IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MARVIO RAMEY, Plaintiff, v. QUIKTRIP CORPORATION, Defendant.	:	CIVIL ACTION NO. 1:21-cv-1634-AT

ORDER

This stumble-and-fall case is before the Court on Defendant QuikTrip Corporation's Motion for Summary Judgment [Doc. 20] and Motion for Oral Argument [Doc. 22]. On June 23, 2019, Plaintiff Marvio Ramey stumbled on a box full of bananas at a QuikTrip store in McDonough, Georgia. Plaintiff seeks to recover damages from Defendant on several negligence-related claims based on an employee's placement of the banana box at the end of a snack aisle. In its Motion for Summary Judgment, Defendant argues that Plaintiff cannot succeed on his claims as a matter of law because they are barred by both the plain view doctrine and the prior traversal rule, under which Plaintiff is presumed to have constructive knowledge of any hazard presented by the banana box. In response, Plaintiff contends that there is a genuine dispute of material fact as to whether he knew or should have known about the banana box because he did not see the box, and he did not have a duty to continuously inspect the floor for hazardous conditions.

Alternatively, Plaintiff argues that even if he had constructive knowledge of the box, his failure to exercise ordinary care should be excused by the distraction doctrine.

For the following reasons, QuikTrip's Motion for Summary Judgment [Doc. 20] is **GRANTED** and its Motion for Oral Argument [Doc. 22] is **DENIED**.

I. FACTUAL BACKGROUND[1]

On June 23, 2019, Plaintiff entered Defendant's gas station in McDonough, Georgia to buy food. (Def.'s Statement of Undisputed Material Facts "Def.'s SOF," Doc. 20-6 ¶ 2); (*see* 6/23/19 Surveillance Video, Doc. 20-5). Some time before Plaintiff entered the gas station, a large grey box full of yellow bananas was placed at the endcap of an aisle by one of Defendant's employees who was stocking the store and running the register. (Def.'s SOF ¶¶ 5–6); (Dep. of Marvio Ramey, "Pl.'s Dep.," Doc. 21-1 at 71:21–24). A picture of the box is copied below for reference:

[1] The Court provides the following factual background, keeping in mind that when deciding a motion for summary judgment the Court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion. *See Optimum Techs., Inc. v. Henkel Consumer Adhesives, Inc.*, 496 F.3d 1231, 1241 (11th Cir. 2007) (observing that, in connection with a motion for summary judgment, the court must review all facts and inferences in the light most favorable to the non-moving party). This factual background does not represent actual findings of fact. *In re Celotex Corp.*, 487 F.3d 1320, 1328 (11th Cir. 2007). Instead, the Court has provided the relevant facts simply to place the Court's legal analysis in the context of this particular case or controversy.

(Def.'s SOF ¶ 5.) The pictured box, cropped for space in this Order, was located directly against the display at the time of Plaintiff's fall and not in the position shown in the picture. (Def.'s SOF ¶ 6); (Pl.'s Dep. at 57:1–16).

Surveillance footage from that evening indicates that Plaintiff entered the store at approximately 3:23:11 a.m., passed the checkout aisle, and turned left into the store's back aisle.[2] (Def.'s SOF ¶ 15.) After browsing snacks for about sixteen seconds, Plaintiff walked towards the back of the aisle, turned left, passed the banana box, and proceeded into the center aisle.[3] (*Id.* ¶¶ 16–17.) Plaintiff continued walking down the aisles browsing for snacks and then, approximately two minutes after entering the store, he started to prepare hot dogs. (*Id.* ¶¶ 17–19.) Next, Plaintiff went back into the center aisle to get condiments and take

[2] In his deposition, Plaintiff mentioned going straight to the hot dogs upon entering the store, (Pl.'s Dep. at 52:10–15), but after reviewing the store's surveillance footage Plaintiff later conceded that he went to the back aisle upon entering the store, (Pl.'s Resp. to Def.'s SOF, "Pl.'s RSOF.," Doc. 24 ¶ 15).

[3] After reviewing the surveillance footage, Plaintiff conceded that he walked past the box one time before his fall. (Pl.'s RSOF ¶ 13.)

something out of the bakery cabinet. (*Id.* ¶¶ 20–21.) While carrying hot dogs from the center aisle, Plaintiff returned to the back aisle and proceeded towards the drink coolers and then stumbled on the banana box and hit his head on the door of one of the coolers. (*See* 6/23/19 Surveillance Video, Doc. 20-5 at 3:28:47–3:28:55.)

At the time of his fall, Plaintiff was looking at the drink coolers and did not see the banana box. (Def.'s SOF ¶¶ 7, 9.) However, Plaintiff admitted that nothing was obstructing his view of the banana box as he turned the corner prior to the fall. (Pl.'s RSOF ¶ 8); (Pl.'s Dep. at 63:21–25). Based on these facts, Defendant moved for summary judgment and filed a motion for oral argument on March 16, 2022. (Docs. 20, 22.) Both motions are currently pending before the Court.

II. LEGAL STANDARD

The Court may grant summary judgment only if the record shows "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A factual dispute is genuine if there is sufficient evidence for a reasonable jury to return a verdict in favor of the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is material if resolving the factual issue might change the suit's outcome under the governing law. *Id.* The motion should be granted only if no rational fact finder could return a verdict in favor of the non-moving party. *Id.* at 249.

When ruling on the motion, the Court must view all the evidence in the record in the light most favorable to the non-moving party and resolve all factual disputes in the non-moving party's favor. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). The moving party need not positively disprove the opponent's case; rather, the moving party must establish the lack of evidentiary support for the non-moving party's position. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party meets this initial burden, in order to survive summary judgment, the non-moving party must then present competent evidence beyond the pleadings to show that there is a genuine issue for trial. *Id.* at 324–26. The essential question is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251–52.

III. DISCUSSION

In the Complaint, Plaintiff raises claims of premises liability, vicarious liability, and negligent training and supervision. Although Defendant ostensibly moves for summary judgment on all three claims, both parties focus their arguments on the premises liability claim. Regardless of the parties' intentions, in the circumstances presented here it appears that Plaintiff's vicarious liability and negligence claims effectively rise and fall with the premises liability claim. The Court will therefore focus its analysis on the premises liability claim as well.

A. PREMISES LIABILITY

Under Georgia's premises liability statute, "[w]here an owner or occupier of land, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe." O.C.G.A. § 51–3–1. To establish a premises liability claim, an invitee–plaintiff must show: "(1) that the defendant had actual or constructive knowledge of the hazard; and (2) that the plaintiff lacked knowledge of the hazard despite the exercise of ordinary care due to actions or conditions within the control of the owner/occupier." *Robinson v. Kroger Co.*, 493 S.E.2d 403, 414 (Ga. 1997). The Court addresses each of these prongs in turn.

1. Defendant's Awareness of the Hazard

On the first prong, the plaintiff bears the burden of "[presenting] evidence that . . . would enable a rational trier of fact to find that the defendant had actual or constructive knowledge of the hazard." *Am. Multi-Cinema, Inc. v. Brown*, 679 S.E.2d 25, 28 (Ga. 2009). As Plaintiff argues in his Response, Defendant does not dispute that it had actual knowledge of the hazard posed by the banana box. As Defendant apparently concedes, one of its employees placed the banana box at the end of the center donut aisle for restocking purposes at some time before Plaintiff entered the store. (*See* Def.'s SOF ¶ 6) ("The banana box was placed directly against a display on the floor of an aisle."); (Def.'s Mem. in Supp. of Mot. for Summ. J. "Def.'s MSJ," Doc. 20-1 at 13) ("The subject banana box was placed on the

ground, directly against the display, to be stocked."); (Pl.'s Dep. at 71:21–24) ("[Defendant's cashier] said he was stocking the store, and running the register by himself, because another employee didn't come in."). Thus, no genuine issue of material fact exists concerning Defendant's knowledge of the banana box.

2. Plaintiff's Awareness of the Hazard

The parties' primary dispute is over the second prong. Even though the first prong is satisfied because Defendant had actual knowledge of the hazard, Defendant would still be entitled to summary judgment based on the second prong if Plaintiff "intentionally and unreasonably exposed [him]self to a hazard of which [he] knew or, in the exercise of ordinary care, should have known." *Robinson,* 493 S.E. 2d at 414. Neither party argues that Plaintiff had actual knowledge of the banana box — indeed, Plaintiff denies that he ever even saw the banana box prior to the fall. But Defendant would still be entitled to summary judgment if it can show that Plaintiff *constructively* knew about the hazards presented by the box, and failed to exercise ordinary care to avoid that hazard when he stumbled over the box. By comparison, to survive summary judgment, Plaintiff would have to create a genuine dispute of material fact as to the same.

In its Motion for Summary Judgment, Defendant argues that Plaintiff's premises liability claim fails on the second prong because Plaintiff had constructive knowledge of the hazard presented by the box — and any injuries that he had suffered from tripping over the box were the result of his own failure to exercise ordinary care — based on two theories. First, that the box was in plain view (the

plain view doctrine); and second, that Plaintiff had previously traversed the banana box and successfully navigated the alleged hazard only moments before he fell (the prior traversal rule). In contrast, Plaintiff argues that the plain view doctrine does not apply in this case — and a genuine issue of material fact exists concerning his constructive knowledge of the box — because he never saw the box and he was not required to continuously inspect the floor for hazardous conditions. Plaintiff also contends that the distraction doctrine excuses any potential negligence on his part because he was distracted by the drink coolers. Plaintiff does not address Defendant's second theory that Plaintiff had constructive knowledge of the hazard based on the prior traversal rule.

The Court begins with Defendant's argument that Plaintiff had constructive knowledge of the hazard presented by the banana box based on the plain view doctrine. Under the plain view doctrine, an invitee is "under a duty to look where [he] is walking and to see large objects in plain view which are at a location where they are customarily placed and expected to be." *Ridley v. Dolgencorp, LLC*, 839 S.E.2d 26, 29 (Ga. Ct. App. 2020) (quoting *Robinson*, 493 S.E.2d at 410). A Plaintiff is subject to this duty "[e]ven though [he] had no actual knowledge of the hazard" and "professes not to have seen [the object] prior to the fall." *Robinson*, 493 S.E.2d at 410. Granted, as Plaintiff notes, courts should not apply the doctrine "in such a manner as to remove any reasonable limits on its application," *id.* at 410, but, as Defendant notes, the doctrine is not dead.

Here, Defendant argues that the banana box Plaintiff stumbled over was in plain view because it was (1) not hidden, (2) easily discernable to multiple customers traversing the subject aisle that night, and (3) filled with yellow bananas visible from an open top. Defendant also notes, "Plaintiff readily admitted nothing prevented him from seeing the box prior to the fall." (Def.'s MSJ at 12); (*see* Pl.'s Dep. at 63:21–25) ("[Q.] Do you know if, at the time you were rounding the corner, there was anything that would have blocked your view of the box? A. No, ma'am."). Conversely, Plaintiff argues that the box was not in plain view because he did not see the box, and, based on the Georgia Court of Appeals' decision in *Piggly Wiggly Southern, Inc. v. Brown*, 468 S.E.2d 387 (Ga. Ct. App. 1995), he was not required to continuously monitor the ground for hazardous conditions.

True, "[an] invitee is not barred of a recovery simply because by extreme care on his part it would have been possible for him to have discerned the [hazard]." *Robinson,* 493 S.E.2d at 409 (internal quotation marks and citation omitted). Consistent with that premise, *Piggly Wiggly* generally stands for the narrow proposition that an invitee is not responsible for avoiding all possible hazards, including difficult-to-see hazards that could only be avoided through the exercise of extreme care. Beyond that, Plaintiff's analogy to *Piggly Wiggly* is inapposite. The hazard at issue in *Piggly Wiggly* was a small puddle of water, which is much more difficult to observe than a large banana box. And unlike the puddle of water in *Piggly Wiggly*, the banana box at issue here is not the sort of hazard that Plaintiff could have observed only through the exercise of extreme care. *Cf. Piggly*

Wiggly S., Inc., 468 S.E.2d at 391 ("[W]e cannot say (as a matter of law) that the *small puddle of water* which caused [plaintiff's] fall was such an open and obvious danger that the average shopper, in the exercise of ordinary care would have observed the puddle and avoided it.") (emphasis added) (citation omitted). In fact, more recent case law post-dating the Georgia Supreme Court's decision in *Robinson v. Kroger,* 493 S.E.2d 403 (1997)[4] suggests that objects are in plain view when, as in this case (1) the object is large, (2) it is not hidden or camouflaged, and (3) it is in an area where such objects are commonly located.

First, concerning size, in *Houston v. Wal-Mart Stores East, L.P.*, the Georgia Court of Appeals found that large, flattened, cardboard boxes were plainly visible because "any person with ordinary, common sense would recognize [boxes on the floor] as something that might cause a person to trip, slip, or fall." 749 S.E. 2d 400, 403 (Ga. Ct. App. 2013). Similarly, in *Capes v. Dollar General Corp.* that same court found that a box that "was less than one foot in height" was plainly visible when "nothing prevented [plaintiff] from observing the hazard posed." 567 S.E. 2d 726, 727 (Ga. Ct. App. 2002). In this case, Defendant's picture of the box, (Def.'s Ex. 3, Doc. 20-4,) resembles the one-foot-high box in *Capes* and the large, flattened boxes in *Houston* more than the small water puddle in *Piggly Wiggly*. If anything,

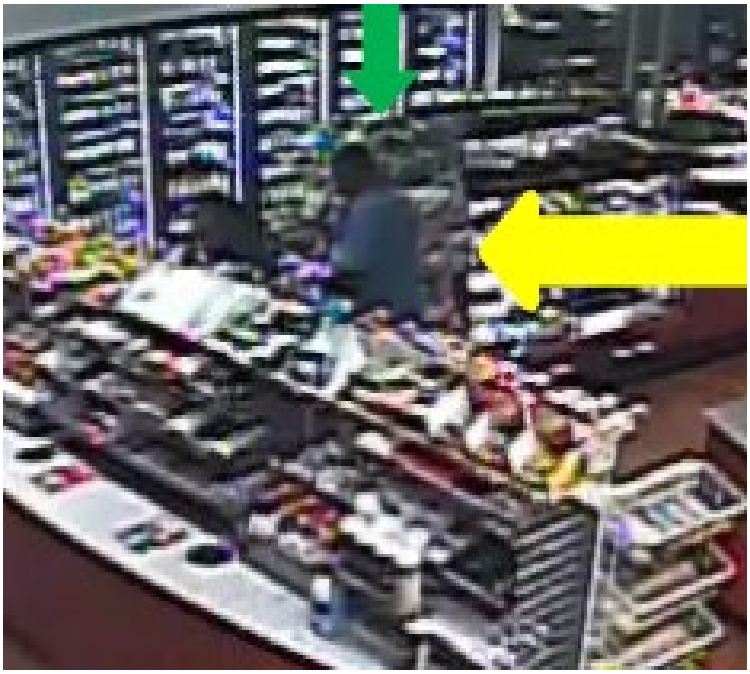
[4] The Georgia Supreme Court has referred to *Robinson* as its seminal decision articulating the relevant standard for analyzing premises liability claims under current law. *See Am. Multi-Cinema, Inc.*, 679 S.E.2d at 28. Prior to the Georgia Supreme Court's decision in *Robinson*, the case law Georgia courts had developed in slip and fall cases had been marked by "pendulum-like" shifts, with "dramatic swing[s]" between periods in which courts had a tendency to find a jury issue in every slip and fall case and periods in which it was "rare" that cases would escape summary adjudication. 493 S.E.2d at 405–06.

the box in this case, which was not flattened, was even more plainly visible than the flattened box in *Houston*.

Second, concerning hiddenness, the Georgia Court of Appeals has recognized that in contrast to cases like *Houston* where the object was in plain view, there are "distinguishable" cases where a "plaintiff lacked knowledge of a *difficult-to-see* article lying on the floor of [a] defendant's store before slipping or tripping over it." *Houston*, 749 S.E. 2d at 402 n.3 (emphasis added); *see, e.g*. *Brown v. Wal-Mart Stores, Inc.*, 669 S.E.2d 221, 224 (Ga. Ct. App. 2008) (finding a jury question as to whether an invitee exercised ordinary care when slipping on a piece of clear shrink wrap). But Plaintiff does not argue that the box was translucent or camouflaged like the piece of clear shrink wrap in *Brown* or the puddle of water in *Piggly Wiggly*, and he has provided no other evidence to suggest that the banana box was in fact "difficult-to-see."[5] To the contrary, Plaintiff admits in his Response to Defendants' Statement of Undisputed Material Facts that nothing was "blocking his view of the banana box as he turned the corner just prior

[5] In addition to *Brown*, the *Houston* opinion referenced two other Georgia Court of Appeals decisions involving difficult-to-see objects that pre-dated *Robinson*: *Kitchens v. Davis* 99 S.E.2d 266 (Ga. Ct. App. 1957), and *Big Apple Super Market of Rome, Inc. v. Briggs,* 115 S.E. 2d 385 (Ga. Ct. App. 1960). Even putting aside that both of these decisions were decided several decades before *Robinson*, the Court finds both of these cases distinguishable. In *Kitchens*, the court found a jury question as to whether an invitee exercised ordinary care by tripping on small baskets in a store "because of the colors of the floor . . . the lighting of the store and the shadows cast." 99 S.E.2d at 270. Plaintiff in this case does not claim that the color of the floor, the lighting, or shadows made the banana box difficult to see. In *Briggs,* the court found a jury question as to whether an invitee exercised ordinary care by slipping on a "carton" that a jury could find was "protrud[ing] into the aisle in such a manner as to threaten danger to customers whose attention was diverted from the floor by adjacent displays of merchandise." 115 S.E. 2d at 387. In this case, Plaintiff fell on a large box that was placed flush against the endcap rather than a "carton" that was "protrud[ing] into the aisle."

to falling." (Pl.'s RSOF ¶ 8.) Though Plaintiff adds that the surveillance footage makes clear that the banana box was placed against the endcap of the aisle "so that shelving was above and beside the banana box," *id.*, it is also clear from that footage that none of the shelving was blocking his view of the box. This is readily apparent from the surveillance image below, which was captured just before Plaintiff's fall, with the yellow arrow indicating Plaintiff's location and the green arrow indicating the location of the box directly in front of him on the floor:



(Def.'s SOF ¶ 21 & n.2.)[6] Although the box itself is not visible in the image, its position relative to the endcap can be discerned from Defendant's Exhibit 3, which provides a full view of the aisle. (*See* Def.'s Ex. 3, Doc. 20-4.) Notably, Plaintiff did not trip on the box after making a sharp right turn past the shelving in such a

[6] The Court has cropped the original image from Defendant's Statement of Undisputed Material Facts to save space.

manner that the shelving could have potentially blocked his view of the box as he rounded the corner; instead, Plaintiff approached the box head-on with the box directly in his line of sight.

The Court also notes that Plaintiff had two additional opportunities to see the box prior to the fall. The first occurred when Plaintiff walked past the box coming from the opposite direction at 3:23:48 a.m., approximately four minutes before the fall, as indicated in the image below, which was included in Defendant's Statement of Undisputed Material Facts:

(Def.'s SOF ¶ 16.)[7] Once again, the yellow arrow identifies Plaintiff's location and the green arrow indicates the location of the box directly in front of Plaintiff. The second occurred at 3:27:48 a.m., approximately one minute before the fall, when Plaintiff walked down the back aisle with the box located directly in his line of sight:

[7] This image has also been cropped by the Court to save space.

(6/23/19 Surveillance Video, Doc. 20-5 at 3:27:48.)

Considering Plaintiff's statements and the images above, the Court finds that this was a situation in which the hazard in question was "perfectly obvious and apparent, so that one looking ahead would necessarily see it." *McLemore v. Genuine Parts Co.*, 722 S.E.2d 366, 369 (Ga. Ct. App. 2012).

Third, concerning the location, the Georgia Court of Appeals has indicated that "[a] merchant . . . may place cartons and containers in the aisles while he places articles on the display shelves, and a customer may expect to find such objects in the aisles." *Brown*, 669 S.E.2d at 223 (quoting *Kitchens* 99 S.E. 2d 269). The Court finds this logic equally applicable to large boxes. Although the Georgia Court of Appeals has also clarified that "the merchant must so place such articles so as not to threaten danger to those using the aisle and so that they are in full sight and within the observation of everyone," *id.* (emphasis omitted), as already

discussed, the box was "in full sight" and "within the observation of everyone" at the time of Plaintiff's fall. In fact, the surveillance footage indicates that numerous other individuals who were at the store at the same time as Plaintiff successfully avoided the box without any issue. (*See* 6/23/19 Surveillance Video, Doc. 20-5 at 3:23:11–3:28:55.)

In short, considering the large size of the box, the fact that nothing was blocking Plaintiff's view of the box or otherwise rendering it difficult to see, and the fact that it was placed in an area where customers may expect to find such objects, the Court finds that the plain view doctrine applies in this case. Accordingly, Plaintiff had constructive knowledge of the hazard presented by the box and "the fact that the plaintiff merely failed to look will not relieve [him] from the responsibility for [his] misadventure." *McLemore*, 722 S.E.2d at 369.[8]

3. Plaintiff's Alleged Distraction

As a fallback, Plaintiff argues that even if the plain view doctrine would otherwise apply in this case, his failure to exercise ordinary care to avoid the banana box should be excused by the distraction doctrine. Under the distraction doctrine:

> when an invitee explains that he was not looking at the location of the hazard which caused injury because of something in the control of the owner/occupier, which purported distraction is of such a nature that the defendant might have anticipated that it would divert an invitee's attention, e.g., . . . a merchandise display of such a nature that its presence would not have been anticipated by the invitee, the invitee

[8] Also, because the plain view doctrine applies here, the Court need not address whether the prior traversal rule applies.

> has presented some evidence that [the invitee] exercised reasonable care for [the invitee's] own safety.

Robinson, 493 S.E.2d at 412 (internal quotation marks and citation omitted). In this case, Plaintiff argues that the distraction doctrine should apply because he was focused on the sodas on display in the coolers located against the wall, which diverted his attention away from the banana box.

In support of his distraction theory, Plaintiff cites *Begin v. Georgia Championship Wrestling, Inc.,* 322 S.E.2d 737 (Ga. Ct. App. 1984). In *Begin*, the plaintiff tripped on plastic strips that were partially taped together by masking tape on the floor of a school gymnasium. *Id.* at 738–39. A wrestling match was occurring in the gymnasium at the time of the plaintiff's fall, and the Court found that there was an issue of fact as to whether the plaintiff had been distracted by the wrestling match. *Id.* at 741. But here there was no wrestling match or other similar distraction occurring in the background of the store that "would not have been anticipated" by Plaintiff and that could have potentially diverted his attention. *Robinson*, 493 S.E.2d at 412.

The only alleged distraction in this case was the sodas. But Georgia courts have consistently held that "[l]ooking at displayed merchandise or a store's aisle signage . . . constitute[s] a self-induced distraction." *Id.* at 411 (collecting cases). For example, in *Ridley v. Dolgencorp, LLC*, the Georgia Court of Appeals declined to excuse a customer's negligence in tripping over a parking abutment while looking at a store display rack because the customer's alleged distraction was self-

induced. 839 S.E.2d 26, 30 (Ga. Ct. App. 2020). Likewise, in *Bartlett v. McDonough Bedding Co.*, the Georgia Court of Appeals rejected the plaintiff's argument that he had fallen down a stairwell because he was distracted by store merchandise. In so holding, the court concluded that "looking [at merchandise], cannot be accepted under the distraction theory because [looking at merchandise] was the very activity that brought him to [the store]." 722 S.E.2d 380, 383 (Ga. Ct. App. 2012).

Here, just like in *Ridley* and *Bartlett*, the alleged distraction — looking at merchandise — was the very activity that brought Plaintiff to the store. To the extent Plaintiff was distracted by the sodas in the moments before the fall, his distraction was self-induced and the distraction doctrine therefore does not apply.

B. PLAINTIFF'S REMAINING CLAIMS

Although neither party directly addresses Plaintiffs' imputed liability and negligent training and supervision claims in their briefs, the Court finds that both claims necessarily fail as a matter of law. In this case, Plaintiff cannot establish that Defendant's employee acted negligently because, as previously discussed, the box was placed in plain view. Even though Plaintiff ultimately tripped over the box, that was due to his own negligence rather than any negligence on the part of the employee. Thus, there was no negligence on the part of the employee that could potentially be imputed to Defendant as the employer. Additionally, Plaintiff cannot show that Defendant acted negligently in failing to train or supervise the employee because there was no predicate act of negligence committed by the

purportedly ill-trained and ill-supervised employee in the first place. Like Plaintiff's premises liability claim, Plaintiff's remaining claims therefore fail as a matter of law.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendant's Motion for Summary Judgment [Doc. 20] as to each of Plaintiff's claims. Defendant's Motion for Oral Argument [Doc. 22] is **DENIED** as moot. The Clerk is **DIRECTED** to enter judgment in favor of Defendant and close this case.

IT IS SO ORDERED this 27th day of October, 2022.

Amy Totenberg
United States District Judge