back into the building and walked through the lobby to the elevator.

She slipped on coffee on the floor as she reached for the elevator. She never saw the coffee until she fell. Another tenant found Plaintiff on the lobby floor close to the elevator. He also saw brownish liquid in a five or six inch area on the floor next to Plaintiff. The tenant does not know who spilled the liquid and has no idea how long it was there.

WHA rules prohibit food and beverages in common areas such as the lobby in all high rise buildings, including the Herlihy Apartments. These rules are contained in all tenants' leases. Tenants and visitors have access to a community center equipped with a kitchen, a coffee maker and vending machines for special events on the weekends. There is no evidence that the coffee on the lobby floor was placed there by WHA or its employees. No employee of WHA had notice of the spilled coffee before Plaintiff's fall. WHA employees left the building on Friday afternoon and did not return until Monday morning.

Summary judgment is appropriate when the moving party has shown that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.[1] In considering such a motion, the Court must evaluate the facts in the light most favorable to the non-moving party. Summary judgment will not be granted under circumstances where the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.[2]

In this case, Plaintiff alleges that Defendant was negligent in failing to maintain the area

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[1] Super. Ct. Civ. R. 56(b); *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

[2] *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962).

in a reasonably safe condition and that it knew or should have known that the condition of the area involved an unreasonable risk of harm to persons lawfully on the premises.

Defendant argues that the plaintiff in a premises slip and fall case must show: (1) a dangerous or defective condition on Defendant's premises; and (2) that the condition was either 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.[3] Defendant contends that there can be no liability unless the premises owner had a reasonable time to correct the condition after discovery or the time when it reasonably should have been discovered.[4] Thus, Defendant has argued that Plaintiff must point to evidence that notice of the spilled coffee should have come to Defendant's attention before her fall and that Defendant had a reasonable opportunity to correct the condition. Defendant further contends that Plaintiff cannot satisfy this essential element of her claim because she cannot show how long the coffee was present on the floor before her fall. Therefore, Defendant argues, there is no evidence upon which a jury could conclude Defendant had reasonable opportunity to remedy the dangerous condition. There is no other evidence from which a jury could reasonably infer Defendant's constructive notice of the spilled coffee. Thus, Defendant is entitled to summary judgment

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[3] *Howard v. Food Fair Stores*, 201 A.2d 638, 640 (Del.1964).

[4] *Woods v. Prices Corner Shopping Center*, 541 A.2d 574, 575 (Del. Super. Ct. 1988).

because Plaintiff cannot prove an essential element of her case.[5]

Plaintiff has raised the following factual issues:

(1) whether a rule that prohibited food and beverages in common areas, such as the lobby in question, was properly enforced;

(2) whether Defendant failed to establish reasonable procedures for Defendant's employees to identify and remove hazards such as spills on the weekends;

(3) whether there was a history of spills in the lobby at Plaintiff's apartment complex;

(4) whether Defendant was on notice of the hazards that foods and beverages created in the common areas of its building, which was occupied primarily by elderly tenants;

(5) whether Defendant breached its duty to maintain its premises in a reasonably safe condition by failing to adequately inspect the premises for hazards, such as spills;

(6) whether Defendant's employees should have observed the coffee on the floor through prior inspections before Plaintiff fell; and

(7) whether Defendant conducted a reasonable inspection of its premises on the day in question.

The Court finds that summary judgment is inappropriate. Plaintiff has raised a number of material factual issues that must be resolved by the trier of fact. Therefore, the Motion for Summary Judgment of Defendant Wilmington Housing Authority is hereby denied.

IT IS SO ORDERED.

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[5] *Burkart v. Davies*, 602 A.2d 56, 59 (Del. 1991) (Rule 56 mandates entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and no which that party will bear the burden of proof at trial).

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Judge Mary M. Johnston

oc: Prothonotary