[Cite as *Szerszen v. Summit Chase Condominiums*, 2010-Ohio-4518.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Gary L. Szerszen,	:	
Plaintiff-Appellant,	:	No. 09AP-1183 (C.P.C. No. 08CVC-12-18150)
v.	:	(REGULAR CALENDAR)
Summit Chase Condominiums et al.,	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on September 23, 2010

Crabbe, Brown & James, and *Christina L. Corl*, for appellant.

Reminger Co., LPA, Amy S. Thomas, and *Robert V. Kish*, for appellees.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} Gary L. Szerszen, plaintiff-appellant, appeals from the judgment of the Franklin County Court of Common Pleas granting the motion for summary judgment filed by Summit Chase Condominiums (individually "Summit Chase"), Summit Chase Condominium Association (individually "the condominium association"), and Sterling Town Properties (individually "Sterling Town"), defendants-appellees.

{¶2} On December 22, 2006, appellant arrived home to his condominium from a two-day trip to New York. The condominium complex, Summit Chase Condominiums

("the condominiums"), is owned/managed/maintained by Summit Chase, the condominium association, and Sterling Town. Appellant rented the condominium from another individual and had lived there for about 17 years. On the day in question, appellant set down his luggage and turned to walk into the kitchen when he slipped on a puddle of water that had accumulated on his kitchen floor. Appellant broke his wrist. The puddle of water had come from his sink, which had overflowed due to a sludge blockage in the stack line. There is no dispute that maintenance of the stack line under the present circumstances was the responsibility of Summit Chase and the condominium association.

{¶3} On December 22, 2008, appellant filed a negligence action against appellees. On July 27, 2009, appellees filed a motion for summary judgment on the grounds that the water puddle was an open and obvious hazard, and they had no superior or constructive knowledge of the water puddle.

{¶4} On November 30, 2009, the trial court granted appellees' motion for summary judgment, finding the puddle was an open and obvious danger, and appellees did not breach a duty because they neither caused nor had actual or constructive knowledge of the alleged hazardous condition. The court journalized the decision on December 11, 2009. Appellant appeals the judgment of the trial court, asserting the following assignments of error:

> [I.] THE TRIAL COURT ERRED AS A MATTER OF LAW IN GRANTING DEFENDANTS-APPELLEES MOTION FOR SUMMARY JUDGMENT AS THERE ARE GENUINE ISSUES OF MATERIAL FACT AS TO WHETHER THE CONDITION AND HAZARD ASSOCIATED WITH IT THAT CAUSED MR. SZERSZEN'S FALL WERE OPEN AND OBVIOUS.
>
> [II.] THE TRIAL COURT ERRED AS A MATTER OF LAW IN GRANTING DEFENDANTS-APPELLEES MOTION FOR SUMMARY JUDGMENT AS THERE ARE GENUINE ISSUES

> OF MATERIAL FACT AS TO WHETHER DEFENDANTS-APPELLEES HAD SUPERIOR OR CONSTRUCTIVE NOTICE OF THE CONDITIONS ASSOCIATED WITH IT THAT CAUSED MR. SZERSZEN'S FALL.

{¶5} Appellant argues in his first assignment of error that the trial court erred in granting summary judgment to appellees. Pursuant to Civ.R. 56(C), summary judgment is proper if: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327. Appellate review of a lower court's entry of summary judgment is de novo, applying the same standard used by the trial court. *McKay v. Cutlip* (1992), 80 Ohio App.3d 487, 491. The party seeking summary judgment initially bears the burden of informing the trial court of the basis for the motion and identifying portions of the record that demonstrate an absence of genuine issues of material fact as to the essential elements of the non-moving party's claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. The movant must point to some evidence in the record of the type listed in Civ.R. 56(C) in support of his motion. Id. Once this burden is satisfied, the non-moving party has the burden, as set forth in Civ.R. 56(E), to offer specific facts showing a genuine issue for trial. Id. The non-moving party may not rest upon the allegations or denials in the pleadings, but must affirmatively demonstrate the existence of a genuine issue of material fact to prevent the granting of a motion for summary judgment. Civ.R. 56(C); *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, 115.

{¶6} In an action for negligence, a plaintiff must prove (1) the defendant owed her a duty of care; (2) the defendant breached that duty of care; and (3) as a direct and proximate result of the defendant's breach, the plaintiff suffered injury. *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77.

{¶7} Appellant argues in his first assignment of error that the trial court erred when it found that the puddle of water in his kitchen was an open and obvious hazard, and, thus, appellees owed no duty to appellant to protect him from that danger. Appellant asserts that he had just entered his condominium, set down his luggage, and immediately turned to walk into his kitchen, at which point he fell. Appellant contends he repeatedly testified that, even if he had looked at the floor, he would not have seen the clear water on the floor.

{¶8} When a danger is open and obvious, a premises owner owes no duty of care to individuals lawfully on the premises. See *Armstrong v. Best Buy Co.*, *Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573. Open and obvious dangers are not concealed and are discoverable by ordinary inspection. *Parsons v. Lawson Co.* (1989), 57 Ohio App.3d 49, 50-51. The dangerous condition at issue does not actually have to be observed by the claimant to be an open and obvious condition under the law. *Lydic v. Lowe's Cos., Inc.*, 10th Dist. No. 01AP-1432, 2002-Ohio-5001, ¶10. Rather, the determinative issue is whether the condition is observable. Id. "The rationale underlying this doctrine is 'that the open and obvious nature of the hazard itself serves as a warning. Thus, the owner or occupier may reasonably expect that persons entering the premises will discover those dangers and take appropriate measures to protect themselves.' " *Armstrong* at ¶5, citing *Simmers v. Bentley Constr. Co.*, 64 Ohio St.3d 642, 644, 1992-Ohio-42. "The fact that a

plaintiff was unreasonable in choosing to encounter the danger is not what relieves the property owner of liability. Rather, it is the fact that the condition itself is so obvious that it absolves the property owner from taking any further action to protect the plaintiff." Id. at ¶13. When applicable, the open and obvious doctrine obviates the duty to warn and acts as a complete bar to any negligence claim. Id.

{¶9} Furthermore, "[t]he law uses an objective, not subjective, standard when determining whether a danger is open and obvious. The fact that appellant herself was unaware of the hazard is not dispositive of the issue. It is the objective, reasonable person that must find that the danger is not obvious or apparent." *Goode v. Mt. Gillion Baptist Church*, 8th Dist. No. 87876, 2006-Ohio-6936, ¶25. Thus, "[a] dangerous condition does not actually have to be observed by the claimant to be an open-and-obvious condition under the law." *Lykins v. Fun Spot Trampolines*, 172 Ohio App.3d 226, 2007-Ohio-1800, ¶24. "Rather, the determinative issue is whether the condition is observable." Id.

{¶10} In most situations, whether a danger is open and obvious presents a question of law. See *Hallowell v. Athens*, 4th Dist. No. 03CA29, 2004-Ohio-4257, ¶21. However, under certain circumstances, disputed facts may exist regarding the openness and obviousness of a danger thus rendering it a question of fact. Where only one conclusion can be drawn from the established facts, the issue of whether a risk was open and obvious may be decided by the court as a matter of law. *Klauss v. Marc Glassman, Inc.*, 8th Dist. No. 84799, 2005-Ohio-1306, ¶18, citing *Anderson v. Hedstrom Corp.* (S.D.N.Y.1999), 76 F.Supp.2d 422, 441; *Vella v. Hyatt Corp.* (E.D.Mich.2001), 166 F.Supp.2d 1193, 1198; *Parsons*. However, where reasonable minds could differ with

respect to whether a danger is open and obvious, the obviousness of the risk is an issue for the jury to determine. Id., citing *Carpenter v. Marc Glassman, Inc.* (1997), 124 Ohio App.3d 236, 240; *Henry v. Dollar Gen. Store*, 2d Dist. No. 2002-CA-47, 2003-Ohio-206; *Bumgardner v. Wal-Mart Stores, Inc.*, 2d Dist. No. 2002-CA-11, 2002-Ohio-6856. Accordingly, the determination of the existence and obviousness of a danger alleged to exist on a premises requires a review of the facts of the particular case. *Miller v. Beer Barrel Saloon* (May 24, 1991), 6th Dist. No. 90-OT-050.

{¶11} In the present case, the bulk of the evidence relied upon by the parties to support their respective positions comes from the depositions of Thomas Noland and appellant. Noland, the building engineer for Sterling Town assigned to the condominiums, testified at his deposition that the condominium association is responsible for the common plumbing system, including the stack line. He stated that the condominiums had plumbing problems that were the responsibility of the condominium association about once per month. Waterworks, a plumbing contractor, was called 23 times in 2006 for problems involving stack lines. However, he said from the period of 2005-2007, there was not what he would call an "ongoing" problem with the stack lines. He speculated that the stack lines would get clogged due to tenants putting substances in their drains that they should not. In 2008, he saw inside a stack line at the condominiums, and the build up varied from not much to a lot. In the most clogged lines on the lower floors, the four-inch line was clogged until only an inch-wide opening remained. In early 2008, Noland implemented a preventative maintenance program for places in the building that were having backup issues. Sterling Town performed a clean out of the stack lines in July 2008. Approximately every quarter, he has Waterworks clean the pipes. The problem that caused appellant's

sink to back up with respect to the incident in question, Noland said, was a clogged stack line that was the responsibility of the condominium association.

{¶12} Appellant testified at his deposition that, prior to his accident, the sinks and pipes had backed up in his unit approximately five times. In each of those five instances, sewage backed up into his kitchen sink. One of those times was in the late-1990s. In two of the five incidents, sewage had overflowed onto his floor. He said backups occur "all the time" and on a "regular basis." Prior to the incident in question, he had been in New York for two days. When he walked into his condominium, he set his bags onto the floor, noticed his plant needed water, immediately turned into the kitchen, and on his second step slipped on the water. It was 5:09 p.m. and still light out when he fell. At first he testified that, if he had looked at the floor, he would not have been able to see the water because it was clear on a blue surface, but he then stated the reason he could not see the water was because he was not looking. Appellant later testified that had he looked down at the water, he would not have been able to see it. He then stated:

> I guess if I looked hard enough – if I was paying attention and looking for that specific thing, I probably could have seen the water – looking, you know – I was not looking – I didn't – I was just focused on doing something else, which was getting water[.]

Appellant further said there was nothing to suggest that the condominium association or maintenance department knew about water on his floor prior to his fall. Appellant said the plumbing problems in the building have been going on "forever." There were units all over the building that had problems with backups. Although a photograph appellant took of the carpet next to the kitchen showed a large dark stain from the water, appellant said he did not see the stain before he fell. He said he could have seen it had he looked at the

carpet. Another photo of his kitchen sink showed a dark liquid in it. Neither photograph is in the record before this court.

{¶13} After reviewing the evidence submitted by the parties, we find there remains a genuine issue of material fact as to whether the hazardous condition was open and obvious. The most pertinent of appellant's deposition testimony on the open and obvious issue was his statement that the water he slipped on was clear against the blue floor in his kitchen, and if he had looked down, he would not have seen the water. Although he did testify that if he had looked "hard enough" and had looked for "that specific thing" he probably could have seen the water, and appellees rely upon this statement to demonstrate the water was open and obvious, we believe this evidence militates against a finding of open and obvious. If one is able to view a condition only if he or she is looking "hard enough" and looking for "that specific thing," a genuine issue of material fact is raised as to whether the condition is open or obvious. A jury may interpret this evidence as demonstrating the water was not discoverable by "ordinary inspection." *Parsons* at 50-51. As explained above, the determinative issue is whether the condition is observable, and given appellant's deposition testimony, reasonable minds could differ with respect to the obviousness of the risk, leaving this issue best determined by a jury.

{¶14} We further find *Francill v. The Andersons, Inc.* (Feb. 15, 2001), 10th Dist. No. 00AP-835, to be inapposite to the circumstances in the present case. The trial court cited *Francill* for the proposition that this court has already determined that water on a floor that "probably" could have been seen by a plaintiff if he or she had looked is an open and obvious danger. Thus, the trial court reasoned, because appellant admitted he would have "probably" seen the water if he had been looking for that specific thing, the water

was an open and obvious hazard. However, the circumstances here differ from those in *Francill*. In *Francill*, the plaintiff slipped and fell on water, leaves, and a flat-headed nail. The trial court granted summary judgment to the premises owner. On appeal, this court affirmed the trial court's judgment. We relied upon the plaintiff's admission that, if she had looked down she "probably" would have seen the water to demonstrate that the water was open and obvious and discoverable by ordinary inspection.

{¶15} However, in the present case, appellant did not indicate merely that he would have "probably" seen the water had he looked down. Appellant's explanation was more qualified than the plaintiff's in *Francill*. Here, appellant not only limited his ability to discern the water on his kitchen floor by using the word "probably," but also by indicating that he would have "probably" been able to see the water only if he had been looking "hard enough" and looking for "that specific thing." These qualifications bring directly into question whether the water was, in fact, observable and discoverable by "ordinary" inspection. These are genuine issues of material fact that a fact finder should determine after considering the evidence, testimony, and credibility of the witnesses.

{¶16} Furthermore, if the fact that a hazard is discernable by looking "hard enough" for "that specific thing" always renders the hazard open and obvious, it would be nearly impossible to recover for premises liability under any circumstance. There exist few substances that are completely invisible when one knows to look for it and is looking directly at it. While we acknowledge that "the mere fact that water is transparent does not require the conclusion that genuine issues of material fact necessarily exist as to the obviousness of the hazard presented by the water[,]" *Caravella v. West-WHI Columbus Northwest Partners*, 10th Dist. No. 05AP-499, 2005-Ohio-6762, ¶22, the additional

qualifiers that appellant placed on his statement that he "probably" would have seen the water take the present case out of the realm of cases in which the plaintiff's sole claim is that the water was not obvious because it was clear. Additionally, many of the cases in which "clear" water is still found to be an open and obvious condition involve plaintiffs who had an expectation that they may encounter water due to additional circumstances, such as inclement weather or noticeably wet floors in the general vicinity, which are not present in the case at bar. See, e.g., id (that plaintiff admitted tile floor was "noticeably wet" with standing water belied contention that the water was not observable due to its transparency); *Francill* (although plaintiff claimed that water on floor was clear, it was open and obvious because plaintiff admitted that it was pouring down rain and, had she looked down, she "probably" could have seen the water); *Hect v. K-Mart Corp.* (Dec. 9, 1994), 11th Dist. No. 93-P-0119 ("transparent" water on floor was open and obvious when there was snow on the ground outside and plaintiff observed slush and water on carpet before encountering water on floor). For purposes of summary judgment here, the key issue is whether water that could be seen only by looking "hard enough" for that specific substance constitutes something that was observable by "ordinary inspection," and because reasonable minds could differ on this issue, summary judgment was inappropriate.

{¶17} We also add that it is of no consequence to our analysis that there was a water stain on the carpet in the adjoining room and water in the overflowing kitchen sink, as these do not render the water on the kitchen floor any more open or obvious when appellant did not see, and could not reasonably have been expected to have seen, either of these conditions prior to his encounter with the water on the kitchen floor. Therefore,

for the foregoing reasons, we find there remain genuine issues of material fact as to whether the water on the kitchen floor was open and obvious, and the trial court erred in granting summary judgment on this issue. Appellant's first assignment of error is sustained.

{¶18} Appellant argues in his second assignment of error that there remain genuine issues of material fact as to whether appellees had constructive notice of the conditions associated with the puddle that caused his fall. Appellant asserts that the trial court improperly found that appellees must have had constructive knowledge of the "exact" danger that caused his fall. Appellant maintains that appellees did not have to have knowledge of the specific water puddle but, instead, had to have knowledge of the history and extent of the plumbing problems throughout the condominium property. It was the improperly maintained pipes, not the water puddle, appellant contends, that was the hazard that caused his fall.

{¶19} Initially, we agree with the trial court that the hazardous condition pertinent to the present case was the puddle of water and not the faulty maintenance of the stack line. The hazard that actually caused the injury was the water on the kitchen floor. Therefore, the next issue is whether appellees created the hazard or had actual or constructive knowledge of the hazard so as to breach their duty to appellant. In order to avoid summary judgment in a "slip and fall" case, the plaintiff must present evidence showing one of the following: (1) that one or more of the defendants was responsible for placing the hazard in her path; (2) that one or more of the defendants had actual notice of the hazard and failed to give appellant adequate notice of its presence or remove it promptly; or (3) that the hazard had existed for a sufficient length of time as to warrant the

imposition of constructive notice, i.e., the hazard should have been found by one or more of the defendants. *Johnson v. Wagner Provision Co.* (1943), 141 Ohio St. 584, 589. Without such evidence, the plaintiff cannot prove that the defendant breached the duty of ordinary care to prevent accident or injury. See *Cupp v. Zoz* (Dec. 27, 1994), 12th Dist. No. CA94-06-122.

{¶20} Here, it is undisputed that appellees had a duty to maintain, repair, restore, and replace the common property plumbing system, which included all plumbing, lines, and pipes, pursuant to the Declaration of Summit Chase Condominium and Summit Chase Rules and Regulations of Residents. Noland, the building engineer, specifically testified that the cause of the water backup into appellant's condominium was a clogged stack line, which was the responsibility of the condominium association. Therefore, it is clear that appellees owed appellant a duty to maintain the stack lines to prevent water problems.

{¶21} However, whether a duty is breached and whether the breach proximately caused an injury are normally questions of fact to be decided by the jury, or by the court in a bench trial. *Pacher v. Invisible Fence of Dayton*, 154 Ohio App.3d 744, 2003-Ohio-5333, ¶41, citing *Miller v. Paulson* (1994), 97 Ohio App.3d 217, 221. Here, appellant contends that notice was immaterial to determining breach of duty because appellees created the hazard in question. When it is the property owner himself who creates the hazardous condition that causes the plaintiff's injury, then the plaintiff need not show that the owner had knowledge or notice of the condition at issue. *Crane v. Lakewood Hosp.* (1995), 103 Ohio App.3d 129, 136.

{¶22} In the present case, although we found above that the hazardous condition relevant to our analysis was the water on the kitchen floor, appellees' maintenance of the stack lines and their knowledge of past problems is still relevant to determining whether they created the hazardous condition that caused appellant's injury. The particular mechanism by which the hazard was created is immaterial for this analysis. The relevant issue is whether the defendants' actions or inactions brought about a hazardous condition, regardless of the means by which it did so. Here, if appellees caused the hazardous condition – that is, caused water to be spilled onto appellant's floor – by failing to maintain the stack lines, then appellees breached their duty to appellant by creating the hazardous condition.

{¶23} As already indicated above, Noland testified that the condominium association is responsible for maintaining the stack lines, and a clogged stack line was responsible for the back up of sewage into appellant's residence. He stated that the condominiums had plumbing problems that were the responsibility of the condominium association about once per month, and Waterworks was called 23 times in 2006 for problems involving stack lines. In 2008, he saw inside a stack line at the condominiums, four-inch line was clogged until only a one-inch-wide opening remained. Sterling Town did not perform a clean out of the stack lines until July 2008. Thus, it is apparent that appellees were aware the stack lines tended to clog, causing plumbing problems within the units. A reasonable fact finder could find a foreseeable consequence of clogged stacked lines is sewage water backing up into residents' condominiums. If a tenant is away from home for a period of time and is unable to manage the situation, sewage may back up until it overflows a sink, resulting in water accumulating on the floor and creating

a hazardous condition. Whether appellees' lack of proper maintenance lead directly to the creation of a dangerous condition in appellant's condominium is for a fact finder to resolve. Therefore, it appears from the evidence that reasonable minds could come to more than one conclusion as to whether appellees created the hazard causing appellant's injuries, and viewing such evidence most strongly in favor of appellant, appellant has demonstrated genuine issues of material fact remain to be litigated.

{¶24} As for actual notice and constructive notice, there is no dispute that appellees had no actual notice of the water puddle on appellant's kitchen floor. However, appellant relies upon *Jordan v. Simon Property Group*, *L.P.*, 11th Dist. No. 2004-L-060, 2005-Ohio-4480, and *Lopez ex rel. v. Cleveland Municipal School Dist.*, 8th Dist. No. 82438, 2003-Ohio-4665, for the proposition that appellees had constructive notice of the hazard because they knew there was a history of problems with the common plumbing system and failed to remedy the problems. In *Lopez*, a boy slipped and fell in a puddle at school created by a recurring leak. The trial court granted summary judgment to the school, finding that the plaintiff had failed to produce evidence showing the school had actual or constructive notice of the dangerous condition or had created the hazard. On appeal, the court found there were genuine issues of material fact based on the boy's testimony that he had seen water dripping onto the floor four to five months prior to the incident, and the boy's mother testified that she had seen maintenance workers place buckets in the area prior to the fall. The court added that the boy also testified that water dripped onto the floor after it rained or when the snow melted. The court reasoned that, even though the puddle did not exist all the time, the school should have been aware that the recurring leak caused the puddle. Therefore, the court found there was sufficient

evidence demonstrating a genuine issue of material fact as to whether the school had actual or constructive notice of the dangerous condition such that summary judgment should have been denied.

{¶25} In *Jordan*, the plaintiff slipped and fell on a puddle of water coming from a leaking skylight. It was raining on the date of the incident. The mall's manager indicated that leaking skylights were ongoing problems for several years, but there were no recorded leaks in the area in question. The trial court granted the defendant's motion for summary judgment due to lack of evidence as to whether defendant created the puddle, created the leak that was the source of the puddle, knew the puddle existed, or knew how long the puddle had been on the concourse.

{¶26} On appeal, the court found there remained a genuine issue of material fact on the issue of constructive notice. The court rejected the trial court's attempt to distinguish *Lopez* based upon the fact that the leak occurred in the same location, causing the hazard to form in a very specific location each time. The court in *Jordan* indicated it believed the trial court read *Lopez* too narrowly, and *Lopez* did in fact apply. Relying upon the deposition testimony that the leaking skylights had been an ongoing problem and applying the reasoning of *Lopez*, the court in *Jordan* found that, although this particular puddle did not exist all the time, the defendants' knowledge of its leaking skylight problem, especially during rain, should have made it aware that puddles were likely to form underneath skylights regardless of which particular skylight was leaking at the time. The court further explained that, although there was no evidence that any mall employee knew about the specific puddle that caused the fall, there was evidence the defendants had knowledge of faulty, leaky skylights causing puddles during wet weather.

Knowing numerous skylights had leaked in the past, created a reasonable risk that any one of the skylights could leak in the future, thereby creating a hazard on the floor. Therefore, the court found, the defendants were in a better position to prevent the hazard than its invitees, and a jury could find that the defendants failed to exercise reasonable care.

{¶27} The trial court distinguished *Jordan* and *Lopez*, finding that, in both cases, the water on which the plaintiffs slipped accumulated after it rained, which is an identifiable, known event to the defendants, while in the present case, there was no connection shown between any of the stack line backups and any other identifiable event, such as every time it rains, snows, etc. As the court in *Jordan* found with respect to the trial court's interpretation of *Lopez* in that case, we find the trial court here also interpreted *Lopez*, as well as *Jordan*, too narrowly. Neither case limited its analysis to the fact that the hazard existed only after identifiable events known to the defendants occurred. In *Lopez*, the court based its decision on evidence that water was seen dripping onto the floor four to five months prior to the incident, and maintenance workers had placed buckets in the area on a prior occasion. The court did mention that water dripped onto the floor after it rained or when the snow melted, but this was merely an additional factor in its analysis. Likewise, in *Jordan*, the court based its decision on the fact that there was a known history of leaking skylights, and that the leaks occurred "especially during rain" was only an additional factor mentioned.

{¶28} Analogous to the circumstances in *Lopez* and *Jordan*, in the present case, there existed a known history of problems with the stack lines and a known history that the clogged stack lines would sometimes cause water to back up into the sinks of

individual condominium units. Similar to *Lopez,* even though the water did not exist on appellant's floor all the time, appellees should have been aware that the repeated problems with the stack lines would cause back ups and possible puddles. Furthermore, like in *Jordan*, appellees' knowledge of its clogged stack line problem should have made it aware that backup into residents' dwellings were likely to result, regardless of which particular residents' dwelling the sewage would back up into at any time. Like facts in *Jordan*, here, although there was no evidence that appellees knew about the specific puddle that caused the fall, there is evidence appellees had knowledge of faulty stack lines causing back ups when they were clogged. Knowing residents' have experienced back ups in the past creates a reasonable risk that any one of the residential units could back up in the future, thereby creating a puddle hazard on the floor. Thus, appellees were in a better position to prevent the hazard than appellant and other residents, and a jury could find that the defendants failed to exercise reasonable care. Therefore, we find there are genuine issues of material fact with regard to whether appellees created the hazard in question or had constructive notice thereof. For all the above reasons, appellant's second assignment of error is sustained.

{¶29} Accordingly, appellant's first and second assignments of error are sustained, the judgment of the Franklin County Court of Common Pleas is reversed, and this cause is remanded to that court for further proceedings in accordance with law, consistent with this decision.

Judgment reversed and cause remanded.

TYACK, P.J., and McGRATH, J., concur.