IN THE SUPREME COURT OF GUAM

YOUNG JA GUERRERO,

Plaintiff-Appellant,

vs.

McDONALD'S INTERNATIONAL PROPERTY COMPANY, LTD., and AMERICAN HOME ASSURANCE COMPANY,

Defendants-Appellees.

Supreme Court Case No.: CVA04-029
Superior Court Case No.: CV1643-00

OPINION

Filed: March 8, 2006

Cite as: 2006 Guam 2

Appeal from the Superior Court of Guam
Argued and submitted on May 19, 2005
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice, ROBERT J. TORRES, JR., Associate Justice.

TYDINGCO-GATEWOOD, J.:

[1] Appellant Young Ja Guerrero appeals from the trial court's grant of summary judgment in a slip and fall case in favor of Appellee McDonald's Corporation. The trial court held that mere proof of a fall, and proof of a foreign substance on the floor, were insufficient to show that McDonald's caused the dangerous condition, or had actual or constructive knowledge of the dangerous substance on the floor, such that it breached its duty of reasonable care. We agree with the conclusion of the trial court and affirm.

I.

[2] On January 2, 2000, sometime between 2:00 p.m. and 3:15 p.m., Guerrero and her family were eating at the Tamuning McDonald's. As she was exiting the restaurant, she slipped on a substance and fell. The apparent location of the slip is variously described as "[a]s she was walking out," or as she "was exiting the door." Appellant's Brief, at 11-12, 13 (Feb. 15, 2005). McDonald's, on the other hand, first states that Guerrero "inexplicably fell outside McDonald's," Appellee's Brief, at 6 (Mar. 18, 2005), but later states she fell "upon exiting the Tamuning McDonald's." Appellee's Brief, at 8 (Mar. 18, 2005). She is permanently injured as a result of the fall.

[3] In discovery, deposition testimony was taken from Guerrero that she slipped on something. In an affidavit, she said that she "slipped and fell on a foreign substance left on the floor." Plaintiff Appellant's Excerpts of Record ("ER") Vol. II, Tab 10 (Guerrero Dep.). Depositions of the family members who were accompanying her showed that Guerrero's relative Im Hwa Ja had seen a substance on the floor. Ja had also seen Guerrero slip, and after Guerrero was taken to the hospital, went back to the place where Guerrero fell. She noticed that the foreign substance she saw earlier was still there. She then touched it with her finger and then licked her finger and described it as

"sweet." Appellant's ER, Vol. II, Tab 8 (Im Hwa Ja Aff.). The other evidence that there was a substance on the floor is from Guerrero herself, in stating that she saw a substance on the floor and she slipped on "a foreign substance." Appellant's ER, Vol. II, Tab 10 (Guerrero Aff.).

[4] McDonald's and its insurer, American Home Assurance Company (collectively referred to as "McDonald's"), moved for summary judgment after having taken depositions, on the basis that nothing in the testimony so far could result in McDonald's being liable for any damages suffered by Guerrero as a result of the slip-and-fall.

[5] In ruling on the McDonald's motion for summary judgment, the trial court applied a standard of care from a 1950 California appellate case, *Vaughn v. Montgomery Ward & Co.*, 213 P.2d 417, 419 (Cal. Dist. Ct. App. 1950), which held that the premises owner owed a duty to his business guest of exercising reasonable and ordinary care to keep the premises in a reasonably safe condition. On the basis of the deposition testimony and other materials presented on summary judgment, the trial court found "no evidence that McDonald's caused or had notice of the defective condition of the floor . . . . Where the landowner has no actual or constructive knowledge of the condition, courts have held that no liability can attach." Appellant's ER, Vol. II, Tab 17 (Decision and Order). The trial court granted summary judgment in favor of McDonald's. Guerrero's appeal followed.

II.

[6] We have jurisdiction over this appeal from a final judgment pursuant to 48 U.S.C. § 1424-1(a)(2) (Westlaw through P.L. 109-169 (2006)), and Title 7 GCA §§ 3107(b) and 3108(b) (2005).

III.

[7] A trial court's decision granting a motion for summary judgment is reviewed *de novo*. *Bank of Guam v. Flores*, 2004 Guam 25 ¶ 7. The court may grant summary judgment pursuant to Rule

56 of the Guam Rules of Civil Procedure 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 and that the moving party is entitled to a judgment as a matter of law." Guam R. Civ. P. 56.

IV.

A. Negligence and Premises Liability

[8] In our *de novo* review, we must determine whether the trial court properly determined that McDonald's was entitled to judgment as a matter of law.

[9] In a case for negligence, the establishment of tort liability requires the existence of a duty, the breach of such duty, causation and damages. *Leon Guerrero v. DLB Constr. Co.*, 1999 Guam 9 ¶ 14 (citing Restatement (Second) Torts §§ 281, 282 (1988)). In the instant case, the trial court found no evidence that McDonald's had caused the defective condition, or had notice of the defective condition on the floor such that it breached its duty of reasonable care.

[10] A property owner's duty is found under Guam law, which provides: "Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully brought the injury upon himself." Title 18 GCA § 90107 (2005). This court has previously recognized this as the standard of care on Guam with respect to an owner's management of its property. *See Nissan Motor Corp. v. Sea Star Group Inc.*, 2002 Guam 5 ¶ 11. In *Nissan*, we stated that "every landowner owes a duty to exercise reasonable care in the management of his property." *Id.* We now extend this same standard of care, initially enunciated in *Nissan*, to slip and fall cases on Guam, and examine how this standard of care is implicated in summary judgment motions.

1. Actual or Constructive Knowledge

[11] Title 18 GCA § 90107 finds its source in section 1714 of the California Civil Code. *See* Cal. Civ. Code § 1714 (Westlaw through Chap. 9 of 2006 Urgency Legislation). For this reason, and because Guam's statutory language is identical to California's, we look to California case law interpreting the standard of care owed by a store owner to its invitees. This is because "[g]enerally, when a legislature adopts a statute which is identical or similar to one in effect in another jurisdiction, it is presumed that the adopting jurisdiction applies the construction placed on the statute by the originating jurisdiction." *Sumitomo Constr., Co.. v. Zhong Ye, Inc*, 1997 Guam 8 ¶ 7 (citing Sutherland's Stat. Const. §§ 52.01 (5th Ed)). Thus, "we look to the substantial precedent developed within that state to assist in interpreting parallel Guam provisions." *O'Mara v. Hechanova,* 2001 Guam 13 ¶ 8 n.1 (observing that where a Guam provision is derived from California, "California case law on this issue is persuasive when there is no compelling reason to deviate from California's interpretation.") (citing *Fajardo v. Liberty House Guam*, 2000 Guam 4 ¶ 17).

[12] Section 1714 of the California Civil Code is applied today in California cases involving premises liability; *see Krupnick v. Hartford Accident & Indem. Co.*, 34 Cal. Rptr. 2d 39, 48 (Ct. App. 1994) ("section 1714, subdivision (a) of the Civil Code . . . mandate[s] . . . [property owners] to act with ordinary care and skill in the management of one's property and person."). The duty owed – or standard of care which must be provided by a premises owner – is the same "reasonable person" standard. That is, "[t]he proper test to be applied to the liability of the possessor of land in accordance with section 1714 of the Civil Code is whether in the management of his property he has acted as a reasonable man in view of the probability of injury to others . . . ." *Carlson v. Ross*, 76 Cal. Rptr. 209, 211 (Ct. App. 1969) (quoting *Rowland v. Christian*, 443 P.2d 561, 568 (Cal. 1968)); *see also Hatfield v. Levy Bros.*, 117 P.2d 841, 845 (Cal. 1941) ("[N]egligence in such cases is

founded upon [the store owner's] failure to exercise ordinary care in remedying the defect after he has discovered it or as a man of ordinary prudence should have discovered it.").

[13] In particular, and with respect to store owner liability for dangerous conditions such as a slippery substance found on the floor, "[i]t is well established in California that although a store owner is not an insurer of the safety of its patrons, the owner does owe them a duty to exercise reasonable care in keeping the premises reasonably safe." *Ortega v. Kmart Corp*., 36 P.3d 11, 14 (Cal. 2001). Ordinary, or reasonable care, is exercised by a store owner "by making reasonable inspections of the portions of the premises open to patrons, and the care required is commensurate with the risks involved." *Id.* at 15.

[14] To establish liability under California law, the store owner's "actual or constructive knowledge of a dangerous condition is [] key . . . ." *Id.* This conclusion underscores the principle with which we concur – that a store owner "is not the insurer of the visitor's personal safety." *Id.* Such principle was recognized in earlier California cases, including the case relied upon by the trial court, *Vaughn*, where the California appellate court recognized that the premises owner owes a duty to reasonably keep the premises safe, but is not expected to insure the constant safety of the invitee, because "[n]o inference of negligence arises based simply upon proof of a fall upon the owner's floor." *Vaughn*, 213 P.2d at 419. The Supreme Court of California has held:

> Although the owner's lack of knowledge is not a defense, "[t]o impose liability for injuries suffered by an invitee due to [a] defective condition of the premises, the owner or occupier must have either actual or constructive knowledge of the dangerous condition or have been able by the exercise of ordinary care to discover the condition, which if known to him, he should realize as involving an unreasonable risk to invitees on his premises . . . ."

Ortega, 36 P.3d at 15 (quoting *Girvetz v. Boys' Market*, 206 P.2d 6, 8 (Cal. Dist. Ct. App. 1949) (internal quotation marks omitted); *see also* Donald M. Zupanec, Annotation, *Store or Business Premises Slip-and-Fall: Modern Status of Rules Requiring Showing of Notice of Proprietor of Transitory Interior Condition Allegedly Causing Plaintiff's Fall*, 85 A.L.R.3d 1000 (1978)

("[H]istorically . . . the mere existence of a defective condition in a store or public place or business does not, as a matter of law, render the proprietor liable for an injury caused by the defective condition unless the proprietor knew, or in the exercise of reasonable care ought to have known, of the defect."); Restatement (Second) of Torts § 343 (1965) (similarly providing that a business owner is liable for injuries to invitees caused by a condition the possessor "knows or by the exercise of reasonable care would discover.").

2. When Constructive Knowledge may be Inferred

[15] Under specific circumstances California law allows the injured invitee to meet his or her burden of proof with respect to the constructive knowledge requirement, through inferences. *Bridgman v. Safeway Stores, Inc.*, 348 P.2d 696 (Cal. 1960). In *Bridgman*, the court stated that, "evidence that an inspection had not been made within a particular [period of] time prior to an accident may warrant an inference that the defective condition existed long enough so that a person exercising reasonable care would have discovered it." *Id.* at 698. *Bridgman* thus allows a plaintiff to prove the existence of constructive knowledge through inference, established by proof of insufficient inspections. Thus, "[w]here . . . the owner operates his store on a self-service plan, . . . the exercise of ordinary care may require the owner to take greater precautions and make more frequent inspections than would otherwise be needed . . . . " *Id.*

[16] The requirement of actual or constructive knowledge on the part of the premises owner "is merely a means of applying the general rule stated above that the proprietor may be liable if he knew or by the exercise of reasonable care could have discovered the dangerous condition, and it does not alter the basic duty to use ordinary care under all the circumstances." *Id.*

[17] The concept of inferring constructive knowledge, or some hybrid of the concept, became recognized as the "mode of operation" approach to premises slip-and-fall liability. In some states, the plaintiff is not required to prove notice "if the proprietor could reasonably anticipate that

hazardous conditions would regularly arise," thus freeing the plaintiff "from the burden of discovering and proving a third person's actions." *Jackson v. K-Mart Corp.*, 840 P.2d 463, 469 (Kan. 1992).

[18] In other states, the "mode-of-operation" approach was expanded even further, such that the approach resulted in strict liability on the part of some store owners. An example of this mode-of-operation strict liability case is found in *Jasko v. F.W. Woolworth Co.*, 494 P.2d 839, 840 (Colo. 1972), which held that "when the operating methods of a proprietor are such that dangerous conditions are continuous or easily foreseeable, the logical basis for the notice requirement dissolves. Then, actual or constructive notice of the specific condition need not be proved." (Citing *Bozza v. Vornado, Inc.*, 200 A.2d 777 (N.J. 1964)). As well, *Ciminski v. Finn Corp.*, 537 P.2d 850, 853 (Wash. Ct. App. 1975) held that "[a]n owner of a self-service operation has actual notice of these problems. In choosing a self-service method of providing items, he is charged with the knowledge of the foreseeable risks inherent in such a mode of operation."[1] Some cases have held that the existence of a spill and a fall automatically rendered the store owner liable. *See* Steven D. Winegar, Comment, *Reapportioning the Burden of Uncertainty: Storekeeper Liability in the Self-Service Slip-and-Fall Case*, 41 UCLA L. Rev. 861 (1994).

[19] Despite the trend in other jurisdictions toward the mode-of-operation approach, the current state of the law in California has rejected the principle which could result in strict liability on the part of the owner. The holdings of both *Vaughn* and *Bridgman* have been recently reaffirmed in *Ortega v. Kmart Corp.*, 36 P.3d 11 (Cal. Dist. Ct. App. 2001), where the California Supreme Court

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[1] The later Washington case of *Ingersoll v. DeBartolo, Inc.*, 869 P.2d 1014, 1016 (Wash 1994) reined in the widening tendency in Washington to find liability without showing notice. The court in *Ingersoll* stated, "the requirement of showing notice will be eliminated only if the particular self-service operation of the defendant is shown to be such that the existence of unsafe conditions is reasonably foreseeable." The exception was further limited in the later case of *Carlyle v. Safeway Stores, Inc.,* 896 P.2d 750 (Ct. App. Wash. 1995), which held that a plaintiff who slips and falls in a grocery store cannot survive summary judgment by merely raising the inference that the substance causing her fall came from within the store; rather, the plaintiff must show that such spills were foreseeable in the specific area where she fell.

acknowledged that proprietors of self-service operations must exercise greater precautions because of the inherent risks, requiring frequent inspections, citing *Bridgman v. Safeway Stores, Inc.*, 348 P.2d 696 and *Louie v. Hagstrom's Food Stores*, 184 P.2d 708 (Cal. Dist. Ct. App. 1947). The *Ortega* case re-articulated the California rule for slip-and-fall cases in self-service establishments: "The cases require that an owner must have actual or constructive notice of the dangerous condition before incurring liability" and that "[t]he plaintiff has the burden to prove the owner had actual or constructive notice of the defect in sufficient time to correct it." *Ortega,* 36 P.3d at 13 (citations omitted); *see also Moore v. Wal-Mart Stores, Inc.*, 3 Cal. Rptr. 3d 813 (Ct. App. 2003) (a more recent application of the *Ortega* test to a slip-and-fall case).

[20] We find no compelling reason to deviate from the California authority, from which Guam's statutory provisions regarding the duty of care owed by a property owner to his or her invitees, finds its source. We therefore reject the mode-of-operation approach taken by various jurisdictions, which holds a store owner strictly liable for injuries caused in factual circumstances similar to the case at bar. In particular, a review of the various jurisdictions adopting such doctrine illustrates that "[c]ourts adopting mode-of-operation rules have attempted to cut the Gordian knot by eliminating the requirement [of knowledge], but as a result they have created ambiguous rules that may be construed as imposing strict liability." Winegar, 41 UCLA L. Rev. at 902.

[21] We agree instead with the policy underlying the requirement that the plaintiff prove either that the property owner caused the dangerous condition, or had actual or constructive knowledge of such condition. "The knowledge requirement serves an important function because it ensures that a court will find a causal connection between the storekeeper's negligence and the patron's injury. In this way, the requirement protects storekeepers from unwarranted liability." *Id.* "Without this knowledge requirement, certain store owners would essentially incur strict liability for slip-and-fall injuries, i.e., they would be insurers of the safety of their patrons." *Moore*, 3 Cal. Rptr. at 818. The

court in *Moore* uses the following example to illustrate its point: "[W]hether the french fry was dropped 10 seconds or 10 hours before the accident would be of no consequence to the liability finding," a ruling that the *Moore* court held was simply "not . . . prudent." *Id.* We concur.

[22] In following California's interpretation of a premise owner's duty to an invitee under section 1714, we acknowledge that a balance is necessary. On the one hand, the plaintiff cannot be burdened with having to show the defendant's subjective knowledge of a dangerous condition. This is virtually impossible, because then a store owner need simply disavow knowledge of the dangerous condition, and he avoids all liability. This is why many jurisdictions have broadened traditional premises liability either, as under *Bridgman*, to encompass constructive notice by showing a failure to inspect, or as in more expansive jurisdictions, adopting the burden-shifting approach. Yet on the other hand, a store owner must also be able to show that he did all that he could to prevent injury. A store owner should make reasonably frequent inspections, and efforts of the store owners who do so should be recognized by our jurisprudence. But if a store owner is responsible for every slip-and-fall regardless of that store owner's inspection schedule, there would be no point in continuing a schedule of periodic inspections. This is an equally undesirable result for public policy reasons. The standard enunciated in *Ortega* is an acknowledgment of the balance required between these two competing results.

[23] We therefore decline to deviate from a negligence-based rule of liability in self-service slip and fall cases. We follow the principle first enunciated in *Nissan Motor Corp.*, 2002 Guam 5, that a property owner must exercise reasonable care in the management of his property in view of the probability of injury to others, and we hold specifically that in order to be liable for injury caused by a harmful or dangerous condition on a property, there must be negligence on the part of the property owner itself. The owner must have caused the condition, or have actual or constructive knowledge of the existence of the condition in sufficient time to correct it. This holding preserves

our adherence to the rule that a business should not be strictly liable for all accidents caused on its premises. A plaintiff may demonstrate the necessary constructive knowledge of the dangerous condition if it is established that the property had not been inspected within a reasonable period of time so that a person exercising due care would have discovered and corrected the hazard.[2] Moreover, an inference may arise where the plaintiff alleges an owner's failure to inspect the premises within a reasonable period of time – "an inference that the condition was on the floor long enough to give the owner the opportunity to discover and remedy it."[3] *Ortega*, 36 P.3d at 13.

B. Summary Judgment Standard

[24] "If the movant can demonstrate that there are no genuine issues of material fact, the non-movant cannot merely rely on allegations contained in the complaint, but must produce at least some

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[2] We are aware that some jurisdictions have adopted the approach discussed in Steven D. Winegar, Comment, *Reapportioning the Burden of Uncertainty: Storekeeper Liability in the Self-Service Slip-and-Fall Case*, 41 UCLA L. Rev. 861 (1994), where the plaintiff is given the benefit of a presumption: Once the plaintiff alleges a *prima facie* case of a slip on a substance that has been left on the defendant's floor due to the knowledge or way of doing business of the defendant, the trier of fact would be instructed that the presumption arises, that the defendant had actual or constructive knowledge of the hazard and failed to exercise reasonable care to eliminate it. *Id.* at 901.

The Supreme Court of Kentucky has adopted what is called the "burden-shifting"approach. In *Lanier v. Wal-Mart Stores, Inc.*, 99 S.W.3d 431 (Ky. 2003), the Kentucky Supreme Court adopted the rule that imposes a rebuttable presumption that "shifts the burden of proving negligence, i.e., the exercise of reasonable care, to the party who invited the injured customer to its business premises." *Id.* at 437. The Florida Supreme Court in *Owens v. Publix Supermarkets, Inc.*, 802 So. 2d 315 (Fla. 2001), adopted the presumption: "[W]e hold that . . . the existence of that unsafe condition creates a rebuttable presumption that the premises owner did not maintain the premises in a reasonably safe condition." *Id.* at 331.

This approach has not been embraced by California in interpreting its § 1714 duties to invitees. *See Ortega*, 36 P.3d at 13, where the California Supreme Court stated that an inference of negligence is permitted when there is evidence of an owner's failure to inspect, but not a presumption. We do not herein address whether it may be appropriate to adopt a rebuttable presumption of negligence because in this case, Guerrero's pleading did not contain the elements of a prima facie case. So neither an inference nor a presumption would arise; *see* subpart (B), "Summary Judgment Standard," *infra*. Because we conclude that Guerrero did not even meet the threshold requirements for a *prima facie* case of negligence against McDonald's, it is premature to discuss the nature of any inference or presumption which may arise if plaintiff had met the elements of a *prima facie* case.

[3] The *Ortega* court distinguishes the inference it allows from the presumption used in other cases; noting that an inference is a deduction while a presumption is "an assumption of fact that the law requires to be made from another . . . group of facts. . ." *Ortega*, 36 P.3d at 13, n.1. Guam law has the same statutory distinctions. Title 6 GCA § 5102 (2005) states: "An inference is a deduction which the reason of the judge or jury makes from the facts proved, without an express direction of law to that effect." Title 6 GCA § 5103 (2005) defines presumption: "A presumption is a deduction which the law expressly directs to be made from particular facts."

significant probative evidence tending to support the complaint." *Taijeron v. Kim*, 1999 Guam 16 ¶ 8 (citing *Iizuka Corp. v. Kawasho Int'l,* 1997 Guam 10 ¶ 7). Moreover:

> The party opposing the summary judgment cannot rely on its pleadings, but must make an independent showing by a proper declaration or by reference to a deposition or another discovery product that there is sufficient proof of the matters alleged to raise a triable question of fact if the moving party's evidence, standing alone, is sufficient to entitle the party to judgment.

Buehler v. Alpha Beta Co., 274 Cal. Rptr. 14, 15 (Ct. App. 1990). In addition, the court must view the evidence and draw inferences in the light most favorable to the non-moving party. *Manvil Corp. v. E.C. Gozum & Co.,* 1998 Guam 20 ¶ 6.

[25] Because the movant must demonstrate that there are no issues of material fact, in support of its motion for summary judgment, McDonald's submitted an affidavit of its employee, Ms. Merilyn Santos. She stated that she was the Floor/Shift Manager on duty that day, and stated that there was an inspection of the floor of the restaurant every thirty minutes, including the area where plaintiff fell. She further stated that the McDonald's floor was inspected at 3:00 p.m. the day of the injury, which was fifteen minutes before the fall and was inspected again five minutes after the fall. She further stated that McDonald's employees kept the area of the accident in a clean and safe condition and McDonald's employees saw no foreign substance on the tiles near the area of the accident.

[26] Most critically to the case at hand, Guerrero cannot rely on her pleadings, and has not shown by a proper declaration that there is a triable issue of fact. Guerrero may defeat judgment as a matter of law if she establishes a genuine issue of material fact that "something slippery on the floor . . . [has] been there long enough so that [McDonald's] should have discovered and removed it." *Brown v. Poway Unified Sch. Dist.*, 15 Cal. Rptr. 2d 679, 683 (Cal. 1993) (quoting Prosser & Keeton, Torts § 39 (5th ed. 1984)). But Guerrero cannot survive summary judgment and maintain a case by a mere allegation that she stepped on something and was caused to fall because "[n]o inference of negligence arises based simply upon proof of a fall upon the owner's floor." *Vaughn*, 213 P.2d at

419. Guerrero's failure to present evidence of the basic facts prevents even an inference that McDonald's had actual or constructive knowledge of the transitory hazard and failed to exercise reasonable care to eliminate it.

[27] Viewing the evidence described above in a light most favorable to the nonmoving party, Guerrero has established that she slipped and fell on a clear substance and thereby suffered injury. Nevertheless, she has failed to raise a triable issue of material fact with respect to whether McDonald's either caused the dangerous condition of the floor, or had actual or constructive knowledge of the dangerous condition of the floor. The plaintiff must come forward with a promise of proof that defendant knew or should have known there was risk of an unsafe condition on the floor, that the defendant failed to take reasonable steps to address the foreseeable hazard or condition, and that the plaintiff's injuries were in fact caused by the unsafe condition.[4] Specifically, Guerrero could have alleged in her affidavit or presented evidence that the substance was on the floor for an unreasonably long time, or that McDonald's inspections were insufficient. Guerrero has not done so here. Where, as here, the opposition to a motion for summary judgment presented speculation in lieu of specific facts, the granting of summary judgment is appropriate. *Merrill v. Navegar, Inc.* 28 P.3d 116, 132 (Cal. 2003); *Wiz Technology, Inc. v. Coopers & Lybrand*, 130 Cal. App. 2d 263, 270 (Ct. App. 2003). For this reason, we conclude that summary judgment has properly been granted in favor of McDonald's.

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[4] This is the minimum that the plaintiff must show even in jurisdictions which have adopted the "burden-shifting" approach. The Florida Supreme Court in *Owens v. Publix Supermarkets, Inc.,* 802 So. 2d 315, 331 (Fla. 2001), stated: "[O]nce the plaintiff establishes that he or she fell as a result of a transitory foreign substance, a rebuttable presumption of negligence arises. . . [but w]e emphasize that this burden-shifting does not eliminate the plaintiff's burden of proving that the slip and fall accident was the cause of plaintiff's injuries." Because in this case, the plaintiff's allegation of actual or constructive knowledge rested on speculation, the plaintiff does not meet the elements of a *prima facie* elements case. *Cf. Owens*, 802 So. 2d 315 (where the Florida Supreme Court reversed a grant summary judgment because the store owner did not maintain or produce any records of inspections).

V.

[28] We hold that a property owner must exercise reasonable care in the management of his property, in view of the probability of injury to others. A property owner may be liable for injury caused by a harmful or dangerous condition on the property only where the property owner caused the condition, or had actual or constructive knowledge of the existence of the condition and failed to exercise reasonable care to eliminate it. Constructive knowledge of the harmful or dangerous condition may be inferred by proof that the property had not been inspected within a reasonable period of time under the circumstances. Accordingly, summary judgment was properly granted by the trial court in this case, where Guerrero, the nonmoving party, failed to offer any evidence that McDonald's either caused the harmful condition or had actual or constructive knowledge of such condition. We **AFFIRM**.