

ROBERT PORTER RANDLE

NO. 18-C-398

VERSUS

FIFTH CIRCUIT

WHOLE FOOD COMPANY, INC.

COURT OF APPEAL

STATE OF LOUISIANA

August 20, 2018

Susan Buchholz

First Deputy Clerk

IN RE WHOLE FOOD COMPANY, INC.

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE DANYELLE M. TAYLOR, DIVISION "O", NUMBER 764-006

Panel composed of Judges Fredericka Homberg Wicker,
Stephen J. Windhorst, and Marion F. Edwards, Judge Pro Tempore

WRIT GRANTED; MATTER REMANDED

In this merchant liability suit arising from an alleged slip-and-fall accident, relator seeks review of the trial court's granting of plaintiff's motion for partial summary judgment on the issue of liability. For the following reasons, we grant the writ, vacate the trial court judgment, and remand the matter for further proceedings.

On August 19, 2016, plaintiff, Robert Porter Randle, filed suit against Whole Food Company, Inc., d/b/a Whole Foods Market for personal injury damages arising from an alleged July 4, 2016 slip and fall accident at the Metairie Whole Foods store location. On April 11, 2018, plaintiff filed a partial motion for summary judgment on the issue of liability. In his motion, plaintiff contended that he slipped on water leaking from a beer cooler onto the store's aisle. Plaintiff alleged that, as a result of the accident, he sustained a severe knee injury requiring life-long treatment.

In his motion for partial summary judgment, plaintiff contended that before he slipped on the leaking water, Whole Foods had knowledge of the leaking cooler but did not take action to correct the leak. In support of his motion, plaintiff attached various documentation to show that the beer cooler at issue had leaked prior to and after the date of the accident. Whole Foods, in opposition to the motion for partial summary judgment, produced evidence to support its position

that, despite prior leaking concerns, the beer cooler at issue was not leaking at the time of the accident.

Following a hearing on the motion, the trial judge granted plaintiff's motion for partial summary judgment on the issue of liability, finding that it is "reasonable to assume that the leaky cooler kept leaking" and was leaking on the date of the accident. Whole Foods seeks review of the trial court's judgment granting plaintiff's motion for partial summary judgment.

In a slip and fall case against a merchant, a plaintiff must prove the essential elements of a standard negligence claim in addition to the requirements under La. R.S. 9:2800.6. *Burns v. Sedgwick Claims Mgmt. Servs.*, 14-421 (La. App. 5 Cir. 11/25/14), 165 So.3d 147, 152. Under La. R.S. 9:2800.6, a plaintiff has the burden of proving the existence of a condition, that the condition presented an unreasonable risk of harm, that the risk of harm was reasonably foreseeable, and that the merchant either created or had actual or constructive notice of the condition which caused the damage, prior to the occurrence. *Landry v. Leson Chevrolet Co.*, 17-665 (La. App. 5 Cir. 06/06/18), 2018 La. App. LEXIS 1158.

Our review of summary judgments is *de novo* under the same criteria that govern the district court's consideration of whether summary judgment is appropriate. Thus, appellate courts ask the same questions the trial court does in determining whether summary judgment is appropriate: whether there is any genuine issue of material fact, and whether the mover is entitled to judgment as a matter of law. *Breaux v. Fresh Start Props., L.L.C.*, 11-262 (La. App. 5 Cir. 11/29/11), 78 So.3d 849, 852.

In determining whether an issue is genuine for purposes of a summary judgment, courts cannot consider the merits, make credibility determinations, evaluate testimony or weigh evidence. *Boros v. Lobell*, 15-55 (La. App. 5 Cir. 09/23/15), 176 So. 3d 689, 693. An issue is genuine if it is such that reasonable persons could disagree. Summary judgment is not appropriate unless only one conclusion could be reached by reasonable persons. *Landry v. Leson Chevrolet Co.*, 17-665 (La. App. 5 Cir. 06/06/18), 2018 La. App. LEXIS 1158; *Foster v. Pinnacle Entm't, Inc.*, 16-8 (La. App. 5 Cir. 04/27/16), 193 So.3d 288, 294.

Upon our review of the documentation in support of and in opposition to plaintiff's motion for partial summary judgment on the issue of liability, we find that genuine issues of material fact exist and that the trial judge erred as a matter of law in granting plaintiff's motion for partial summary judgment. The trial judge, in finding it "reasonable to assume" the defendant's liability, substituted her own opinion for that specifically reserved for the trier of fact under Louisiana law. Although the trial judge's inferences and factual determinations concerning the evidence presented may very well be reasonable, the parties presented conflicting evidence concerning the existence of the condition on the date of the accident and whether such condition caused plaintiff's fall. Thus, at this summary judgment

stage, we find that genuine issues of material fact exist and that summary judgment is improper. Accordingly, we grant the writ, vacate the trial court judgment, and remand this matter for further proceedings.

Gretna, Louisiana, this 20th day of August, 2018.

FHW
SJW
MFE

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
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JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **08/20/2018** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY

CHERYL Q. LANDRIEU
CLERK OF COURT

18-C-398

E-NOTIFIED

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