SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2842-16T2

ENRICO ANDRICOLA,

Plaintiff-Appellant,

v.

KENNEDY UNIVERSITY HOSPITAL, INC. and SODEXO, INC.,

Defendants-Respondents.

Submitted April 9, 2018 - Decided May 16, 2018

Before Judges Accurso and Vernoia.

On appeal from Superior Court of New Jersey, Law Division, Camden County, Docket No. L-0964-14.

Spear, Greenfield, Richman & Weitz, PC, attorneys for appellant (Marc F. Greenfield and Jeremy M. Weitz, on the brief).

Parker McCay, PA, attorneys for respondent Kennedy University Hospital, Inc. (Thomas M. Walsh and Andrew S. Winegar, of counsel; Kathryn A. Somerset, on the brief).

Ahmuty, Demers & McManus, attorneys for respondent Sodexo, Inc. (Glenn A. Kaminska, on the brief).

PER CURIAM

Plaintiff Enrico Andricola appeals from a summary judgment dismissing his premises liability complaint against defendant Kennedy University Hospital, Inc. and its cafeteria manager Sodexo, Inc. We affirm.

Viewed in the light most favorable to plaintiff, the facts are as follows. While visiting the Hospital's cafeteria for lunch, as he did a couple of times a week, plaintiff slipped and almost fell on some sort of clear slippery substance as he walked with his tray to a table after paying for his food. He did not see a puddle on the smooth, hard floor and thought the substance more likely grease or wax than a liquid. Although he limped to a table and began eating his lunch, the pain in his ankle did not permit him to finish it.

Plaintiff reported the accident to hospital personnel, who took a report and arranged for him to be examined in the Hospital's emergency room. He did not go back to see what caused him to fall and did not notice if any of the substance stuck to his shoe. No one apparently witnessed the accident or saw anything on the floor. Plaintiff testified at deposition he did not fall near the soda machines.

Representatives of the Hospital testified at deposition the cafeteria maintains daily cleaning schedules and that dietary staff, the employees on the cafeteria line and cashiers, are

trained to immediately clean up any spills. In addition, employees are trained they must put out wet floor signs, which are stored in three different areas for ready access, to alert patrons to a spill or clean up.

Following discovery, defendants moved for summary judgment, contending plaintiff failed to carry his burden to show they had actual or constructive notice of the clear substance on the floor and was not entitled to rely on the mode of operation doctrine to relieve him of that showing. See Prioleau v. Kentucky Fried Chicken, Inc., 223 N.J. 245, 260-63 (2015) (explaining the mode of operation rule). Specifically, defendants argued plaintiff's inability to offer any specifics about the substance on which he slipped left him unable to show it "was related to a product sold or procured in the cafeteria." Plaintiff contended he was entitled to a mode of operation charge at trial because it was "clearly foreseeable and known that customers of [the Hospital's] cafeteria would bring food and/or drink into the area where Plaintiff fell, as they had to pay Defendants for said food and drink in that very area."

After hearing argument, Judge Kassel granted the motions. Noting plaintiff's testimony that he slipped while walking from the cashier to his table and could not say what it was he

slipped on, the judge concluded plaintiff's evidence was simply too speculative to permit a mode of operation charge.

On appeal, plaintiff reprises the arguments he made to the trial court and contends material disputed facts precluded entry of summary judgment. We disagree.

As the Supreme Court explained in Prioleau, not every plaintiff slipping in a self-service restaurant is entitled to a mode of operation charge. 223 N.J. at 264-65. To be entitled to the rebuttable inference of the defendant's negligence a mode of operation charge provides, a plaintiff must establish "a nexus between self-service components of the defendant's business and a risk of injury in the area where the accident occurred." Id. at 258, 262.

Although plaintiff slipped in an area that might reasonably be affected by the cafeteria's self-service operation, between the cashier and tables provided for patrons, his inability to do more than guess at the substance he slipped on prevented him from establishing a factual nexus between that operation and the dangerous condition. See Walker v. Costco Wholesale Warehouse, 445 N.J. Super. 111, 126 (finding the evidence provided a plausible basis to believe the white "yogurt-like" substance on which plaintiff slipped could have been cheesecake offered as a free sample in the store).

Plaintiff testified at his deposition the substance was either "some type of a wax build-up" or "some type of grease and it was clear." As "wax build-up" on a vinyl floor could as easily occur in a full-service restaurant as a self-service cafeteria, plaintiff cannot establish the dangerous condition bore any relationship to defendants' self-service method of business. See Prioleau, 223 N.J. at 264 (noting the absence of any evidence to establish that the location of the plaintiff's accident was related to a self-service component of the defendant's business). Accordingly, we agree with Judge Kassel that plaintiff's inability to identify the substance on which he slipped rendered his proofs too speculative to permit a mode of operation charge.

Plaintiff's remaining arguments, that factual determinations as to the nature of the substance and how long it had been on the floor precluded summary judgment, and that the evidence supported defendants' constructive notice of the dangerous condition, are without sufficient merit to warrant discussion in a written opinion. See R. 2:11-3(e)(1)(E).

Affirmed.