

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RODNEY BENNETT,

Plaintiff,

Civil Action No. 17-CV-10538

vs.

HON. BERNARD A. FRIEDMAN

LOWE'S HOME CENTERS, LLC,

Defendant.

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**OPINION AND ORDER GRANTING  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This matter is presently before the Court on defendant's motion for summary judgment [docket entry 16]. Plaintiff has not responded and the time for him to do so has expired. Pursuant to E.D. Mich. 7.1(f)(2), the Court shall decide this motion without a hearing.

This is a premises liability action. Plaintiff alleges that he slipped and fell "on a slippery, transparent liquid substance" while shopping at defendant's store in Sterling Heights, Michigan, on December 31, 2015. Compl. ¶ 6. Plaintiff further alleges that as a result of defendant's negligence, he sustained severe injuries to his left shoulder. *Id.* ¶ 14. Plaintiff commenced suit in state court and defendant timely removed the matter to this Court based on diversity of citizenship.

Defendant argues that it is entitled to summary judgment because (1) plaintiff has not shown that defendant had notice of the condition that allegedly caused him to fall; (2) plaintiff failed to preserve evidence, and deprived defendant of the opportunity to gather its own evidence,

by failing to photograph the scene<sup>1</sup> and by failing to report the incident to defendant until long afterwards; and (3) plaintiff has no evidence that his shoulder injury was caused by the fall.<sup>2</sup>

By failing to respond to defendant's summary judgment motion, plaintiff has conceded that there are no genuine issues of fact as to the critical issues of notice and causation. *See* Fed. R. Civ. P. 56(e)(2). Under these circumstances, defendant is plainly entitled to judgment as a matter of law. Accordingly,

IT IS ORDERED that defendant's motion for summary judgment is granted.

Dated: December 7, 2017  
Detroit, Michigan

s/Bernard A. Friedman  
BERNARD A. FRIEDMAN  
SENIOR UNITED STATES DISTRICT JUDGE

#### **CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on December 7, 2017.

s/Johnetta M. Curry-Williams  
Case Manager

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<sup>1</sup> On this point, defendant notes plaintiff's deposition testimony that he slipped on "some white dust" and that his coat "was loaded" with it. Pl.'s Dep. at 49-50.

<sup>2</sup> On this issue, defendant points to a medical record from Urgent Care of Farmington Hills, where plaintiff sought treatment on December 29, 2015, for left shoulder pain. Plaintiff told the provider he had been experiencing this pain for "5 months." Def.'s Ex. 2.