IN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

SOPHIE WILLIAMS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 16 L 19323
	)	
YORKTOWN MALL,	)	
	)	
Defendant.	)	

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Defendant respectfully submits the following Memorandum of Law in support of Defendant's Motion for Summary Judgment.

STATEMENT OF FACTS

Plaintiff Sophie Williams hurried to Yorktown Mall, in snowy conditions, to avoid missing a sale. Williams walked through the snow from the parking lot, in her high-heeled leather boots, and made her way inside in the mall. She fell on the floor and did not know how, or why she fell. After her fall, she noticed that her clothes were wet. Williams was helped to her feet by Ron Nelson who works in the American Eagle store. Nelson testified that he saw a puddle on the floor when he arrived to work four hours earlier. He could not remember if the puddle he saw was in the same spot where Williams fell. The maintenance log showed that a puddle, near the American Eagle store entrance, had been mopped up around the time when Nelson arrived for work. Earlier in the day, another business invitee had slipped on the floor, but did not fall nor was she injured. Mall personnel inspected the larger area including where Williams later fell. There were no signs of standing water, or any other slip hazards, during this extensive inspection. Williams' fall was reported to the mall manager, Jenna Green. Green saw the puddle, but also saw snow melting off of Williams' high-heeled leather boots. Green believed

that the puddle was tracked into the mall on Williams' high-heeled leather boots. The floor had been inspected two hours before Williams' fall. Green testified that mall policy states that visual inspections of the floors are to be completed hourly during wet weather conditions. Snow had begun falling, and Green had implemented those procedures, just before the report came in about the Williams' fall.

ARGUMENT

I. THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE THE PLAINTIFF CANNOT PROVE THAT THE DEFENDANT BREACHED ITS DUTY OF CARE.

In a negligence lawsuit for slip and fall injuries, plaintiffs need to establish that the defendant owed a duty of reasonable care, that duty was breached, and the injury was proximately caused by the same breach. *Wiegman v. Hitch-Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 795, 721 N.E.2d 614, 620 (2d Dist. 1999). Proximate cause can be determined when the evidence can "reasonably suggest that the defendant's negligence operated to produce the injury." *Id.* at 789, 721 N.E.2d at 620. Conclusive proof is not necessary to establish proximate cause, but must be based on more than "a matter of speculation, surmise and conjecture." *Id.* at 796, 721 N.E.2d at 620.

Yorktown Mall acknowledges that it owed a duty of care to Williams, a business invitee. Yorktown Mall denies that it breached its duty of care to Williams. In *Wiegman*, a witness testified that she saw a puddle earlier in the day, in the exact same spot where Wiegman fell. *Id.* at 793, 721 N.E.2d at 618. This witness also noted the omission of floor mats in the area, which is prone to regular occurrences of standing water. *Id.* at 793, 721 N.E.2d at 618. In *Wiegman*, the court found that the defendant was lackadaisical in its duty of care. *Id.* at 802, 721 N.E.2d at 625. The defendant could not prove that slip hazards seen earlier in the day had been remedied. *Id.* at

802, 721 N.E.2d at 625. That is not so, in this case. Unlike *Wiegman*, Yorktown Mall visually inspected the floor two hours before the fall. In her own testimony, Williams' stated that the snow outside had not yet been cleared by the snow plows on the roads. Yorktown Mall had begun implementing an hourly inspection schedule, due to the wet weather, just prior to Williams' fall. Yorktown Mall's maintenance log shows that a puddle in the area was mopped up four hours before Williams' fall. Yorktown Mall also conducted an extensive inspection of the area after another business invitee reported a slip earlier that day. Unlike *Wiegman*, Yorktown Mall clearly followed procedures designed to protect business invitees from dangerous conditions caused by wet or slippery floors.

In this case, Green testified that after Williams' fall, she responded to the accident. Green saw the puddle of water. She also saw that snow was melting off of Williams' high-heeled leather boots. She believed the water had accumulated, due to the snow that was tracked into the mall by Williams. Williams does not provide evidence to suggest how the water accumulated on the floor where she slipped. The inference that the water was already on the floor, prior to the fall, is purely speculative. Green's suggestion that Williams tracked in the water herself is a likely alternative to Williams' speculation. "The existence of one fact cannot be inferred when a contrary fact can be inferred with equal certainty from the same set of facts." *Richardson v. Bond Drug Co.*, 387 Ill. App. 3d 881, 885, 901 N.E.2d 973, 977 (1st Dist. 2009). Like *Richardson*, more than one reasonable possibility exists to explain the water from the presented facts. Williams does not present any evidence to show that she did not track in the water herself. Williams also fails to offer evidence in support of her speculation that the water was present prior to her fall.

Williams cannot prove that her injuries were proximately caused by water under the control of Yorktown Mall. Therefore, Williams fails to prove that Yorktown Mall breached its duty of care. Without proof of this element of proximate cause, Yorktown Mall is entitled to summary judgment.

II. PLAINTIFF FAILS TO ESTABLISH THE CONSTRUCTIVE NOTICE ELEMENT OF PROXIMATE CAUSE TO WARRANT A JURY TRIAL.

Williams relies on Nelson's testimony to claim that Yorktown Mall had constructive notice. Yorktown Mall's maintenance log debunks Williams' theory. It shows that a puddle was mopped up in the area, indicated by Nelson, close to the time Nelson arrived for work. Williams also points to the slip of another business invitee earlier in the day. The evidence of that slip disproves Williams yet again. Green testified that the floor was dry at that time and no one, including the person who slipped, could find a cause for the slip. "Where the plaintiff alleges constructive notice, the time element to establish constructive notice is a material factor and it is important upon the plaintiff to establish that the foreign substance was on the floor long enough to constitute constructive notice to the proprietor." *Hayes v. Bailey*, 80 Ill. App. 3d 1027, 1030, 400 N.E.2d 544, 546 (3d Dist. 1980). "Failure to show how long the water had been on the floor was a failure to show proximate cause." *Id.* at 1031, 400 N.E.2d at 546. Like *Hayes*, Williams' has no evidence to establish the time element of the water and cannot prove that the water had accumulated on the floor prior to her fall.

Liability can be established if the defendant was directly responsible for the water. *Ishoo v. Gen. Growth Props., Inc.*, 2012 IL App (1st) 110919, ¶ 21, 966 N.E.2d 1160, 1164. Alternatively, evidence can be submitted that shows the defendant knew that the liquid was on the floor, thereby having constructive notice. *Id*. ¶ 21, 966 N.E.2d at 1164. In *Ishoo*, the plaintiff

claimed to slip in a small pool of cleaning solution in a mall. *Id.* ¶ 3, 966 N.E.2d at 1161. "The gap in the plaintiff's claim, however, is that no facts exist to connect the defendants to the presence of the liquid substance on the floor." *Id.* ¶ 24, 966 N.E.2d at 1164. Like *Ishoo*, Williams has not presented any proof that the defendant was directly responsible for the water on the floor. Additionally, no evidence has been presented to support Williams' claim that Yorktown Mall had knowledge of the water, and chose to ignore it. Identical to *Ishoo*, Williams cannot establish that a connection existed between the water and Yorktown Mall. Without this connection, Williams cannot prove that Yorktown Mall had constructive notice. Therefore, summary judgment is appropriate in favor of Yorktown Mall.

CONCLUSION

None of the evidence presented by Williams establishes that the puddle of standing water was there before she fell. In fact, all the evidence points to Yorktown Mall's diligence in maintaining a safe environment for its business invitees. There is no evidence to suggest that Yorktown Mall was directly aware of the standing water and failed to act. Without evidence showing a breach of duty of care or constructive notice, negligence cannot be proven. Yorktown Mall respectfully requests that the Court grant its Motion for Summary Judgment and whatever other relief the Court deems just.

Dated: April 26, 2016

Respectfully submitted,

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