2012 PA Super 27

TONDALAYA GOODMAN, Appellant v. CHESTER DOWNS AND MARINA, LLC, D/B/A HARRAH'S CHESTER CASINO & RACETRACK, Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 861 EDA 2011

Appeal from the Order dated February 18, 2011
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 100102739

BEFORE: PANELLA, LAZARUS, and STRASSBURGER*, JJ.

PER CURIAM: Filed: February 10, 2012

Order reversed. Case remanded in accordance with the dictates of this decision. Jurisdiction relinquished.

Judge Strassburger files a Concurring Opinion.

*Retired Senior Judge assigned to the Superior Court.

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CONCURRING OPINION BY STRASSBURGER, J.: Filed: February 10, 2012

I join the Majority memorandum.

I write separately to point out my disagreement with Pennsylvania slip and fall law.

Here, Goodman allegedly sustained serious injuries to her left knee after she slipped and fell on an unidentified liquid in front of Appellee's Winning Streak restaurant on September 21, 2008, at approximately 2:00 in the afternoon. To succeed in this premises liability action, Goodman will have to prove that the defective condition on the floor of the premises was the result of the direct negligence of a Chester Downs employee or that Chester Downs had sufficient constructive notice of the defect to have

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enabled it to correct that defect. ***Lanni v. Penna. R.R. Co.***, 88 A.2d 887 (Pa. 1952).

> As [I have] opined in the past, ***see*** [***Landis v. Giant Eagle, Inc.***, GD 91-7779, 142 PLJ 263 (1994) aff'd 655 A.2d 1052 (Pa. Super. 1994) (unpublished memorandum)], equitable considerations should allow a plaintiff to recover under factual situations such as this. Where a customer has sustained injuries although neither the customer nor the store has [potentially] behaved negligently, it would be more fair to hold the store responsible than to place the risk on the consumer. Accidents such as these are foreseeable risks of conducting this type of business, and commercial businesses are in a far better financial position to absorb the cost by spreading the risk among thousands of customers. Between these two [potentially] innocent parties, fairness should require the store to pay as a cost of operating its business.

Duff v. Wal-Mart Stores, Inc., 2002 WL 34098113 (Pa.Com.Pl. 2002) aff'd 828 A.2d 405 (Pa. Super. 2003) (unpublished memorandum).

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