

United States District Court
Southern District of Texas

ENTERED

May 27, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

GLORIA GOMEZ,

Plaintiff,

VS.

WAL-MART STORES, INC., *et al*,

Defendants.

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CIVIL ACTION NO. 2:15-CV-00226

ORDER ON SUMMARY JUDGMENT MOTION

Before the Court is “Defendants’ Wal-Mart Stores, Inc. and Wal-Mart Stores Texas, LLC’s No-Evidence Motion for Summary Judgment” (D.E. 22), along with Plaintiff, Gloria Gomez’s Response (D.E. 23), and Defendants’ Reply (D.E. 25). Defendants seek summary judgment eliminating any negligent activity claim and the premises liability claim.

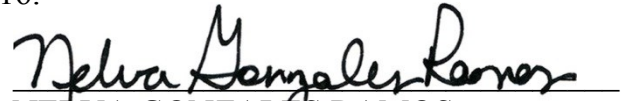
After due consideration, the motion is GRANTED IN PART with respect to the claim for general negligence or negligent activity. The motion is DENIED IN PART with respect to the claim for premises liability because there is more than a scintilla of evidence raising a disputed issue of material fact regarding whether the condition of the premises had existed a sufficient length of time that Defendants knew or should have known of it.

In so holding, the Court rejects Plaintiff’s argument that she is entitled to a spoliation presumption. She has not demonstrated (1) that Defendants owed a duty to Plaintiff to investigate and thereby generate and maintain evidence favorable to her, (2)

that Defendants were ever in exclusive possession of additional evidence that was relevant, material, and probative with respect to this matter, or (3) that Defendants acted in bad faith with respect to handling evidence.

Any claim for negligent activity is DISMISSED. The claim for premises liability will proceed to trial.

ORDERED this 27th day of May, 2016.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE