

2005 Mass. Super. LEXIS 578,*

Juanita Newton Pruner v. CVS Pharmacy, Inc. et al.

Opinion No.: 91225, Docket Number: 03-234

SUPERIOR COURT OF MASSACHUSETTS, AT HAMPSHIRE

June 27, 2005, Decided

JUDGES: [*1] C. Brian McDonald, Justice of the Superior Court.

OPINION BY: C. Brian McDonald

OPINION

ORDER

As the plaintiff has no evidence that the ice she slipped on was an unnatural accumulation, notwithstanding the repetitious assertion in her papers that the defendants "created" the ice condition; as the plaintiff has no evidence regarding the duration the ice was present prior to her fall, except that it was present when she entered the store; as the descriptions of the ice by the plaintiff, the eyewitness, and the store manager are consistent that the ice bore no signs of the passage of appreciable time; as the plaintiff has no evidence that the passage of time altered the condition of the ice; as the plaintiff has no evidence that any act or failure to act on the part of the defendants changed the condition of the ice; as the plaintiff had entered the defendant's store by the same route as her exit and had done so without any trouble, although she saw the presence of ice; as the defendants had no duty to warn the plaintiff of a condition she was aware of; as the plaintiff has no evidence that negligence of the defendants caused her to slip on the ice; as the snow and ice removal and treatment [*2] policies of the defendant CVS do not create a duty to the plaintiff where none otherwise exists, *Goulart v. Canton Housing Authority*, 57 Mass.App.Ct. 440, 444-45, 783 N.E.2d 864 (2003); as "It is common knowledge that in this climate . . . a number of conditions might exist which, within a very short time, could cause the formation of ice . . . without fault of the owner and without reasonable opportunity on his part to remove it or warn against it, or even ascertain its presence[.]" *Aylward v. McCloskey*, 412 Mass. 77, 80-81, 587 N.E.2d 228 (1992); as there are no genuine disputes of material fact; and as the defendants have demonstrated that the plaintiff will be unable to prove her claim as "no rational view of the evidence permits a finding of negligence," *Goulart v. Canton Housing Authority*, 57 Mass.App.Ct. at 441, the Defendants' Motion for Summary Judgment is ALLOWED and the Plaintiff's Motion for Partial Summary Judgment to Resolve Liability is DENIED.

C. Brian McDonald

Justice of the Superior Court

June 27, 2005