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

LUIS AMOROCHO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	15 L 5130
	)	
SUPERVALU INC., d/b/a JEWEL-OSCO, JEWEL FOOD STORES, INC., d/b/a JEWEL-OSCO, and ALBERTSON'S, LLC, d/b/a JEWEL-OSCO,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER ON DEFENDANT JEWEL FOOD STORES, INC.'S MOTION FOR SUMMARY JUDGMENT

I. FACTUAL BACKGROUND

The Plaintiff filed a six-count complaint against the Defendants seeking damage for injuries he sustained when he slipped and fell in the receiving area of a Jewel Store while he was making a delivery, on May 23, 2013. It is alleged that the Defendants were negligent in allowing a strawberry to be and remain on the floor, causing the Plaintiff to slip and fall.

In the motion, the Defendant points out that as there is no evidence that a Jewel employee caused the strawberry to be on the floor as opposed to a third-party. It points out that the Plaintiff testified that there was one, smashed strawberry located next to the pallet off of the walking path, and that he could not identify the source of the strawberry. It also points out that the evidence shows that produce, such as strawberries, are neither delivered nor discarded to that area of the store, those items having their own receiving area at the other end of the store. Thus, the Defendant contends that it is more likely that a third-party vendor dropped the strawberry, rather than a store employee, and as such, the Plaintiff must

prove notice. The Defendant maintains, however, that there is no evidence of notice. It contends that prior to the incident, Jewel receivers were there keeping the area clean and organized, and they testified that there was neither a strawberry nor a red smear on the floor. The receiving employees testified that the path was clear and open, which was admitted to by the Plaintiff, and no one saw anything on the floor until after the incident when they saw a read streak on the floor next to the Plaintiff. In addition, the Defendant points out that the Plaintiff admitted that his own improper actions is straying from the clear path to step over the pallet was the cause of his accident.

In response, the Plaintiff points out that the receiving area is not accessible to customers, and none of the third-party vendors are fresh produce vendors. Thus, he maintains that a jury could reasonably find that the strawberry was caused to be there by the negligence of a Jewel employee, either by allowing a fresh produce vendor to enter or by an employee placing or dropping the strawberry there. He argues that the presence of the strawberry is itself evidence of negligence. Further, he contends that as such, notice is not required, but even if it was, constructive notice is a question of fact. He points out that the amount of time that the Jewel receivers spent cleaning and checking the floors, the strawberry should have been discovered. He also contends that they would have discovered the strawberry had they moved the pallet and placed out of the way near the wall, rather than in the middle of the room right next to the path, which the evidence shows was Jewel's usual policy with regard to pallets. In addition, the Plaintiff contends that while he characterized his misstep in walking over the pallet as imprudent, he did not admit any guilt or causation. He notes that had the pallet not been in his path, he would not have had to step over it.

The Court has read the motion, response, and reply, as well as, all of the supporting materials tendered therewith.

II. COURT'S DISCUSSION AND RULING

The evidence here shows that produce was not stored in or received through the receiving area of the store where the Plaintiff was making his delivery. However, it was an area where many third-party vendors walked through to make other deliveries, including deli items, salads, sandwiches, and other items. Thus, it has not been shown that it is more likely that the strawberry was dropped there by an employee rather than a vendor, and notice must be shown. With regard to notice, the Plaintiff does not know how long the strawberry was there, and he had only been in the area a few minutes prior to the fall. Prior to his delivery, there had been other deliveries by other vendors. Further, the Jewel employees working in the receiving area constantly checked the area and cleaned it so it would remain free of debris, with one employee, Joan Offutt, testifying that she walked the area 10 times each hour to check it. Despite constant checking of the area, neither she nor any of the Jewel employees saw anything on the floor prior to the Plaintiff's fall. Furthermore, there is no evidence that the strawberry was conspicuous such that it should have been seen.

Plaintiff's reliance on Burke v. Grillo, 227 Ill. App.3d 9 (2nd Dist., 1992), provides no support for his position. There, the complained of defect was described as a hole 2 and ½ feet long, 8 inches wide, and 4 inches deep, as well as there for over 1 and ½ years, but the court still found that there was no constructive notice. Burke, at 18. The court there held that the plaintiff hadn't shown that the hole was conspicuous, noting that the affiants did not see the hole and the plaintiff did not notice it prior to the fall. Id. Here, the strawberry was

located on the side of a wooden pallet and the Plaintiff did not notice it until after he fell, nor did any of the Jewel employees working in the area see it. Thus, the complained of condition here was not so conspicuous that the Defendant should have discovered it through the exercise of reasonable care. As such, there is no evidence of constructive notice.

The Plaintiff suggests that if the pallet had not been there, the employees would have discovered the strawberry. However, the pallet is not alleged to have been the dangerous condition which caused the Plaintiff's fall. Further, the Plaintiff testified that the path was clear and wide enough for him to push his cart of boxes through, but that he decided to step to the side of the cart and step over the pallet to move more quickly. His decision to do so and its relation to the causation of his fall would be relevant only to the issue of contributory negligence. However, the pallet was not the dangerous condition and did not block his path. Accordingly, as there is no constructive notice, summary judgment in favor of the Defendant is warranted.

Based on the foregoing, Defendant Jewel Food Store's Motion for Summary Judgment is granted.

ENTER

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KATHY M. FLANAGAN #267

Judge Kathy M. Flanagan