

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

MONICA VOGEL,

Plaintiff- Appellant,

vs.

MERCER VIEW GOLF COUSE,
MERCER COUNTY PARK
COMMISSION; COUNTY OF
MERCER, STATE OF NEW JERSEY,
and JOHN DOES 1-10 OWNERS
and OPERATORS (fictitious
designations), JOHN DOE 1-10
MAINTENANCE
ENTITIES (fictitious designations), all
jointly, severally

Defendants-Respondents.

DOCKET NO.: A-001685-24T4

Civil Action

On Appeal From:

Law Division

Mercer County

Docket No.: MER-L-1194-21

Sat Below:

Hon. R. Brian McLaughlin,
J.S.C.

AMENDED BRIEF SUBMITTED ON BEHALF OF
PLAINTIFF/APPELLANT MONICA VOGEL

STARK & STARK

A Professional Corporation

By: Ksenia Cutler, Esq.

100 American Metro Boulevard

Hamilton, New Jersey 08619

kcutler@stark-stark.com

Ph: (609) 896-9060

*Attorneys for Plaintiff/Appellant,
MONICA VOGEL*

ON THE BRIEF:

Ksenia Cutler, Esq. – Attorney ID No. 410362023

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PRELIMINARY STATEMENT

This action arises from an incident which resulted in severe injuries to the Plaintiff, Monica Vogel. On June 15, 2019, Ms. Vogel was in course of her employment as a waitress/bartender at the restaurant located at Mountain View Golf Course, when she slipped and fell due to an accumulation of water on the floor caused by a backed-up floor drain.

Mountain View Golf Course (hereinafter “Mountain View”) is owned and operated by the County of Mercer. There is a restaurant on the property of Mountain View. The County contracts out the operation of the restaurant. At the time of this incident, the restaurant was being operated by a company called Heirloom. The kitchen at Mountain View had ongoing water/flooding issues that existed for many years. These problems pre-existed Heirloom’s operation of the restaurant.

Despite denying responsibility for the issue, when a problem with the water pooling was reported by Heirloom, the County routinely came out and attempted to fix the issue. The County made numerous repairs in an attempt to mitigate the water pooling issue, however, it appears that none of the solutions were successful, and water continued to pool on the floor.

Mercer County was aware of an ongoing water issue in the kitchen at Mountain View for many years and failed to adequately address it. Water continues

to accumulate on the floor to this day.

CONCISE STATEMENT OF MATERIAL FACTS AND PROCEDURAL HISTORY¹

In November 2018, Heirloom Events, LLC (“Heirloom”) entered into a contract with Mercer County (“Mercer”) to run a catering business out of Mountain View. Pa001. The contract with Mercer required Heirloom to maintain all equipment and Mercer was responsible for all plumbing. Pa010.

MAINTENANCE

The Licensee will be responsible for the repair and maintenance of all Mercer County Park Commission owned equipment during the term of the license. Licensee will accept all buildings and their equipment “as is” in their present existing condition. The Licensee shall, at its own expense and upkeep, make such repairs or improvements necessary to maintain Mercer County Park Commission owned buildings and areas occupied for the purpose of operating the concession and shall be responsible for the daily maintenance and upkeep. Licensee shall keep the hood system free and clean of grease and shall have the entire hood and duct system cleaned bi-annually. Also, the Licensee will be responsible for monthly cleaning of the grease trap. Licensee shall be responsible to make all necessary repairs to the hood and exhaust fan. Licensee will be responsible for cleaning of the restrooms and common areas at both Mountain View and Princeton C.C. Licensee shall not make alterations, additions, or improvements to either facility without prior written consent of the Executive Director. All alterations, additions, and improvements, whether temporary or permanent in character, shall at all times be deemed to be the property of the Mercer County Park Commission and shall remain upon the premises at the termination of the agreement. **Licensee will not be responsible for the repairs to the roofs, exterior walls, electric, HVAC or plumbing. Id.**

Although the agreement required Heirloom to maintain the equipment, Mercer was the entity that actually performed repairs and maintained the equipment. When problem with the water arose, Heirloom would report the issue

¹ The plaintiff-appellant intertwined the procedural history with the statement of facts to present a cohesive narrative that contextualizes the factual background within the legal developments of the case.

to Mercer, and, instead of hiring an outside entity, Mercer responded with their own workmen and plumbers.

On June 15, 2019, Plaintiff, Monica Vogel, slipped and fell because of water that backed up from a floor drain in the kitchen at the Mountain View Golf Course. As a result of the incident, Ms. Vogel sustained serious injuries and underwent bilateral total hip replacement.

On June 4, 2021, Ms. Vogel filed a Civil Complaint against Mercer County and the Mountain View Golf Course (“County Defendants”). Pa033. On September 14, 2021, County Defendants filed an Answer with a third-party complaint against Heirloom. Pa049. The Third-Party Complaint contains two counts. The first count alleges negligence and seeks contribution against Heirloom and the second Count seeks indemnification.

On May 31, 2023, Defendant Heirloom filed a motion for summary judgment against third-party Plaintiffs, County Defendants. Pa061. In their motion, Heirloom argued that the claims in the First Count must be dismissed as to Heirloom because they are barred by the Workers’ Compensation Doctrine and that the claim in the Second Count must be dismissed in its entirety as to Heirloom because the contract between Heirloom and Mercer does not contain legally enforceable indemnification language. On November 8, 2023, trial court granted summary judgment in favor of Heirloom. Pa063.

On July 18, 2024 an arbitration was held in this matter and Plaintiff was

awarded \$606,924.00. Pa065. The arbitrators found that because the County's plumber attempted to fix the drainage system whenever it backed up, the County Defendants were on notice of and exercised control over the drainage system problems. Thus, the County is liable for injuries Ms. Vogel sustained on June 15, 2019. Id.

Following pretrial discovery, on August 27, 2024 County Defendants moved for summary judgment contending that (1) Heirloom is solely liable for Plaintiff's alleged injury based upon the contract, (2) Plaintiff cannot satisfy all the elements of the Tort Claims Act to establish liability on the County Defendants and (3) the mere happening of an accident is not sufficient to support a finding of negligence. Pa066. Plaintiff timely filed an opposition to County Defendants' motion and put forth sufficient evidence for summary judgment to be denied. Pa080. In her opposition, Plaintiff presented overwhelming evidence that County Defendants are liable for the injuries suffered by Ms. Vogel due to the slip and fall incident in the kitchen at Mountain View. Plaintiff demonstrated that County Defendants were aware of ongoing water pooling problems in the kitchen at Mountain View for many years and failed to adequately address them.

The trial court held oral argument on the motion for summary judgment on October 23, 2024.² 1T. The trial court decided that Heirloom was responsible for

² The transcript of this oral argument is referenced as "1T."

the condition of the kitchen facilities and the entire clubhouse. 1T 18-25. Then the Court “ultimately” found that Plaintiff did not satisfy conditions for liability under TCA 59:4. 1T 22:3-5. In determining liability, the trial court found, without citation to any authority, that the “proper window is really the approximately six months before the accident that Heirloom was responsible for the clubhouse and kitchen facilities.” 1T 22:16-19. The trial court stated that there is a serious issue regarding proximate cause because Ms. Vogel does not indicate that she saw the water before she went into the bar area. 1T 21:1-6. The court also stated that Ms. Vogel “fell in the bar area which was approximately 30 feet from the kitchen.” 1T 20:17-18. It must be noted that there is no evidence in the record that establishes the distance between the puddle and the location where Ms. Vogel fell. However, the distance was mentioned in County Defendants’ moving papers where defense counsel assumed that Plaintiff walked “almost twenty feet before her alleged fall and injury.” (Brief omitted). There is nothing in the record to support this assumption. Next, the court continued that “no one can say that there was an issue with the plumbing.” 1T 23:11. As to the notice, the trial court opined that there was “nothing in the motion record that really establishes that there was a recurring plumbing issue.” 1T 24:12-14. Finally, the court found that “there is not a basis for a reasonable jury to conclude that the County’s conduct was palpably unreasonable ...” 1T 26:10-15. Based on these findings, the trial court granted summary judgment in favor of County Defendants. Pa098.

Thereafter, Plaintiff moved for reconsideration of the court's October 23, 2024 order pursuant to Rule 4:49-2. Pa100. On January 7, 2025, the trial court held oral argument on the Plaintiff's motion for reconsideration.³ 2T. The court denied Plaintiff's motion stating that there was no genuine issue of material fact that would preclude summary judgment for the County Defendants. Pa102; 2T 24:1-10.

On February 11, 2025 Plaintiff filed a Notice of Appeal. Pa103.

STANDARD OF REVIEW

On appeal of an order granting summary judgment, the appellate court reviews the trial court's order "in accordance with the same standard as the motion judge." J. P. v. Smith, 444 N.J. Super. 507, 519-20 (App. Div. 2016). Summary judgment should be granted only when all "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 challenged and that the moving party is entitled to a judgment or order as a matter of law." Rule 4:46-2(c).

A motion for summary judgment should be denied if, "after reviewing 'the competent evidential materials submitted by the parties' in the light most

³ The transcript of this oral argument is referenced as "2T".

favorable to the non-moving party, ‘there are genuine issues of material fact[.]’”
Grande v. Saint Clare's Health Sys., 230 N.J. 1, 24 (2017) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)).

The New Jersey Supreme Court has articulated the applicable standard as follows:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion Judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. The Judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.
Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

It is the moving party's burden in a motion for summary judgment to exclude all reasonable doubt as to existence of any genuine issue of material fact and all inferences of doubt are drawn against moving party and in favor of opponent of motion. Saldana v. DiMedio, 275 N.J. Super. 488, 646 A.2d 522 (App. Div. 1994). If there is slightest doubt as to existence of material issue of fact, the motion should be denied. Garley v. Waddington, 177 N.J. Super. 173, 179, 425 A.2d 1084 (App. Div. 1981).

By its plain language, Rule 4:46-2, dictates that a court should deny a summary judgment motion where the party opposing the motion has come forward

with evidence that creates a “genuine issue as to any material fact challenged.” Brill vi. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995). To decide if a genuine issue of material fact exists, the judge must consider whether the competent evidence presented in support of and in opposition to the motion, when viewed in the light most favorable to the non-moving party, is sufficient to permit a rational fact-finder to resolve the disputed factual issue in favor of the non-moving party. Id. at 540. “A trial court should never decide on its merits a dispute on which a rational jury could go either way.” Pressler & Verniero, N.J Court Rules Comment on Rule 4:46-2.

In the present case, the trial court misapplied the summary judgment standard when it did not draw inferences in the Plaintiff’s favor or determine whether there where material facts in dispute. The trial court failed to consider overwhelming evidence material to this matter that County Defendants are liable for the injuries that Ms. Vogel sustained due to the slip and fall incident in the kitchen at Mountain View. Plaintiff demonstrated that County Defendants were aware of ongoing water pooling problems in the kitchen at Mountain View for many years and failed to adequately address them.

LEGAL ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT BECAUSE IT FAILED TO CONSIDER EVIDENCE THAT ESTABLISH COUNTY DEFENDANTS’ LIABILITY UNDER N.J.S.A. 59:4-2. (1T 22:3-5; Pa098).

Pursuant to N.J.S.A. 59:4-2, in order to impose liability on a public entity for

the dangerous condition of its property, a plaintiff must establish (1) there existed a dangerous condition; (2) the dangerous condition proximately caused the injury; (3) the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred; (4) that either (a) the dangerous condition was caused by a negligent employee or (b) the entity knew about the condition, and (5) the entity's conduct was 'palpably unreasonable.'" Vincitore v. N.J. Sports & Exposition Auth., 169 N.J. 119, 125 (2001) (quoting N.J.S.A. 59:4-2).

A. The County is liable for the injuries Ms. Vogel sustained on June 15, 2019, because the water pooling at the kitchen constitutes a dangerous condition that caused her injuries.

N.J.S.A. 59:4-1(a) defines a dangerous condition as "a condition of property that creates a substantial risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used."

In Furey, plaintiff's decedent, Eugene Furey, was killed when he lost control of his vehicle and struck a tree along a road owned and maintained by defendants, Ocean County and its road foreman. In plaintiff's wrongful death suit it was alleged that decedent's death was caused by a dangerous condition on public property and a failure to warn. Numerous deposition transcripts of employees of the county were read into evidence demonstrating that it was the responsibility of the County to monitor, repair and maintain the situations where there was erosion on the shoulder. Furey v. Cty. of Ocean, 273 N.J. Super. 300, 307-08, 311 (App. Div.

1994). The County also admitted its responsibility for keeping roadways in a safe condition. At trial, the County moved for a directed verdict as to N.J.S.A. 59:4-1(a) and N.J.S.A. 59:4-2. The trial judge denied the motion stating:

[m]y determination is that if the county does undertake to do it, they have a duty to do it in a proper fashion, and as the testimony reflected here, two things. One is as my recollection serves me, the county laborers and the road department indicated that part of their job is to transverse [sic] this particular roadway and to look for particular dangerous conditions; and two, that once those conditions in their determinations are found, then they have the authority to do something about it. And it's my judgment that the cases are saying that once you undertake that particular obligation, then your duty is to perform that in a prudent and reasonable manner. So, I will deny your motion. Furey, 273 N.J. Super. at 308-09.

The jury returned a verdict against defendant County and the County appealed from the judgment of liability. The County argued that the trial court erred in determining that the plaintiff's proofs established a cause of action under N.J.S.A. 59:4-1(a) and N.J.S.A. 59:4-2.

The appellate court relied on Speziale v. Newark Hous. Auth., 193 N.J. Super. 413, 419, 474 A.2d 1085 (App.Div.1984), which set forth an objective standard "test whether the condition created a substantial risk of harm to persons, generally, who would use the public property with due care in a foreseeable manner. Accordingly, in order to prove his case, plaintiff must show 'that the condition was one that created a hazard to a person who foreseeably would use the property . . . with due care.'" The court in Furey found that the trial court did not err when it determined that the plaintiff's proofs were sufficient to establish a

cause of action for a dangerous condition on public property. Furey, 273 N.J. Super. at 313. Plaintiff presented deposition transcripts of county employees' acknowledgement that a drop-off could be dangerous and the county's admission that its department maintained and was responsible for keeping roadways in a safe condition and this evidence did establish a cause of action. Id. This court also found sufficient basis for a jury verdict that the county's failure to maintain the shoulder of a roadway was the proximate cause of an accident. Furthermore, the court in Furey rejected the argument that the actual conduct of the plaintiff would be relevant in determining if a dangerous condition existed. Furey, 273 N.J. Super. at 311.

Here, County Defendants are liable for the injuries Ms. Vogel sustained on June 15, 2019 because the water pooling in the kitchen constitutes a dangerous condition that caused her injuries. Ms. Vogel testified that the water pooling problem went on for a handful of years. Pa118 (T22:3-4). Ms. Vogel further testified that employees at Mountain View had to utilize tablecloths to protect themselves from falling and/or slipping on the wet floor in their work area. She recalled that even before Heirloom took over the operation in 2018, there was a concern with the water leak in the kitchen. Pa117 (T20:9-10). She would come in in the morning and there would be wet floor so the employees would put tablecloths down to try to mop up the water so no one would fall or slip, and then they could squeegee it and try to clear the problem up until it was addressed by the

County. Pa117 (T20:13-19; T21:13-20).

Mr. Messina has been employed as a plumber by the County since 2012 and he testified that the County was responsible for the water backlogging at the kitchen at the Mountain View. Pa136 (T11:6-23); Pa137 (T15:2-16:6); Pa138 (T21:5). Mr. Snyder, who has been employed by the County as a project manager since 2018, testified that “HVAC services and things such as plumbing or electrical, infrastructure, things of that nature, falls under the responsibility of the County.” Pa157 (T82:4-8). Ms. Hutchinson, a bartender/server at Mountain View for about 20 years, testified that she slipped and almost fell in the kitchen on multiple occasions due to the water on the floor. Pa168 (T26:12-13); Pa169 (T27:3-4). She also opined that it is dangerous “especially when you are running back and forth, and you are busy.” Pa169-Pa170 (T27:20-28:2).

Here, Plaintiff presented substantial evidence including the testimonies of Heirloom employees regarding ongoing water issue and the County employees’ admission of their responsibility to mitigate the problem, was properly presented in Plaintiff’s opposition to the Defendants’ motion for summary judgment. This evidence was sufficient to establish a cause of action for a dangerous condition. Moreover, this evidence presents a factual dispute as to the County’s awareness of the problem and its failure to mitigate the problem. Had the Court properly considered this evidence, it would have been clear that factual disputes exist, precluding summary judgment.

B. The water pooling in the kitchen caused Plaintiff's fall that resulted in serious injuries.

Pursuant to N.J.S.A. 59:4-2, a public entity is liable for injury caused by a condition of its property if the plaintiff establishes that the property was in dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition and that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred.

Here, Plaintiff's injuries were caused by a dangerous condition in the kitchen at Mountain View which caused Ms. Vogel to slip and fall. It is undisputed that a water pooling on the kitchen floor creates a foreseeable risk of serious bodily injury and the County's failure to adequately address an ongoing water pooling in the kitchen was a proximate cause of plaintiff's fall, causing her serious injuries.

The water accumulation problem at Mountain View has existed for twenty years. Pa210 (T12:2-4). The water pooling problem in the kitchen created a foreseeable risk of precisely the kind of injury that was sustained by Ms. Vogel on June 15, 2019 when she was caused to slip and fall on her way out of the kitchen. Ms. Hutchinson witnessed the incident, whereafter she testified that the water on the floor caused Ms. Vogel to fall. Pa164 (T9:23-25). The incident was reported to the County the same day, and the report states that the County was aware of this leak. Pa186.

Next, Dr. Pressman, one of the Plaintiff's treating physicians, opined in his

report that the injury to Ms. Vogel’s hips was caused by a fall on a wet floor while at work on 6/15/2019. Pa177*⁴. Furthermore, Dr. Nolan, who performed an Independent Medical Evaluation, also opined that “the need for the right hip replacement was related to the slip and fall injury.” Pa183*.

Accordingly, Plaintiff presented evidence that the incident and the injuries were a foreseeable consequence of the County’s failure to repair the drainage in the kitchen at Mountain View which was a direct cause of the water accumulation, and the injuries sustained by Ms. Vogel.

At the very least, there is a genuine issue of fact as to whether Plaintiff’s injury was caused by the dangerous condition at the restaurant at Mountain View. Plaintiff was the non-moving party and is entitled to all reasonable inferences of fact. Plaintiff has raised a jury question whether the water pooling on the kitchen floor both caused Plaintiff to fall and created a foreseeable risk that an employee of the restaurant would slip and fall on that water pool. Therefore, the trial court misapplied the summary judgment standard because a jury could reasonably find that the County knew or should have known that the water pooling in the kitchen created a dangerous condition, and it was foreseeable that a water on the kitchen floor can cause an employee to slip and fall as a result of that water pooling.

⁴ Pursuant to R. 2:6-1(a)(3) and R. 1:38-3(f)(1), confidential documents identified herein with an asterisk (“*”) — are excluded from the public Plaintiff’s Appendix and can be found in the separately filed Plaintiff’s Confidential Appendix.

C. The trial court failed to consider key evidence in the record that established the County's notice of the ongoing plumbing issue in the kitchen at Mountain View.

In this case, the Court disregarded overwhelming evidence that establishes that County Defendants had constructive, if not actual, notice of the dangerous condition that caused Ms. Vogel to slip and fall on June 15, 2019. At a minimum, Plaintiff's allegations as to the County's knowledge of a dangerous condition have raised a factual issue for jury determination precluding the entry of summary judgment and entitling Plaintiff to have the matter considered by a jury.

In order to establish that a public entity had actual notice of a dangerous condition for purposes of N.J.S.A. 59:4-2, the public entity must have "had actual knowledge of the existence of the condition and knew or should have known of its dangerous character." N.J.S.A. 59:4-3a. In the absence of actual notice, a public entity may be charged with constructive notice if plaintiff establishes that the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character. N.J.S.A. 59:4-3b.

Our Supreme Court noted that "[c]omplaints . . . about a dangerous condition may serve to establish actual or constructive notice to [a public entity] of that condition[,]" Norris v. Borough of Leonia, 160 N.J. 427 (1999). Further, whether a public entity is on actual or constructive notice of a dangerous condition is measured

by the standards set forth in N.J.S.A. 59:4-3(a) and (b), not by whether "a routine inspection program" by the County would have discovered the condition. Polzo v. Cty. of Essex, 209 N.J. 51, 68 (2012). In Polzo, the only evidence presented by plaintiff to establish constructive notice was the engineering report, and the court stated that "standing alone, the report is insufficient to sustain plaintiff's burden." Polzo v. County of Essex ("Polzo I"), 196 N.J. 569, 581 960 A.2d 375 (2008). The Court noted that plaintiff did not present any conclusive evidence that the county had ever made repairs to any part of the road's shoulder (the area where incident occurred) in the past. Therefore, the court could not determine as a matter of law whether the County defendant was on constructive notice of a dangerous condition on public property. Polzo, 196 N.J. at 580-81.

Applying these principles here, it is clear that Plaintiff presented sufficient evidence to establish that County Defendants were on notice of the dangerous condition for a prolong period of time, twenty years.

Mr. Williams, the supervisor for Heirloom, testified that the County was aware that the leak had been an ongoing issue for years predating Heirloom involvement with the County. Pa191 (T16:10-17:5); Pa196 (T34:14-23). He stated that at the time he started the operation of the restaurant, there were plumbing issues and that they had several backups in different areas. Pa198 (T42:18- 43:2). Mr. Williams further testified that when he started the operation of the restaurant the squeegees were left behind from the previous operator for the sole purpose of

cleaning up the water from the floor. Pa193 (T25:12). He said that the water issue occurred once or twice per week. Pa194 (T26:2-3).

Mr. Snyder's testimony corroborated Mr. Williams's testimony wherein he stated that around the time Heirloom took over the operation of the restaurant, he observed the water on the kitchen floor, and he identified the source of the water as a drainage issue. He further clarified that it was the floor drain and that the floor drains are located throughout the kitchen. Pa153-Pa154 (T64:1-65:10); Pa156 (T74:5-8).

Other Heirloom employees testified that they notified the County of the dangerous condition in the kitchen at Mountain View and the County responded with repair people to address the issue. Pa193 (T23:9-21); Pa194 (T26:24- 28:7); Pa203 (T62:1-63:19). Ms. D'Andrea, manager of Heirloom Events, testified that water flooding on the kitchen floor is a condition she is familiar with. She continued that there have always been issues with the drains, and that either the fridge would leak from underneath, or the ice machine would leak, or the water was coming from the floor drains themselves, that the drains in the floor would back up causing water to pool on the floor. She testified that this occurs "at least five times a month." She continued that they have so many issues where there is a flood in the middle of the kitchen, and it has been an issue for twenty years. Pa209- Pa210 (T11:4-12:9). D'Andrea further testified that she is aware of other people falling because of the water on the floor and that she fell many times in the

area where Ms. Vogel slipped and fell. Pa213 (T26:16-24).

Ms. Hutchinson who worked at Mountain View Golf as a server and a bartender for about twenty years and was employed at the time of the accident testified that she has seen the puddle “quite a few times” and that the County was called several times to deal with the water issue. Pa165 (T10:1-17).

Each time there was water pooling in the kitchen at Mountain View, the County sent their own repairmen to fix the issue. The County accepted the responsibility for the water leaks because when Heirloom would notify the County of the water issues, the County sent their own repair people to inspect and attempt to fix the issue. Pa193(T23:9-21; T24:13-25:5); Pa194 (T26:24-28:7); Pa196 (T34:14-36:11); Pa201 (T54:21-55:2); Pa203 (T62:1-63:19); Pa204 (T68:4-14).

Ms. D’Andrea’s testimony established that the water problem was a continuous problem and that many different people who work for the County would come out to fix the problem, but the problem would occur “again and again and again.” Pa211-Pa212 (T14:8-15:18). Jennifer Carmean, Heirloom’s employee testified that when the water problem occurs, they call the County and the County comes out and repair it. Pa218 (T17:2-21); Pa219 (T19:9-19); Pa225 (T44:4-13).

Here, the trial court discounted the testimony of numerous witnesses which demonstrated the County’s awareness of the ongoing plumbing issues and instead opined that “there’s nothing in the motion record that really establishes that there was a recurring plumbing issue, and indeed, the County conducted routine

maintenance and, in fact, was there the day before, and there was nothing.” 1T 24:12-16.

Moreover, the trial court’s reliance on “routine maintenance” was misplaced. On June 14, 2019, the day before the accident, the County conducted a routine semi-monthly walkthrough cleanliness inspection. Pa248. This “inspection” was not an inspection of the plumbing or any other structural fixtures that can pose a potential hazard in the operation of the restaurant. It was cleanliness inspection of the facilities. Based on that Cleanliness report, the Court erroneously concluded that since the inspection of the premises was conducted the day before the incident then the County did not have a constructive notice, thus, the County is not liable for the injuries Ms. Vogel sustained on June 15, 2019. 1T 24:12-21. The Court inferred that since the water was not present the day before the incident, the County did not have any knowledge of the ongoing water issue in the kitchen at Mountain View. Id. This is directly contradicted by the testimony of numerous witnesses who established that there was ample notice to the County Defendants of an ongoing drainage issue in the kitchen.

To summarize, on the motion for summary judgment the trial court disregarded the critical evidence that establishes the County’s knowledge of the ongoing problem with the water pooling in the kitchen. Instead, the Court stated that there is nothing in the motion record that establishes that there was recurring water issue at the Mountain View and that there is nothing in record that shows that the

County was on notice of the problem to remediate it. Accordingly, the trial court erred in granting summary judgment to County Defendants.

D. The County had acted palpably unreasonably in its maintaining of the plumbing in the kitchen at the Mountain View Golf Course.

In Muhammad v. N.J. Transit, 176 N.J. 185 (2003), the New Jersey Supreme Court defined "palpably unreasonable" conduct as behavior that is "manifestly and obviously without reasonable basis." The Supreme Court in Kolitch v. Lindedahl, 100 N.J. 485, 493 (1985) has concluded that the "term implies behavior that is patently unacceptable under any given circumstances." It further stated that "it must be manifest and obvious that no prudent person would approve of its course of action or inaction." Id. In Polzo, the Court discussed the timeframe and scope of what constitutes palpably unreasonable conduct and It explained that the analysis includes considering whether the public entity had a reasonable time and opportunity to correct the condition after receiving notice. The court in Polzo concluded that without evidence of a prolonged period of inaction or a blatant disregard for public safety, a public entity's failure to remedy a condition would not meet the "palpably unreasonable" standard. Polzo, 209 N.J. at 76-77.

Additionally, under New Jersey law, **palpable unreasonableness is a question of fact that must be left for the jury to decide.** Vincitore v. N.J. Sports & Exposition Auth., 169 N.J. 119, 130 (2001). In Posey v. Bordentown Sewerage Auth., 171 N.J. 172 (2002), the issue before the Court was whether,

under the Tort Claims Act, the Township of Bordentown and/or the County of Burlington may be held liable for injuries sustained on private property that receives water from a stream located in an adjacent public park. The Supreme Court held that summary judgment was inappropriate because a jury reasonably could find that the Township and County knew or should have known that children play in and around the stream, culvert, and pond, and that it was reasonably foreseeable that those children may walk through the culvert. The Court also held that a jury could conclude that it was palpably unreasonable for the public entity defendants not to warn or otherwise protect against the dangerously deep pond of which they had actual notice. Summary judgment is generally inappropriate when there is evidence from which a jury could reasonably find that a public entity's conduct was palpably unreasonable. This standard supports Plaintiff's position that the question of the County's palpable unreasonableness in failing to address the water pooling issue should be presented to a jury.

Here, Plaintiff presented sufficient evidence to raise a question of fact as to whether the County was palpably unreasonable for failing to fix the recurring water pooling issues in the kitchen at Mountain View for over twenty years. Like in Polzo, where the court discussed that evidence of a prolonged period of inaction or failure to remedy a condition would meet "palpably unreasonable" standard, here the evidence shows that the County was aware of the water pooling issue for a prolonged period of time. Testimony of the employees of Heirloom at the time of

the incident and who have been working in the kitchen at Mountain View for twenty years established that repairs were made by the County on many occasions in an attempt to mitigate the issue, however, those solutions always failed resulting in the same water pooling on the kitchen floor. Plaintiff established that when there was a water issue in the kitchen, the County came out to fix it, but ultimately failed to adequately address the problem.

Moreover, pursuant to Rule 4:46-2b and Brill, supra, 142 N.J. at 523, 666 A.2d 146, Plaintiff has successfully raised genuine issue of material fact because each time there was water issue in the kitchen, the County came out to fix it, and that the County failed to adequately address the problem that existed for twenty years. The trial court failed to consider whether a factual issue as to the County's action or inaction had been raised by virtue of all the evidential material submitted in opposition to the summary judgment motion that were sufficient to create a jury question as to whether the County had acted manifestly unreasonably in its maintenance of the plumbing. A jury can conclude that it was palpably unreasonable for the County not to properly and permanently fix the plumbing issues of which the County had a notice.

Therefore, summary judgment was inappropriate in this case. Plaintiff presented ample evidence from which a jury could reasonably find that the County's conduct was palpably unreasonable. Furthermore, pursuant to New Jersey law, the question of the County's palpable unreasonableness in failing to address

the dangerous condition is a question of fact that must be left for the jury to decide. Vincitore, 169 N.J. at 130 (2001).

II. THE COUNTY DEFENDANTS WERE CONTRACTUALLY OBLIGATED TO MAINTAIN THE PLUMBING AT THE MOUNTAIN VIEW GOLF COURSE. (Pa010).

Under New Jersey law, when the terms of a contract are clear and unambiguous, there is no room for construction and the court must enforce those terms as written. M.J. Paquet, Inc. v. New Jersey Dep't of Transp., 171 N.J. 378, 396, 794 A.2d 141 (2001). In November of 2018, Heirloom and the County of Mercer entered into a contract that contained clear and unequivocal language regarding the operation of a catering business at The Mountain View Golf Course. Pa004. The maintenance clause reads that Heirloom “will not be responsible for the repairs to the roofs, exterior walls, electric, HVAC or plumbing.” Pa010. The contract clearly provided that the County was responsible for fixing all the issues related to the plumbing. Id. Moreover, the surrounding circumstances prove that the County accepted that responsibility for the water leaks because on the occasions when Heirloom notified the County of the water issues, the County sent repair people to fix the issue. Pa193 (T23:9-21; T24:13-25:5); Pa194 (T26:24-28:7); Pa196 (T34:14-36:11); Pa201 (T54:21- 55:2); Pa203 (T62:2-63:19); Pa204 (T68:4-14); Pa165 (T10:14-17); Pa167 (T15:1-18).

In this case, Plaintiff presented significant evidence that the County was

contractually obligated to maintain the plumbing and, that the County admitted its responsibility for the plumbing at Mountain View. Therefore, the County is liable for Ms. Vogel's injuries because it failed to repair the ongoing plumbing issues in accordance with the agreement that clearly stated its obligations.

CONCLUSION

For the foregoing reasons, Plaintiff-Appellant respectfully requests that this Court reverse the grant of summary judgment to the County Defendants and dismissal of Plaintiff's Complaint.

STARK & STARK, P.C.

By: 

KSENIYA CUTLER

Dated: June 3, 2025

PAUL R. ADEZIO
MERCER COUNTY COUNSEL
640 South Broad Street
McDade Administration Building
Trenton, New Jersey 08650
(609) 989-6511
mamantia@mercercounty.org
Attorneys for Respondents
Mountain View Golf Course, Mercer County
Park Commission and County of Mercer

MONICA VOGEL, :
 : SUPERIOR COURT OF NEW JERSEY
Plaintiff-Appellant : APPELLATE DIVISION
 :
v. : Docket No. : A-001685-24T4
 :
MOUNTAIN VIEW GOLF COURSE, : Civil Action
MERCER COUNTY PARK :
COMMISSION, COUNTY OF : On Appeal from
MERCER, STATE OF NEW JERSEY, : Law Division, Civil Part
AND JOHN DOES 1-10 OWNERS : Mercer County
AND OPERATORS : Docket No.: MER-L-1194-21
(fictitious designations), :
JOHN DOE 1-10 MAINTENANCE : Sat below:
ENTITIES (fictitious designations), : Hon. R. Brian McLaughlin, J.S.C.
all jointly, severally. :

**BRIEF ON BEHALF OF RESPONDENTS
MOUNTAIN VIEW GOLF COURSE, MERCER COUNTY
PARK COMMISSION AND COUNTY OF MERCER**

On the Brief:
Michael Anthony Amantia, Esq.
Assistant County Counsel
Attorney ID No.: 042851988

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PRELIMINARY STATEMENT

Appellant Monica Vogel (hereinafter referred to as “Appellant”) comes before this Court seeking to overturn the lower court’s determination that the County of Mercer (hereinafter referred to as “Respondents”) demonstrated that no issue of material fact existed that would require the action to proceed to jury trial and that, as a matter of law, the Respondents were entitled to the entry of judgment.

In this matter, the evidence presented at the time of motion hearing supported the Court’s finding that the Respondents were not liable to the Appellant for injuries she allegedly sustained.

For these and the reasons that follow, the Court should affirm the Order granting Summary Judgment dated October 23, 2024 and the Order denying Reconsideration of the Summary Judgment order dated January 7, 2025.

CONCISE STATEMENT OF FACTS

Respondent County of Mercer and its constituent agencies, i.e. Mercer County Parks Commission, own and operate several golf courses in the county. Two of these golf courses are “Mountain View Golf Course” and “Princeton County Club”. Both courses offer various services and amenities which include food and drink.

The Respondents issued a Request for Proposals (hereinafter referred to as “RFP”) to all bidders for concessionaire services at the Mountain View Golf Course clubhouse (hereinafter referred to as “Clubhouse”) and Princeton County Club. (Pa4 Pa25). The Respondents awarded the bid for the Clubhouse to John Williams (hereinafter referred to as “Williams”), owner of “Heirloom Events” (hereinafter referred to as “Heirloom”). The parties signed an agreement memorializing the agreement. (Pa26 to Pa32). The RFP and the agreement included leasing provisions for the Clubhouse. Heirloom was the commercial tenant and paid monthly rent to the Respondents in accordance with the agreed upon payment schedule. (Pa 28). Pursuant to the 2018 RFP and Agreement, Williams and Heirloom agreed to provide concessionaire services to the Clubhouse from January 1, 2019 through 2022 with a one two-year extension or two one-year extensions. (Pa28).

Pursuant to the 2018 RFP and Agreement, Williams and Heirloom were solely responsible for the maintenance and day-to-day upkeep of the Clubhouse. Williams

and Heirloom accepted the appliances inside the Clubhouse in “as-is” condition, and were solely responsible to repair same. (Pa31). The Clubhouse was comprised of the banquet room, grill room, patio, kitchen, storage room, men’s and women’s locker rooms, employee bathroom, and men’s and women’s restrooms. The maintenance clause clearly stated:

MAINTENANCE

The Licensee will be responsible for the repair and maintenance of all Mercer County Park Commission owned equipment during the term of the license. Licensee will accept all buildings and their equipment 'as is" in their present existing condition. The Licensee shall, at its own expense and upkeep, make such repairs or improvements necessary to maintain Mercer County Park Commission owned buildings and areas occupied for the purpose of operating the concession and shall be responsible for the daily maintenance and upkeep. Licensee shall keep the hood system free and clean of grease and shall have the entire hood and duct system cleaned bi-annually. Also, the Licensee will be responsible for monthly cleaning of the grease trap. Licensee shall be responsible to make all necessary repairs to the hood and exhaust fan. Licensee will be responsible for cleaning of the restrooms and common areas at both Mountain View and Princeton C.C. Licensee shall not make alterations, additions, or improvements to either facility without prior written consent of the Executive Director. All alterations, additions, and improvements, whether temporary or permanent in character, shall at all times be deemed to be the property of the Mercer County Park Commission and shall remain upon the premises at the termination of the agreement. Licensee will not be responsible for the repairs to the roofs, exterior walls, electric, HVAC or plumbing.

(Pa10). The Respondents were responsible for structural, HVAC, plumbing and electric matters. Pursuant to the 2018 RFP Agreement, the Respondents, its employees and/or agents would often enter the premises to maintain its obligations.

(*Id.*). The County also employed a liaison, Herman Snyder (hereinafter referred to as “Snyder”), to serve as a reference point to Heirloom. Snyder performed routine inspections of Heirloom’s cleanliness. (Pa231 to Pa252).

Most of the staff employed by Heirloom were formerly employed by the now-

defunct previous commercial tenant/caterer, Carl Schott (hereinafter referred to as “Schott”). (Pa191, citing to WT11:8 to 15).¹

The Heirloom on-site staff were not aware of Heirloom’s contractual obligations to maintain the premises and appliances of the Clubhouse. They operated under the assumption that “the appliances I guess are their [the County’s] responsibility as far as I know.” (Pa230, CT63:1-8).² Both Williams and Heirloom employees noticed that water would sporadically accumulate on the floor of the kitchen. To address this, Williams and Heirloom employees used squeegees to soak up the water on the floor and placed wet floor signs to warn other employees of the wet surface until it dried. Allegedly, the accumulation of water occurred around the ice machine. (Pa191, WT16:3-19). According to Williams and Heirloom employees, the water presence was “intermittent” and related to the ice machine. (Pa198, WT43:1-2). Heirloom informed the Respondents about the water in the kitchen. The Respondents examined the Clubhouse kitchen plumbing and made repairs. Williams was satisfied with the plumbing repairs made by the County and after each servicing, the plumbing operated like-new. (*Id.*).

Vincent Messina (hereinafter referred to as “Messina”), a plumber employed by the Respondent, routinely handled and responded to repair requests at the

¹ “WT” refers to “Williams Transcript”.

² “CT” refers to “Carmean Transcript”.

Clubhouse. (Pa135; MT8:9-21).³ Messina responded to repair calls as needed. (*Id.*) Messina used a “snake” device to clear the kitchen plumbing pipes. (Pa139, MT21-25 to 22-3). In his deposition, Messina determined that the blockage in the kitchen was due to the build-up of grease that seeped into the water pipes. Messina testified that the plumbing was only designed to handle water. Messina also testified that the source of the blockage was solely grease. Messina’s finding was based upon the presence of clear, waxy, buildup of muck that appeared at the end of the snake device he utilized to clear the clog. (Pa139, MT:22-2 to 23-8). Messina also noted that the issues he addressed in the kitchen area were due to Heirloom’s poor maintenance of the grease traps that catch oil and other food debris. Heirloom’s failure to maintain the grease traps caused the traps to accumulate excess food and oil deposits. According to Messina, the grease would slowly build up over time and result in the sporadic issues with the plumbing. (Pa140, MT:28-21 to 29-19). Messina testified that after he fixed the grease-clogged water pipes, he [Messina] advised Williams and the Heirloom staff that the grease traps were the source of the clog and that the maintenance of the grease trap was Heirloom’s responsibility. (Pa140; MT27:1-13).

In 2019, Monica Vogel (“Appellant”) was employed as a bartender by Heirloom. On June 15, 2019, around 11:00 a.m., Appellant arrived at the Clubhouse

³ “MT” refers to “Messina Transcript”.

to begin her shift. (Pa118; VT24:3-11).⁴ Appellant worked as a waitress. She routinely entered the kitchen to collect food orders and served patrons with food orders in the dining area. (Pa118; VT24:14-17). On her way to the dining area carrying food, Appellant alleged that she slipped on the tile portion of the bar, fell backwards, and landed directly on her rear end. (Pa118; VT24:17-20). Appellant was wearing slip-proof service shoes. (Pa119; VT27:20-23). While on the floor of the bar, Appellant observed water on her shoes. Appellant then proceeded to trace her steps back to the kitchen. Upon entering the kitchen, Appellant saw a small accumulation of water near the refrigerator. Appellant believes that she stepped in the water and that the water caused her fall twenty (20) feet later at the bar. (Pa118; VT25:2-3). There were no hazard signs or “wet floor” signs around the wet area. No manager was on duty at the time Appellant fell. According to Appellant, none of the Heirloom employees had warned Appellant about water on the floor. (Pa119; VT26:21-24; VT41:2-7). The puddle of water that Appellant alleges was the source of her fall was in a different location than where the kitchen had water issues in the past. (Pa130; VT71-25 to 73-1).

In her deposition, Appellant does not recall looking or noticing the water while she walked back-and-forth in the kitchen. According to Appellant, the kitchen room was “very lit.” (Pa119; VT26:18-20). Appellant believes the water source

⁴ “VT” refers to “Vogel Transcript”.

came from the refrigerator or ice machine “because it was – underneath. You could see it coming from underneath the machine” but Appellant was not sure. (Pa130; VT71-25 to 72-6; VT73-1 to 10). According to Appellant, the water leak occurred instantaneously and “all of a sudden it would just show up.” (Pa130; VT72:7-14).

On June 14, 2019, the day before Appellant’s alleged incident, Snyder performed a routine inspection of the Clubhouse. The inspection included the kitchen premises, among other areas that Heirloom was required to maintain. Snyder’s inspection was signed and approved by Williams. (Pa248 to Pa249). The County never received notice of any new water issues prior to Appellant’s June 15, 2019 incident in the Clubhouse. According to Appellant, the Respondents responded to the Clubhouse moments after they were advised of the incident. (Pa186).

PROCEDURAL HISTORY

The Appellant filed a Complaint and Jury Demand (hereinafter referred to as “Complaint”) on or about June 4, 2021, alleging the Appellant suffered an injury as a result of the Respondents’ tortious conduct. (Pa33 to Pa36). On or about September 14, 2021, the Respondents filed an Answer with a Third-Party Claim against Heirloom. (Pa49 to Pa60). On or about May 31, 2023, Third Party Defendant Heirloom filed a Motion for Summary Judgment. (Pa61 to Pa62). On November 8, 2023, the Court, per R. Brian McLaughlin, Judge, Superior Court, granted Heirloom’s Motion for Summary Judgment. (Pa63 to Pa64).

Following pretrial discovery and arbitration, the Respondents filed a Motion for Summary Judgment. (Pa66 to Pa79). Appellant opposed the motion. (Pa80 to Pa93). Respondents filed a reply to Appellant’s opposition. (Pa95 to Pa97).

The Court, per Judge McLaughlin, heard oral argument on October 23, 2024. See Transcript dated October 23, 2024 and filed February 11, 2025.⁵ Based on the clear and undisputed facts that Heirloom, as a tenant, was responsible for the condition of the kitchen facilities and the clubhouse overall, the Appellant could not satisfy the requirements of *N.J.S.A. 59-4-1 et. seq.*, the applicable provisions of the Tort Claims Act. As such, the Court granted summary judgment in favor of the Respondents. (1T26:16-17); Pa98 to Pa99).

⁵ The transcript for the hearing dated October 23, 2024 is marked as “1T”.
The transcript for the hearing dated January 7, 2025 is marked as “2T”.

Appellant moved for reconsideration of the Court's October 23rd order. (Pa100 to Pa101). On January 7, 2025, the Court, per Judge McLaughlin, heard oral argument on Appellant's Motion for Reconsideration. The Court denied Appellant's motion and entered an order denying the motion. (2T28-4; Pa102).

On or about February 11, 2025, Appellant filed a Notice of Appeal, and later, an Amended Notice of Appeal. (Pa103 to Pa111).

STANDARD OF REVIEW

A court must grant summary judgment if "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." *Rule* 4:46-2. Even though the allegations of the pleadings raise an issue of fact, if the submissions of the parties demonstrate that there is, in fact, no real material issue, then summary judgment can be granted. *Judson v. Peoples Bank & Trust Co. of Westfield*, 17 N.J. 67, 75 (1954). "Bare conclusions in the pleadings, without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment." *U.S. Pipe & Foundry Co. v. American Arbitration Ass'n*, 67 N.J. Super. 384 (App. Div. 1961). Moreover, disputed issues "of an insubstantial nature" cannot overcome a motion for summary judgment. *Brill v. Guardian Life Ins. Co.*, 142 N.J. 520, 530 (1995).

"(A) party may defeat a motion for summary judgment by demonstrating that the evidential materials relied upon by the moving party, considered in light of the applicable burden of proof, raise sufficient credibility issues 'to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.'" *D'Amato v. D'Amato*, 305 N.J. Super. 109, 114 (App. Div. 1997), (quoting *Brill*, 142 N.J. at 523). "A case may present credibility issues requiring resolution by a trier of fact even though a party's allegations are uncontradicted." *Id.* at 115; however, as

per *Liberty Mutual Ins. Corp. v. Amoroso, P.A.*, 189 N.J. 436, 450 (2007), "(e)ven when credibility may be an issue," if there is a single unavoidable resolution to the alleged factual issue, that would not constitute a genuine issue of material fact, and therefore, summary judgment is appropriate.

Brill v. Guardian Life Ins. Co., 142 N.J. at 540, articulates the standard for determining whether genuine issue of fact exists. The judge must engage in a weighing process as if deciding motions for a directed verdict under *Rules* 4:37-2(b), 4:40-1 and 4:40-2. The judge must decide whether "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. . . . If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact for purposes of *Rule* 4:46-2." *Id.* "(W)hen the evidence 'is so one-sided that one party must prevail as a matter of law,' . . . the trial court should not hesitate to grant summary judgment." *Id.*

After *Brill* was decided, *Rule* 4:46-2(c) was amended in 1996 to add the following sentence: "An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact."

LEGAL ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY GRANTED RESPONDENTS' MOTION FOR SUMMARY BASED ON THE CLEAR, SETTLED AND UNDISPUTED FACTS.

The trial court, in its oral decision, succinctly stated the key issue involved in this matter.

This whole case would be resolved differently if we were just dealing with elements of negligence. . . . However, the County is a public entity and this is governed by Title 59, and particularly Chapter 4 which deals with liability of public property that it owns or controls.

Now, in this particular case, the County clearly owned the premises. But . . . it contracted away the responsibility for the kitchen facilities, rest rooms and the Clubhouse in the contract that . . . it entered into with Heirloom. And that made Heirloom responsible for the condition of the kitchen facilities and really the entire Clubhouse.

(1T21-7 to 25).

A. Liability Rests Solely On The Commerical Tenant

A landlord shall not be liable for personal injuries suffered by a commercial tenant's employee on the leased premises based upon a lack of proper maintenance or repair when the lease unequivocally places responsibility for such maintenance and repair solely on the tenant. *Geringer v. Hartz Mountain Development Corp.*, 388 N.J. Super. (App. Div. 2006); *McBride v. Port Authority of New York and New Jersey*, 295 N.J. Super. 521 (App. Div. 1996).

In *McBride*, the Plaintiff sustained a serious injury when the forklift vehicle he was operating at a loading dock on the leased premises of his employer struck a hole in the ground, which caused the vehicle to jerk and throw him to the ground. *McBride*, 295 N.J. Super. at 525. The plaintiff argued that the commercial landlord was liable for a tenant employee's injuries because it reserved the right to enter the leased premises to perform repairs. *Id.* The Court determined that, lacking ambiguity, the construction of the lease was a matter law to be decided by the Court. *Id.* at 526. The Court found that the contractual agreement between defendant, the Port Authority, and the injured plaintiff's employer contained no ambiguity with regard to responsibility for maintenance and repairs of the loading dock. *Id.*

Similarly, in *Geringer*, the plaintiff, an employee of a tenant in defendant's landlord building, tripped on the carpeted interior stairs, fell, and sustained injuries. *Geringer*, 388 N.J. Super at 394. Plaintiff's claim against the defendant landlord was based upon the maintenance, repair, design, and construction of the stairwell. *Id.* The Appellate Division upheld the dismissal of plaintiff's maintenance and repair claims against the defendant landlord, and found that the lease delegated the duties of maintenance and repair to the commercial tenant. *Geringer*, at 399-401.

Like the landlord in *McBride* and *Gerringe*r, Respondents entered into an agreement with Heirloom who accepted responsibility for the maintenance and repair of the Clubhouse kitchen. On June 15, 2019, Heirloom, not the Respondent,

bore this responsibility. Respondents share no liability for the injuries that the Appellant allegedly incurred that day.

Appellant alleges that, on June 15, 2019, she “slipped and fell as a result of a wet floor” and that the likely source of the water was a refrigerator or ice machine in the kitchen. (Pa118; VT24:7-15; 25:2-7) The RFP and Agreement between the Respondents and Heirloom clearly and unambiguously placed the responsibility for the maintenance and repairs in the Clubhouse kitchen on Heirloom. (Pa4 to Pa32).

The RFP and Agreement specifically address Heirloom’s obligations not once but twice. It reads, in pertinent part:

(1) “The Licensee shall, at its own expense and upkeep, make such repairs or improvements necessary to maintain Mercer County Park Commission owned buildings and areas occupied for the purpose of operating the concession and shall be responsible for the daily maintenance and upkeep.” (Pa10).

(2) “Heirloom is responsible for all cleaning needed at the concession facility including but not limited to the counter spaces, kitchen facilities and restrooms.” (Pa31).

Like the commercial landlords in *Geringer* and *McBride*, the Respondents unequivocally delegated all Clubhouse maintenance obligations to Heirloom. The RFP and Agreement also assigned Heirloom with the responsibility of repairing and maintaining “all Mercer County Park Commission owned equipment during the term of the lease.” (Pa10). Heirloom also accepted “all buildings and their

equipment ‘as is’ in their present existing condition.” (Pa10). The terms in the RFP and Agreement are clear, specific, and set forth the premises, items to be maintained, and the time period the obligation applies. Heirloom accepted all of these obligations. Consistent with *Geringer* and *McBride*, the unequivocal language delegating maintenance and repair responsibilities equally applies to the Clubhouse “kitchen facilities” on June 15, 2019. (Pa10). Therefore, *a fortiori*, Heirloom bore the *sole* responsibility to keep kitchen facilities clean. The record reflects that Heirloom employees did not warn Appellant of the water. No Heirloom employee posted hazard or “wet floor” signs around the area. (Pa119; `VT26:21-24; 41:2-7).

Heirloom also bore the *sole* obligation to fix and repair the refrigerator and ice machine in the Clubhouse kitchen. Pursuant to the RFP and Agreement, Heirloom was “responsible for the repair and maintenance of all Mercer County Commission owned equipment during the term of the lease” and accepted “all buildings and their equipment ‘as is’ in their present existing condition” when it assumed the lease in January, 2019. Since the refrigerator and ice machine were both equipment existing in the Clubhouse kitchen at the time of the incident, and the lease provisions unequivocally designate the responsibility to Heirloom to maintain the equipment, all liability for the personal injury related Appellant’s June 15, 2019 incident rests squarely on Heirloom under *Geringer* and *McBride*.

Pursuant to *Geringer* and *McBride*, the Respondents' inspection of the premises does not negate Heirloom's sole responsibility to maintain the entire Clubhouse and its equipment, and its acceptance of these conditions "as is." So long as these terms and responsibilities were unequivocally delegated to Heirloom in the RFP and Agreement (and they were), that alone suffices in the trial court's determination that liability for Appellant's June 15, 2019 incident rests squarely on Heirloom. If anything, the Respondents' inspection of the premises supports the trial court's conclusion that the County did not act palpably unreasonably.

Appellant, at no time, mentions plumbing as the source of her fall in her Answers to Interrogatories. (Pa280).⁶ Even if she had, Heirloom would still remain solely liable due to its failure to maintain and repair the kitchen equipment. A plumber employed by the County, Messina, testified that, throughout the past ten years, he periodically checked the Clubhouse kitchen pipes with wire video camera and light and only saw issues when Heirloom employees failed to clean the kitchen grill grease baskets. (Pa140;MT29:3-8; 43:11-12). Messina testified how Heirloom's failure to maintain this obligation would permit grease to build up over time, until the pipe finally clogged and water leaked. (Pa138;MT20:1-16). Messina advised the only issues the Clubhouse kitchen encountered were when the grease baskets were not regularly maintained. (Pa140;MT29:3-8). Messina advised

⁶ Respondent refers to the Appellant's Confidential Appendix.

traps directly resulted in the alleged water in the kitchen, and thus, confirms Heirloom's sole responsibility for the injury that resulted from its failure to comply with the maintenance obligation unequivocally delegated upon it by the RFP and Agreement.

B. **Appellant Cannot Establish the Elements of A Dangerous Condition of Public Property under the Tort Claims Act.**

Assuming *arguendo*, that the Respondents are responsible for the premises, Appellant's complaint still fails as she cannot demonstrate all of the elements necessary to prove dangerous condition liability under the Tort Claims Act.

A public entity is only liable for an injury proximately caused by a condition of its property within the limitations of *N.J.S.A. 59:4-2*. A claimant must show that there was a dangerous condition, defined as a "condition of property that creates a substantial risk of injury" when the property is used with due care in a reasonably foreseeable manner. *N.J.S.A. 59:4-1a*.

To impose liability on a public entity pursuant to *N.J.S.A. 59:4-2*, a plaintiff must demonstrate the following:

- (1) a dangerous condition existed at the time of Appellant's injury;
- (2) Appellant's injuries were proximately caused by the dangerous condition;
- (3) the dangerous condition created a reasonably foreseeable risk of the kinds of injuries that Appellant sustained;
- (4) the public entity created the dangerous condition or had notice of it a sufficient time prior to Appellant's injury to have taken measures to protect against it; and

- (3) the dangerous condition created a reasonably foreseeable risk of the kinds of injuries that Appellant sustained;
- (4) the public entity created the dangerous condition or had notice of it a sufficient time prior to Appellant's injury to have taken measures to protect against it; and
- (5) the public entity's failure to take action to protect against the dangerous condition was palpably unreasonable.

Kolitch v. Lindedahl, 100 N.J. 485, 492-93 (1985); *Thompson v. Newark Housing Auth.*, 108 N.J. 525, 530 (1987); *Saldana v. DiMedio*, 275 N.J. Super. 488, 502 (App. Div. 1994) (citing *Levin v. Salem*, 133 N.J. 35, 42 (1993)). Failure to prove all five elements defeats a plaintiff's claim. In the case at bar, the Appellant cannot establish the elements for a dangerous condition.

As to proximate cause, Appellant cannot satisfy this element. "[T]he issue of a defendant's liability will not be presented to the jury simply because there is some evidence of negligence." *Reynolds v. Gonzalez*, 172 N.J. 266, 284 (2002). Rather, "[t]here must be evidence or reasonable inferences therefrom showing a proximate causal relation between defendant's negligence' . . . and the resulting injury." *Ibid.* (quoting *Germann v. Matriss*, 55 N.J. 193, 205 (1970)). The Court has defined "proximate cause" as "any cause which in the natural and continuous sequence, unbroken by an efficient intervening cause, produces the result complained of and without which the result would not have occurred." *Townsend v. Pierre*, 221 N.J. 36, 51 (2015).

Courts have long recognized that the standard for proximate cause depends upon the nature of the tortious conduct, distinguishing routine tort actions from those that involve concurrent causes of harm. See *Camp v. Jiffy Lube No. 114*, 309 N.J. Super. 305, 309 (App. Div. 1998). The routine tort case requires proof that the result complained of probably would not have occurred 'but for' the negligent conduct of the defendant. See *Conklin v. Hannotch Weisman, P.C.*, 145 N.J. 395, 417 (1996) (“In the routine tort case, ‘the law requires proof that the result complained of probably would not have occurred “but for” the negligent conduct of the defendant.’”)

The Appellant’s case is a routine tort action. The Appellant cannot establish that the water near the refrigerator in the kitchen proximately caused her slip and fall **twenty feet away in the bar/lounge**. Appellant admits that the location of the water and where she allegedly fell were in two different and distinct locations. (Pa118;VT24:14-20). The Appellant admits that from the location of the water near the refrigerator, she exited the kitchen, entered the bar area, turned the corner, and entered the lounge before she fell. (Pa118; VT24:14-20). Here, the natural and continuous sequence was broken by the efficient and intervening cause of Appellant walking almost twenty feet before her alleged fall and injury.

As to notice, the County was unaware of any water issues in the Clubhouse kitchen leading up to the June 15, 2019 incident. Despite being open since 7:00 a.m., neither Williams nor Heirloom employees communicated concerns of a water leak

in the Clubhouse kitchen to the County on June 15, 2019, prior to Appellant's alleged fall around noon. More importantly, the Respondents' employee inspected the kitchen premises on **June 14, 2019**, the day before, and observed no water issues. Williams confirmed the Respondents' findings in writing. (Pa248-Pa249). The Respondents had no notifications or reports of unsafe or dangerous conditions associated with the Clubhouse kitchen on the day of the incident. Appellant cannot establish by competent evidence that the Respondents had actual or constructive notice of any unsafe or dangerous condition as required by *N.J.S.A. 59:4-3*. See also, *Norris v. Borough of Leonia*, 160 N.J. 447-48 (1999); *Maslo v. City of Jersey City*, 346 N.J. Super. 346, 348-49 (App. Div. 2002).

Appellant cannot prove constructive notice, i.e., that an alleged dangerous or unsafe condition "had existed for such a period of time and was such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous condition." *N.J.S.A. 59:4-3b*. Unsupported claims of dangerous or unsafe conditions cannot sustain a plaintiff's burden of demonstrating constructive notice. In *Carroll v. New Jersey Transit*, 366 N.J. Super. 380 (App. Div. 2004), the Plaintiff slipped on dog feces and fell down the steps. The Appellate Division found that the Plaintiff in that case did not establish actual or constructive notice under *N.J.S.A. 59:4-3*. *Id.* at 388. It noted that the record lacked any evidence of how long the substance was present. *Id.* It could have been "hours, minutes or

seconds before the accident,” which is insufficient to find constructive notice. *Id.* Moreover, the evidence did not show any prior complaints regarding the steps or even a history of similar incidents, which may indicate actual or constructive notice. *Id.* at 388-89. With the absence of such evidence, the Appellate Division did not find a genuine issue of material fact and affirmed the lower court’s award of summary judgment in the defendant’s favor. *Id.* at 389, 391.

Just as in *Carroll*, the Appellant cannot establish actual or constructive notice of an alleged dangerous condition. According to Appellant, the kitchen was well lit and that the water came from nowhere. (Pa119;VT26:18 to 20; Pa130; VT72:13 to14)

The Appellant’s assertion of an unsafe or dangerous condition, when balanced against the Respondents’ lack of prior notice, the nonexistent number of public complaints regarding similar conditions, and the non-existence of reports of similar injuries resulting from similar conditions, is wholly insufficient to demonstrate that any condition “existed for such a period of time and was such an obvious nature” that the public entity should have discovered it. *N.J.S.A.* 59:4-3b.

Moreover, Appellant cannot prove that the conduct of the Respondents was palpably unreasonable. The standard of palpable unreasonableness requires more than “ordinary negligence” and implies behavior that is patently unacceptable under any given circumstance. *Muhammad v. NJ Transit*, 176 N.J. 185, 195-96 (2003).

The doctrine of *res ipsa loquitur* does not apply. A plaintiff must go beyond a preponderance standard in demonstrating an entity's fault. *Rocco v. NJ Transit Rail Operations*, 330 N.J. Super. 320, 339-340 (App. Div. 2000).

The Respondents routinely inspected the Clubhouse and Heirloom confirmed each inspection. (Pa231 to Pa251). The County's inspection was comprehensive. It covered the banquet room, the grill room, the patio, the kitchen, the dish wash area, the storage area, hallways, foyer/entrance, men's bathroom, men's locker room, ladies' bathroom, ladies' locker room, and employee bathroom. (Pa231). The inspection also included the County-owned equipment and provided space for comments allowing for notes and observations (*Id.*) One of those inspections occurred *one day prior* to Appellant's alleged fall. (Pa248 to Pa249). On June 14th, no one advised the Respondents of any issues in the Clubhouse kitchen. (*Id.*) Messina also inspected the Clubhouse kitchen pipes every two months for at least nine years preceding Heirloom's contract and ensured the kitchen pipes operated normally. (Pa139;MT22:2 to 24)

Without notifications regarding unsafe or dangerous conditions arising from the public, other governmental entities or by its own inspections, the Respondents cannot be aware of every potential condition. As the *Pico* Court observed, governments "[w]ith [] [their] limited resources... cannot be everywhere at once." *Pico v. New Jersey*, 116 N.J. 55, 61 (1989).

dangerous condition was "palpably unreasonable." *Kolitch*, 100 N.J. at 492-93; *Lopez v. City of Elizabeth*, 245 N.J. Super. 153 (App. Div. 1991). The burden of proof with regard to palpable unreasonableness of the entity's action or inaction rests entirely on the claimant. This substantial barrier is part of plaintiffs' prima facie cause of action. *Margolis and Novack, Claims Against Public Entities* (Gann 2024), Comment to N.J.S.A. 59:4-2.

Appellant cannot produce any evidence to support a finding that the Respondents' conduct was palpably unreasonable. There is no evidence that the County had prior notices of any unsafe or dangerous conditions at the Clubhouse kitchen and failed to take proper precautions to guard against possible hazards when made aware of same. The record reflects that the Respondents timely responded when Heirloom's negligence caused the pipes to clog. (Pa140;MT29-3 to 8). This fact is undisputed. During each assessment, Messina unclogged the water pipes and uncovered that excess grease was the source of the clog that resulted in the water accumulating on the kitchen floor. (Pa144;MT44-3 to 6). Messina advised Williams and Heirloom to regularly clean the grease traps to prevent future issues. (Pa140; MT27-1 to 13). Moreover, Williams and Heirloom were contractually obligated to maintain the grease traps. (Pa10). Absent evidence to the contrary, Appellant cannot establish palpably unreasonable conduct.

maintain the grease traps. (Pa10). Absent evidence to the contrary, Appellant cannot establish palpably unreasonable conduct.

Lastly, Appellant cannot avoid the requirements of dangerous condition liability under *N.J.S.A.* 59:4-2 by merely alleging negligence. The New Jersey Supreme Court has rejected such efforts. In *Pico*, a plaintiff sustained an injury due to icy conditions on a highway. *Pico*, 116 N.J. at 58. Among other issues, the Court addressed whether an injury occurring on property should be addressed under the paradigm of *N.J.S.A.* 59:4-2 or under *N.J.S.A.* 59:2-2a, which – under circumstances where an immunity does not apply – makes a public entity vicariously liable for the negligent acts of a public employee during the course of his employment. Emphatically, the Court declared that “(P)laintiff’s claim should have been evaluated not by the standard of ordinary negligence... but by the standard of palpably unreasonable conduct of *N.J.S.A.* 59:4-2.” *Id.* at 63.

Because Appellant cannot demonstrate all of the elements necessary for dangerous condition liability, Appellant’s claims must fail.

C. **Mere Happening Of Accident Or Injury Cannot Support Finding Of Negligence.**

The mere showing of an accident which causes an injury is not alone sufficient to infer negligence. A claimant must prove some fact which is more consistent with negligence than with the absence of it. *Riley v. Weigand*, 18 N.J. Super. 66 (App.

Div. 1952); *Rivera v. Columbus Cadet Corps of America*, 59 N.J. Super. 445 (App. Div. 1960).

In the present matter, the Appellant allegedly sustained an injury that was caused by water that accumulated near the refrigerator in the Clubhouse kitchen floor. There is nothing factually to support her allegations that the Respondents were negligent in maintaining the plumbing or any other contractual responsibilities under the RFP and Agreement at the time of the incident. Quite the contrary. The uncontroverted record suggests the Respondents routinely inspected the premises. The record indicates that Snyder inspected the Clubhouse kitchen one day prior to Appellant's alleged incident. (Pa248). Appellant's key man, Williams, was present during Snyder's June 14, 2019, inspection and signed the checklist to confirm Snyder's observations and notations as was the practice between the parties. (Pa249). Neither Williams nor any Heirloom employee advised Snyder of any leaks or water issues during the inspection. (Pa248 to Pa249). Moreover, Messina routinely check the kitchen pipes every two months for nearly the past decade, and ensured that same operated properly. (Pa139;MT22-2 to 24).

Accidents happen every day. Not all of them are attributable to the negligence of a governmental entity. Although the Appellant, while serving food to concessionaire patrons, allegedly stepped in water in the kitchen and later slipped in the bar area, it was not due to any negligence on the part of the Respondents.

POINT II

HAVING PROPERLY CONSIDERED AND BALANCED THE EVIDENCE AND CORRECTLY DETERMINED THAT NO GENUINE ISSUE OF MATERIAL FACT EXISTED, THE TRIAL COURT CORRECTLY GRANTED SUMMARY JUDGMENT.

New Jersey Court Rule 4:46-2 provides that summary judgment shall be granted when 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 challenged and that the moving party is entitled to a judgment or order as a matter of law.” *Brill*, 142 N.J. at 528-529. The summary judgment procedure “pierces the allegations of the pleadings to show that the facts are otherwise than as alleged.” *Judson*, 17 N.J. at 75. It is a procedure, which protects both parties against found-less claims and frivolous defenses. This not only saves the parties time and expense, but also conserves judicial resources. *State v. South Amboy Trust Co.*, 46 N.J. Super. 497 (Law Div. 1957).

Once the movant has demonstrated that there is no genuine issue of material fact, the burden of going forward with evidence shifts to the opponent of the motion. Controverting facts must be shown, not merely representations or allegations in pleadings without affidavits or other evidentiary support. The opponent must “establish clearly the existence of a genuine issue of material fact. Failure to

discharge this duty will entitle the movant to the relief sought.” *Heljon Management Corp. v. DiLeo*, 55 N.J. Super. 306 (App. Div. 1959).

The *Brill* Court noted that the trial court’s inquiry on a motion for summary judgment 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.” *Brill*, 142 N.J. at 536. Moreover, the *Brill* Court found that the new standard applicable to motions for summary judgment requires the trial judge “to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” *Id.* at 540.

The New Jersey Supreme Court has explained the purpose of summary judgment as follows:

“[Summary Judgment] is designed to provide a prompt, businesslike and inexpensive method of disposing of any cause which a discriminating search of the merit in the pleadings, depositions and admission on file, together with the affidavits submitted on the motion clearly shows not to present any genuine issue of material fact requiring deposition at trial.”

Ledley v. William Penn Life Ins. Co., 138 N.J. 627, 641-42 (1995).

Respondents are public entities and are entitled to immunity under *N.J.S.A.* 59:4-7. The evidence adduced during pre-trial discovery offers no evidence to sustain a claim against the Respondents, let alone produce proofs that overcome the

immunity provided under Title 59. Summary judgment on behalf of the Respondents is appropriate in the present case because:


1. Liability rests solely with the commercial tenant, Heirloom Events; and
2. The Appellant has failed to establish the elements necessary to prove a prima facie case of dangerous condition liability under *N.J.S.A. 59:4-2*; and
3. The Appellant has failed to demonstrate negligent conduct on the part of the Respondents, and because the mere happening of an accident or injury is not sufficient to support a finding of negligence.

There are no facts relevant to this case from which any negligence can be attributed to the Respondents. The facts that are relevant – undisputed and uncontroverted -- support the Respondents' position that they are not liable and immune from any liability. As such, Respondents are entitled to summary judgment.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court affirm the trial court's order granting summary judgment in favor of the Respondents and the trial court's order denying reconsideration of the order granting summary judgment dated January 7, 2025.

Respectfully submitted,
PAUL R. ADEZIO
MERCER COUNTY COUNSEL

By: 
Michael Anthony Amantia
Assistant County Counsel

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

MONICA VOGEL,

Plaintiff- Appellant,

vs.

MERCER VIEW GOLF COUSE,
MERCER COUNTY PARK
COMMISSION; COUNTY OF
MERCER, STATE OF NEW JERSEY,
and JOHN DOES 1-10 OWNERS
and OPERATORS (fictitious
designations), JOHN DOE 1-10
MAINTENANCE
ENTITIES (fictitious designations), all
jointly, severally

Defendants-Respondents.

DOCKET NO.: A-001685-24T4

Civil Action

On Appeal From:

Law Division

Mercer County

Docket No.: MER-L-1194-21

Sat Below:

Hon. R. Brian McLaughlin, J.S.C.

**REPLY BRIEF SUBMITTED ON BEHALF OF PLAINTIFF/APPELLANT
MONICA VOGEL**

STARK & STARK

A Professional Corporation

By: Ksenia Cutler, Esq.

100 American Metro Boulevard

Hamilton, New Jersey 08619

kcutler@stark stark.com

Ph: (609) 896-9060

Attorneys for Plaintiff/Appellant,

MONICA VOGEL

ON THE BRIEF: Ksenia Cutler, Esq. – Attorney ID No. 410362023

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PRELIMINARY STATEMENT

Plaintiff-Appellant Monica Vogel respectfully submits this reply in further support of her appeal. The trial court erred in granting summary judgment to the County Defendants because the record contains substantial evidence creating genuine disputes of material fact as to the County's liability under N.J.S.A. 59:4-2. The evidence shows a long-standing, recurrent water pooling condition in the kitchen at the Mountain View Golf Course kitchen, the County's knowledge of and repeated involvement in addressing that condition, and a foreseeable risk of exactly the harm Ms. Vogel suffered on June 15, 2019.

Respondents' opposition largely repeats the arguments made in their brief on summary judgment, and most importantly, does not respond to arguments made in the Appellant's brief and minimizes evidence in the record that a jury could rely upon in finding that the County Defendants were negligent. Respondents ignore the evidence in which witnesses described the recurring water pooling, contemporaneous reporting to the County, and the County's own pattern of dispatching repair personnel to address the very plumbing and drainage problems at issue. Pa165 (T10:1-17); Pa193 (T23:9-21; T24:13-25:5); Pa194 (T26:24-28:7); Pa196 (T34:14-36:11); Pa201 (T54:21-55:2); Pa203 (T62:1-63:19); Pa204 (T68:4-14).

This reply will address each of the Respondents' arguments and demonstrate why the factual disputes present in this case, including notice, causation, and palpable unreasonableness, must be resolved by a jury, not on summary judgment. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995).

LEGAL ARGUMENT

I. THE COUNTY IS SOLELY RESPONSIBLE FOR THE INJURIES MS. VOGEL SUSTAINED ON JUNE 15, 2019, UNDER THE TERMS OF THE CONTRACT.

In November of 2018, Heirloom and the County of Mercer entered into a contract which contained clear and unequivocal language regarding the operation of a catering business at The Mountain View Golf Course. The terms of the contract clearly provided that the County was responsible for fixing all the issues related to the plumbing. The maintenance clause states that “Licensee (Heirloom) *will not* be responsible for the repairs to the roofs, exterior walls, electric, HVAC or **plumbing.**” Pa010.

Respondents’ reliance on Geringer and McBride is misguided. In Geringer, the terms of the lease unquestionably placed responsibility for maintenance and construction of the premises to the tenant. The court found that there was nothing in the record that suggested that, in actual practice, any employees of the landlord participated in maintaining or repairing the premises. In addition, in Geringer, the plaintiff did not offer any proof that the landlord supervised maintenance of the

premises or that the landlord's own personnel were routinely involved in maintenance and/or repairs of the premises. Therefore, there is no landlord liability when the lease unquestionably places responsibility upon the tenant. The Geringer court's decision underscores that when the contract is clear as to which party is responsible for particular maintenance on leased premises, the contract is controlling. The facts of this case merely reverse which party was made responsible for the particular maintenance under the contract. In the instant case, the terms of the contract clearly place the responsibility for plumbing maintenance on the landlord. The parties' freely negotiated contract should be honored.

As in Geringer, the facts in McBride are also distinct from the present case. The lease in McBride unambiguously placed upon the tenant exclusive responsibility for maintenance and repair of the area where the plaintiff fell. The clause stated "...the Lessee is and shall be in exclusive control and possession of the premises and the Port Authority shall not in any event be liable for any injury or damage to any property or to any person happening on or about the premises nor for any injury or damage to the premises nor to any property of the Lessee or of any other person located in or thereon." McBride, 295 N.J. Super. at 527. The court found, based on the language of the contract, that the lease, unambiguously, made employer liable, not the landlord.

It is clear that the holdings in Geringer and McBride, in fact, support Appellant's position and are in direct contradiction to the position of the County Defendants. Those Courts did not place the duty on the tenant because tenants are inherently responsible for maintenance and landlords are inherently immune from such responsibility. The Courts placed responsibility for the maintenance on the tenants because *in those particular cases the leases unambiguously placed responsibility on the tenants*. Had those leases unambiguously placed the responsibility on the landlord instead, the Courts would have found the landlord responsible. Which party was unambiguously responsible for the maintenance in the contacts at issue in Geringer and McBride is mere happenstance. The **holdings** of these cases are that the terms of the contract are controlling.

In this case, the kitchen at Mountain View had ongoing plumbing issues that existed for twenty years. The contract expressly stated that tenant, Heirloom, will not be responsible for the plumbing repairs. In addition to the clear language of the lease agreement, the record is replete with evidence that the County, by and through its action and the actions of its employees, did in fact accept the responsibility for the water leaks in the kitchen. Mr. Snyder, a County employee, testified that when he observed the water on the kitchen floor, he identified the source of the water as a drainage issue. He further clarified that it was the floor drain and that the floor drains are located throughout the kitchen. Pa153-Pa154 (T64:1-65:10); Pa156 (T74:5-8).

Furthermore, each time there was water pooling in the kitchen at Mountain View, the County sent their own repairmen to address the issue. The County accepted responsibility for the water leaks because when Heirloom would notify the County of the water issues, and the County sent their own personnel to inspect and attempt to fix the issue. Pa193 (T23:9-21; T24:13-25:5); Pa194 (T26:24-28:7); Pa196 (T34:14-36:11); Pa201 (T54:21-55:2); Pa203 (T62:1-63:19); Pa204 (T68:4-14).

Plaintiff presented significant evidence that the County was responsible, and that the County admitted its responsibility, for the plumbing at The Mountain View. Therefore, the County is liable for Ms. Vogel's injuries because it failed to repair the ongoing plumbing issues in accordance with the agreement that clearly stated its obligations.

II. PLAINTIFF ESTABLISHED ALL THE ELEMENTS OF A DANGEROUS CONDITION UNDER THE TORT CLAIM ACT.

A. The Existence of a Dangerous Condition

N.J.S.A. 59:4-1(a) defines a dangerous condition as "a condition of property that creates a substantial risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used." The record supports that recurrent water pooling in the Mountain View kitchen was a dangerous condition within the meaning of the Tort Claims Act.

County Defendants are liable for the injuries Ms. Vogel sustained on June 15, 2019, because the water pooling in the kitchen constitutes a dangerous condition that

caused her injuries. Ms. Vogel testified that the water pooling problem went on for a handful of years. She stated that even before Heirloom took over the operation in 2018, there was a concern with the water leak in the kitchen. Pa117 (T20:9-10). She testified that when she would come in in the morning there would be a wet floor so the employees would put tablecloths down to try to mop up the water so no one would fall or slip, and then they could squeegee it and try to clear the problem up until it was addressed by the County. Pa117 (T20:13-19; T21:13-20).

Witnesses described water pooling as a persistent problem predating Heirloom's tenancy and continuing for years. Ms. Hutchinson, a bartender/server at Mountain View for about 20 years, testified that she slipped and almost fell in the kitchen on multiple occasions due to the water on the floor. Pa168 (T26: 12-13); Pa169 (T27:3-4). She testified that the County was called several times to deal with it. Pa165 (T10:1-17); Pa213 (T26:16-24). Furthermore, the injury suffered by the Ms. Vogel was promptly reported, identifying the wet floor at work on June 15, 2019, as the cause. Pa186. Dr. Nolan, who performed an Independent Medical Evaluation, opined that Ms. Vogel's need for a right hip replacement was related to the slip and fall. Pa183*1.

¹ Pursuant to R. 2:6-1(a)(3) and R. 1:38-3(f)(1), confidential documents identified herein with an asterisk (“*”) — are excluded from the public Plaintiff’s Appendix and can be found in the separately filed Plaintiff’s Confidential Appendix.

This evidence exceeds the threshold to create a jury issue that a substantial slip hazard existed when the kitchen was used with due care. Furey v. County of Ocean, 273 N.J. Super. 300, 308-13 (App. Div. 1994).

B. Constructive Notice and the County's Obligations

The County had, at minimum, constructive notice of the dangerous condition. The kitchen flooding was long-standing and obvious, and the County repeatedly responded with its own repair personnel. Pa165 (T10:1-17); Pa193 (T23:9-21; T24:13-25:5); Pa194 (T26:24-28:7); Pa196 (T34:14-36:11); Pa201 (T54:21-55:2); Pa203 (T62:1-63:19); Pa204 (T68:4-14). Plaintiff's evidence further reflects that whenever water pooled, the County "came out to fix it," yet the condition recurred over many years. The incident was also reported on the day of Ms. Vogel's fall. Pa186.

Although the trial court stated there was "nothing in the motion record that really establishes that there was a recurring plumbing issue," 1T 24:12-14, Plaintiff's submission identified multiple witnesses and record citations demonstrating recurring kitchen flooding and the County's responses. Pa165; Pa193-94; Pa196; Pa201; Pa203-04. At a minimum, this evidence creates a triable fact issue on notice under N.J.S.A. 59:4-2.

C. Proximate Cause

Plaintiff presented competent evidence that the dangerous condition, water pooling, proximately caused Ms. Vogel's injuries. The Act requires a causal connection between the dangerous condition and the injury. N.J.S.A. 59:4-2. Here, witnesses tied Ms. Vogel's fall to water pooling on the kitchen floor. The incident was documented contemporaneously as occurring on a wet floor at work and medical evidence linked at least the right hip replacement to the slip and fall. Pa186; Pa177*; Pa183*.

The Respondents emphasize that the fall occurred in the bar area and contend there is no link to the kitchen pooling. The trial court's reliance on asserted distances ("approximately thirty feet") lacked support in the record, and defense counsel's similar assumption ("almost twenty feet") is not supported by the evidence in the record. 1T 20:17-18.

To the contrary, Plaintiff presented evidence that demonstrates a clear and unbroken causal chain between the dangerous condition and the injury. The water pooling created a foreseeable risk of slip-and-fall accidents, and the County's failure to address the issue was a substantial factor in causing the Plaintiff's injuries. The Respondents' assertion that proximate cause is lacking is unsupported by the record.

Viewing the facts and inferences in Plaintiff's favor, a reasonable jury could find that the kitchen pooling created a foreseeable slipping hazard that directly resulted in Ms. Vogel's fall during her work activity. The trial court made contrary inferences in favor of the moving party, the County Defendants, which led it to determine there was no genuine dispute of fact in this issue and to find against the non-moving party, Plaintiff Vogel. This is in direct contradiction to the standard for summary judgment set forth in Brill which specifically provides that all inferences must be made in favor of the non-moving party.

D. Palpably Unreasonable Conduct

The County's inaction in addressing the water pooling issue constitutes palpably unreasonable conduct. Plaintiff's presented evidence which shows: (1) a recurrent water pooling problem over many years; (2) repeated County interventions that did not permanently resolve the hazard; and (3) a foreseeable risk of serious injury from standing water on a kitchen floor. Pa165; Pa193-94; Pa196; Pa201; Pa203-04.

Despite having notice of the recurring problem for decades, the County failed to implement a permanent solution. Temporary repairs were ineffective, and the dangerous condition persisted, creating a substantial risk of harm to individuals using the property. Under New Jersey law, palpably unreasonable conduct is behavior that is manifestly without any reasonable basis. The County's repeated

failure to remedy a known hazard meets this standard, as it reflects a disregard for public safety and a failure to fulfill its duty to maintain safe conditions on its property.

Given those facts, a jury could find that the County's piecemeal, ineffective responses over an extended period fell far below what was reasonable under the circumstances. Therefore, in this case, the record presents a triable issue as to whether the County's failure to protect against the known condition was palpably unreasonable. N.J.S.A. 59:4-2.

III. THE COUNTY DEFENDANTS ARE LIABLE FOR THE INJURIES MS. VOGEL SUFFERED ON JUNE 15, 2019

Plaintiff presented evidence that the County retained and exercised control over plumbing and drainage work in the clubhouse and repeatedly dispatched the County repair people to address the very condition at issue, water pooling. Plaintiff presented substantial evidence supporting both control and notice. Pa165; Pa193-94; Pa196; Pa201; Pa203-04. Moreover, the County was contractually obligated to maintain plumbing and admitted that responsibility. The County retained control over the drainage and repeatedly addressed the plumbing condition that caused the injury.

CONCLUSION

The trial court's October 23, 2024 order granting summary judgment order in favor of Respondents should be reversed. Plaintiff presented evidence of chronic water pooling, contemporaneous reporting, the County's repeated repair responses, foreseeable risk of harm and medical causation. This evidence creates genuine disputes of material fact on all elements required by N.J.S.A. 59:4-2, including dangerous condition, notice, proximate cause, and palpable unreasonableness. Under Brill, those disputes must be resolved by a jury. Plaintiff-Appellant respectfully requests reversal and remand for trial.

Respectfully submitted,

STARK & STARK
A Professional Corporation

Dated: October 20, 2025

By: /s/ Ksenia Cutler
KSENIA CUTLER, ESQUIRE