IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

JOHN CALVIN BENNINGTON, JR.,

Plaintiff,

vs.

Civil Action No: 11CV7575-1

MONIQUE McCAIN & QUIKTRIP CORPORATION,

Defendant.

FINAL ORDER
(CASE DISPOSITION)
INIT MB DATE 6/11/13

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff John Calvin Bennington Jr. filed this suit on July 12, 2011. He alleges negligence by Defendant Quiktrip Corporation ("QT") based on Defendant failing to keep its premises in a reasonably safe condition and failing to warn invitees of slippery fluid in the parking lot area. On August 6, 2009, Plaintiff visited a branch of Defendant's gas stations during his lunch hour. Plaintiff was employed by ServPro Industries, Inc. at the time of his visit and entered Defendant's premises in a ServPro signature green van. Plaintiff was in the passenger seat of the van upon his arrival at QT and exited the vehicle to purchase a drink at approximately 12:50pm. Upon Plaintiff's return to his vehicle, he opted to drive the van since his partner had purchased lunch and he had only purchased a beverage. While walking from the passenger's side of the vehicle to the driver's side, Plaintiff observed an oily black spot on the ground that was approximately five inches in diameter. It is undisputed by both parties that Plaintiff saw the spot on the ground prior to entering the vehicle. While entering the vehicle, Plaintiff slipped and fell to the ground.

Defendant Monique McCain was the manager of the Quiktrip branch where Plaintiff fell; however, she was not working on the day of the incident. In Plaintiff's Response to Defendants' Motion for Summary Judgment, Plaintiff states that they do not object to a dismissal of Defendant McCain. Therefore, Defendant McCain is **DISMISSED** and this order only applies to remaining Defendant QT.

Defendant brings this Motion for Summary Judgment alleging that Plaintiff cannot present sufficient evidence that would allow them to conclude that Defendant's negligence was the direct or proximate cause of Plaintiff's injury. Defendants proffer that superior knowledge is a necessary component for a premises liability claim, and it did not have superior knowledge of the spot; therefore, Plaintiff's superior knowledge of the hazard causes Plaintiff's case to fail.

STANDARD OF REVIEW

To prevail at summary judgment, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. Lau's Corp., Inc. v. Haskins, 261 Ga. 491 (1991). "A *defendant* may do this by showing the court that the documents, affidavits, depositions and other evidence in the record reveal that there is no evidence sufficient to create a jury issue on at least one essential element of plaintiff's case." Id. (emphasis in original).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Both Plaintiff and Defendant cite Robinson v. Kroger Co., 268 Ga. 735 (1997). In Robinson, the Court asserts that, "while not an insurer of the invitee's safety, the owner/occupier is required to exercise ordinary care to protect the invitee from unreasonable risks of harm of which the owner/occupier has superior knowledge." Id. citing Lau's Corp., Inc. v. Haskins, 261 Ga. 491 (1991). Further, Georgia law requires that the plaintiff "must show that their knowledge of the hazard that caused her injuries was superior to her own." Norman v. Jones Lang LaSalle Ams., Inc., 277 Ga. App. 621, 623 (2006) (speaking to plaintiff's burden of proving defendant property manager and defendant building owner's possession of superior knowledge).The Norman court further clarifies the definition of superior knowledge by stating, "in other words, she must present some evidence demonstrating that (1) the defendants had actual or constructive knowledge of the hazard and (2) she lacked knowledge of the hazard despite her exercise of ordinary care *and* that her lack of knowledge was due to conditions within the defendant's control." Id. at 623, 624 (emphasis added).

In Norman, defendants were the owner and manager of a building in which the plaintiff worked. Id. at 622. The plaintiff in Norman tripped over boxes in a darkly-lit room in the defendants' building. Id. Neither party had knowledge of the hazard prior to the plaintiff's fall. Id. at 623. The Court of Appeals held that both defendants were entitled to summary judgment because the undisputed evidence showed that defendants did not have superior knowledge of the hazard. Id. at 627.

Defendant's assertion that summary judgment cannot be granted because there remains a question of fact as to whether Plaintiff had equal or superior knowledge of the actual hazard on which he fell is refuted by facts not in dispute by either party. Disproving one of the dispositive elements listed in Norman is sufficient to grant summary judgment in this case. Here, the undisputed facts disprove both elements. Beginning with the first element, it is undisputed that Defendant did not have actual knowledge. Rather, Plaintiff argues that it is a question for the jury whether Defendant had constructive knowledge of the oil spill. Plaintiff argues that there remain questions as to whether the oil that caused the fall would

have been discovered during a reasonable inspection, and whether Defendant conducted a reasonable inspection of its premises prior to Plaintiff's fall.

Defendant Quiktrip's policies and procedures are listed on their Daily Assignment Worksheet ("DAW"). Neither party disputes that the DAW for August 6, 2009 had a minimum of 61 enumerated tasks for the morning shift between 6:00am and 2:00pm, including tasks that required an outside inspection of the premises. It is also undisputed that those tasks were completed. Based on the evidence presented of completion of those tasks, as well as the overall rigor of Defendant's inspection process, Plaintiff's constructive knowledge argument falls short.

Moving to the second element and crux of this case, Plaintiff argues that there is a question of fact as to whether Plaintiff had equal or superior knowledge of the hazard on which he fell. This argument is refuted by facts not in dispute by either party. To meet the burden set forth in Norman and survive summary judgment, Plaintiff must show that Defendant had knowledge of the spill and Plaintiff did not have such knowledge. Plaintiff *admits* that he saw the substance on the ground prior to his fall, and cannot show that Defendant had knowledge of the spot. To grant summary judgment, all that must be shown is Defendant did not have superior knowledge. The undisputed evidence here shows Defendant not only lacked superior knowledge, but instead Plaintiff *had* superior knowledge of the hazard. In Norman, summary judgment was granted when the plaintiff and defendants had merely equal knowledge. The Plaintiff in this case has even greater knowledge than the Norman plaintiff; and therefore, has not met his burden.

Based on the undisputed fact that Plaintiff had superior knowledge of the hazard, the Court hereby **GRANTS** the Motion for Summary Judgment.

So Ordered this 11th day of June, 2013.

Courtney L. Johnson, Judge
Superior Court of DeKalb County
Stone Mountain Judicial Circuit

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