



to her feet, Mr. Mills noticed that her arm and the back of her coat were wet. Mr. Mills estimated that there was a wet area on the floor approximately four feet in length. (R. Mills Dep. at 17.) Prior to her fall, Mrs. Mills did not notice the wet area on the white tile floor. The liquid was not discolored or dirtied. Mrs. Mills alleges that her fall and the resulting injuries were directly caused by the liquid's presence on the floor. On March 7, 1997, the Mills filed suit against Sears in the Court of Common Pleas of Chester County. On April 9, 1997, Sears removed the action to this court pursuant to 28 U.S.C. § 1446.<sup>1</sup> On October 20, 1997, Sears filed the instant motion for summary judgment. On November 3, 1997, the Mills filed their response.

## **II. LEGAL STANDARD**

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Whether a genuine issue of material fact is presented will be determined by asking if "a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby,

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1. The action was properly removed under 28 U.S.C. § 1446 because diversity of citizenship exists between the parties and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332.

Inc., 477 U.S. 242, 248 (1986). "A factual dispute is 'material' only if it might affect the outcome of the suit under governing law." Wilson v. Pennsylvania State Police Dept., 964 F. Supp. 898, 901 (E.D. Pa. 1997)(citing Anderson, 477 U.S. at 248). When considering a motion for summary judgment, "all of the facts must be viewed in the light most favorable to the non-moving party." Christy v. Pennsylvania Turnpike Comm'n, 904 F. Supp. 427, 429 (E.D. Pa. 1995)(citing Anderson, 477 U.S. at 256). Additionally, "'the inferences to be drawn from the underlying facts . . . must be viewed in the light most favorable to the party opposing the motion.'" Ideal Dairy Farms, Inc. v. John Labatt, Ltd., 90 F.3d 737, 744 (3d Cir. 1996)(quoting Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574 (1986)). The party opposing summary judgment "must set forth specific facts showing a genuine issue for trial and may not rest upon mere allegations, general denials, or . . . vague statements." Quiroga v. Hasbro, Inc., 934 F.2d 497, 500 (3d Cir. 1991).

### **III. DISCUSSION**

Under Pennsylvania Law, the duty which a store owner owes to its customers is set forth in Restatement (Second) of Torts § 343.<sup>2</sup> Myers v. Penn Traffic Co., 606 A.2d 926, 928 (Pa. Super.

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2. Section 343 reads as follows:

A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he  
(a) knows or by the existence of reasonable care would

Ct. 1992). Although a store owner owes a duty of care to its customers, the store owner is not an insurer of its customers' safety. Id. Additionally, "the mere existence of a harmful condition in a public place of business, or the mere happening of an accident due to such a condition is neither, in and of itself, evidence of a breach of the proprietor's duty of care to his invitees, nor raises a presumption of negligence." Id.

To recover in a slip and fall case, a plaintiff must produce "evidence which proves that the store owner deviated in some way from his duty of reasonable care under the circumstances." Zito v. Merit Outlet Stores, 647 A.2d 573, 575 (E.D. Pa. 1994). The plaintiff must also prove that the defendant had notice of the hazardous condition by showing "that the proprietor knew, or in the exercise of reasonable care should have known, of the existence of the harmful condition." Id. The notice requirement can be satisfied by showing that either the defendant had actual knowledge or constructive notice of the hazardous condition. Under Pennsylvania law, in most situations, a finding of constructive notice requires a plaintiff to present some evidence that would allow a jury to reasonably infer that a hazardous substance was present for a reasonable amount of time to allow

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discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and  
(b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and  
(c) fails to exercise reasonable care to protect them against the danger.

for discovery of the condition. Evans v. Canteen Corp., No. 94-2381, 1995 WL 355231, \*2 (E.D. Pa. June 13, 1995); Gales v. United States, 617 F. Supp. 42, 44 (W.D. Pa. 1985), aff'd, 791 F.2d 917 (3d Cir. 1986); Parker v. McCrory Stores Corp., 101 A.2d 377, 378 (Pa. 1954); Swift v. Northeastern Hosp. of Philadelphia; 690 A.2d 719, 722 (Pa. Super. Ct. 1997); Moultrey v. Great A & P Tea Co., 422 A.2d 593, 596 (Pa. Super. Ct. 1980).

In this case, the Mills have not presented any evidence showing that Sears actually knew that the liquid was on the floor. Because the Mills cannot show actual notice, they must show that Sears had constructive notice. In order to establish constructive notice, they must show that the liquid was on the floor for a sufficient time period such that by the exercise of reasonable care, its existence would have been discovered.

The Mills argue that the existence of snow and ice outside the Sears store made Sears' personnel aware of the hazardous condition that caused Mrs. Mills fall. Even viewing the facts in the light most favorable to the plaintiffs, the description of the general weather conditions existing outside the store at the time of the fall, or preceding the fall is not sufficient evidence from which a jury could infer that a store owner had constructive notice of a hazardous condition inside the store. Parker v. McCrory Stores Corp., 101 A.2d 377, 378 (Pa. 1954). The Mills also argue that warning signs posted at the entrance to the Sears store demonstrates awareness of the hazardous condition. Additionally, the Mills assert that when snow and ice

is on the ground outside that it is reasonable to expect that water would be tracked into the store by customers entering the store and that a Sears employee said "they were short staffed and they only had one man on to handle all the outside entrances." (R. Mills Dep. at 43.) While this could show a general expectation of the potential for water to be tracked into the store, that expectation, if one existed, is not sufficient evidence from which a jury could reasonably infer that the liquid where Mrs. Mills fell was present on the floor for a sufficient period of time to provide Sears with constructive notice of a hazardous condition. Further, the statement attributed to a Sears employee concerning the monitoring of outside entrances generally is not evidence of the amount of time the hazardous condition existed which the Mills allege caused Mrs. Mills' injuries.

The Mills have not presented any evidence from which constructive notice of the hazardous condition could be reasonably inferred.<sup>3</sup> There is no evidence that the liquid had been on the floor for any measurable period of time. Without some evidence as to the time period the liquid was on the floor, a jury would have to speculate how long the liquid was present. This would also mean that the jury would be prevented from properly applying the law which requires that there be actual or

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3. Because the Plaintiff cannot demonstrate that Sears had actual or constructive notice of the hazardous condition, the court will not discuss the remaining sections of Restatement (Second) of Torts § 343.

constructive notice of a hazardous condition before an injured party can recover from a possessor of land. Sears has shown that no genuine issue of material fact exists as to whether Sears had actual or constructive notice of the hazardous condition and that it is entitled to judgment as a matter of law. Accordingly, the court will grant Sears' motion for summary judgment.

**IV. CONCLUSION**

For the foregoing reasons, Defendant's motion for summary judgment will be granted. An appropriate Order follows.