UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

LAURA GARY	*	**CIVIL ACTION NO. 2:14-cv-3131**
	*	
	*	
v.	*	**JUDGE MINALDI**
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WAL-MART LOUISIANA, LLC, ET AL	*	**MAGISTRATE JUDGE KAY**

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MEMORANDUM RULING

Before the court is a Motion for Summary Judgment (Rec. Doc. 37) filed by defendant Wal-Mart Louisiana, LLC ("Wal-Mart"), Oppositions (Rec. Docs. 44 & 46) filed by defendant Coca-Cola Bottling Co. United, Inc. ("Coca-Cola"), and plaintiff Laura Gary ("Gary"), respectively, and a Reply (Rec. Doc. 51) filed by Wal-Mart. For the following reasons, Wal-Mart's Motion (Rec. Doc. 37) will be **DENIED.**

FACTS & PROCEDURAL HISTORY

On June 18, 2014, Gary was shopping at a Wal-Mart store in Lake Charles, Louisiana.[1] She alleges that, as she approached Register #1 to check out, she slipped and fell in a large puddle of water near the Coca-Cola cooler.[2] Gary states that she sustained injuries to her body as a whole, including her left arm, elbow, and wrist.[3] On July 31, 2014, she filed suit against Wal-Mart in the Fourteenth Judicial District Court, Calcasieu Parish, Louisiana, later amending her complaint to name Coca-Cola as a defendant.[4] The case was removed to this court on October 28, 2014.[5]

[1] Pet. for Damages (Rec. Doc. 1-2) ¶¶ 3–4.
[2] *Id.* at ¶¶ 5–6.
[3] *Id.* at ¶ 9.
[4] *See* Pet. for Damages (Rec. Doc. 1-2); First Supplement and Amending Petition for Damages (Rec. Doc. 1-5).
[5] Notice of Removal (Rec. Doc. 1).

Coca-Cola filed a Motion for Summary Judgment (Rec. Doc. 27), which was granted by this court on March 21, 2016.[6] Wal-Mart filed the instant motion on September 28, 2015.[7]

LAW & ANALYSIS

A grant of summary judgment is appropriate where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A dispute is said to be genuine only where "a reasonable jury could return a verdict for the non-moving party." *Dizer v. Dolgencorp, Inc.*, No. 3:10-cv-699, 2012 U.S. Dist. LEXIS 24025, at *16 (W.D. La. Jan. 12, 2012) (citing *Fordoche, Inc. v. Texaco, Inc.*, 463 F.3d 388, 392 (5th Cir. 2006)). In ruling on a motion for summary judgment, the district court shall draw all inferences in a light most favorable to the non-moving party. *Id.* at *3 n. 1 (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (additional citation omitted)). "Rule 56[(a)] mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial." *Webber v. Christus Schumpert Health Sys.*, No. 10-cv-1177, 2011 U.S. Dist. LEXIS 99235, at *14 (W.D. La. Sep. 2, 2011) (citing *Patrick v. Ridge*, 394 F.3d 311, 315 (5th Cir. 2004)). "The non-movant cannot preclude summary judgment by raising 'some metaphysical doubt as to the material facts, conclusory allegations, unsubstantiated assertions, or by only a scintilla of the evidence.'" *Cormier v. W&T Offshore, Inc.*, No. 10-cv-1089, 2013 U.S. Dist. LEXIS 53416, at *18–19 (W.D. La. Apr. 12, 2013) (citing *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)).

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[6] J. Granting Mot. for Summ. J. (Rec. Doc. 59). Gary filed a Notice of Appeal (Rec. Doc. 60) for that judgment on April 18, 2016.

[7] Mot. for Summ. J. (Rec. Doc. 37).

LA. REV. STAT. 9:2800.6

Merchants, such as Wal-Mart, have a duty to their patrons "to exercise reasonable care to keep . . . aisles, passageways, and floors in a reasonably safe condition." LA. REV. STAT. 9:2800.6. The same statute establishes the burden of proof in claims against merchants, stating that:

> B. In a negligence claim brought against a merchant by a person lawfully on the merchant's premises for damages as a result of an injury, death, or loss sustained because of a fall due to a condition existing in or on a merchant's premises, the claimant shall have the burden of proving, in addition to all other elements of his cause of action, all of the following:
> (1) The condition presented an unreasonable risk of harm to the claimant and that risk of harm was reasonably foreseeable.
> (2) The merchant either created or had actual or constructive notice of the condition which caused the damage, prior to the occurrence.
> (3) The merchant failed to exercise reasonable care. In determining reasonable care, the absence of a written or verbal uniform cleanup or safety procedure is insufficient, alone, to prove failure to exercise reasonable care.

Id.

Wal-Mart contends that the parties cannot establish that it had actual or constructive notice of the condition that allegedly caused Gary's fall, or that Wal-Mart caused the leak. We first address the issue of actual notice.

The non-moving parties rely on the testimony of Teanette Evans, an employee who acted as customer service associate and safety team leader at the Wal-Mart store where this claim arose,[8] to establish that Wal-Mart had notice of leaking coolers at the store. Evans testified that Steven Augusto, a Coca-Cola employee, informed her more than 30 days before Gary's alleged fall that there was a problem with Coca-Cola coolers leaking in the store.[9] Augusto did not specify which coolers were leaking, but Evans assumed that the cooler at Register #1 was

[8] Depo. of Teanette Evans (Rec. Doc. 46-3), 7:11–14, 9:15–22.
[9] *Id.* at 15:25–17:17.

included.[10] Gary's husband also testified that after his wife's fall he heard a Wal-Mart employee remark, "It was leaking again," which he understood as a reference to the Coca-Cola cooler.[11]

In ruling on the prior Motion for Summary Judgment, the court found that Evans' recollection was too vague to establish that Coca-Cola had notice of the fact that the cooler at Register #1 was leaking.[12] However, given Evans' position as safety team leader, her own assumption that the leaking coolers included the one at Register #1, and the statement overheard by Gary's husband, there is sufficient support for the issue of Wal-Mart's prior actual notice of the condition (leaking cooler) alleged to be the cause of the injury here. Accordingly, Wal-Mart is not entitled to summary judgment and this court will not address its other claims.

Lake Charles, Louisiana, this 12 day of May, 2016.

PATRICIA MINALDI
UNITED STATES DISTRICT JUDGE

[10] *Id.* at 17:2–7.
[11] Depo. of Randy Gary (Rec. Doc. 46-4), 13:11–22.
[12] Memo. Ruling on Mot. for Summ. J. (Rec. Doc. 58), at 3.