IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

DOROTHY KINGSLEY, Plaintiff	:	CIVIL ACTION - LAW
vs.	:	NO. 04-00855
BRANDON CONSTRUCTION, LLC, Defendant	:	

OPINION AND ORDER

This is a slip and fall case in which the Plaintiff fell in the parking lot of the Hampton Inn in Williamsport, Pennsylvania. The Plaintiff alleges that on May 29, 2002 she exited the Hampton Inn, where she was employed as a housekeeper, to smoke a cigarette. Plaintiff fell in the Hampton Inn parking lot and sustained an injury to her right knee. Plaintiff alleges that she fell due to the Defendant's application of sealant onto the surface of the parking lot. Plaintiff contends that the Defendant was negligent for creating a dangerous condition through its application of a sealing product, and also alleges that the Defendant was negligent for removal of warning signs prior to Plaintiff's fall.

Pursuant to the testimony of the Plaintiff, it was "misting" when she arrived at work on the morning of May 29, 2002. Rain water was visible on the ground. The plaintiff observed that areas in the parking lot around the Hampton Inn were wet. Although the plaintiff knew that seal coating was being performed in the Hampton Inn parking lot, she could not recall if the lot was being sealed on May 29, 2002.

Pursuant to the testimony of the Defendant, the Hampton Inn contracted with the Defendant to seal its parking lot. Gilsonite, a petroleum based sealant, was applied. Application involved the spraying of the sealant on a portion of the lot at a time. The section of the lot to be sprayed would be barricaded, the product applied, parking lot lines were painted and barricades would be removed.

Following a review of all of the evidence presented, this Court finds that the Plaintiff has failed to produce any evidence that the sealant itself was defective, or improperly applied. Although the Plaintiff asserts that a dangerous or unreasonably slippery condition was created when it rained on top of the sealed parking lot, the Plaintiff has failed to produce sufficient evidence to support her claim that the surface was any more slippery than any other surface after it is rained upon. Notably, the Plaintiff testified that other employees walked on the sealed lot without incident. Moreover, this Court finds credible the testimony of Scott Weisel, owner of Brandon Construction. Mr. Weisel testified that following application of the sealant on portions of the Hampton Inn parking lot, it was confirmed by touch that the sealant was dry. Lines were then painted on the parking lot, the Hampton was notified to inspect the area, and barricades and signs were removed. Painting was not possible until the sealant was dry. Following the plaintiff's fall the area was inspected by Mr. Weisel. Mr. Weisel observed beaded water on the surface, an indication that the product had properly sealed the asphalt. The area was not oily or slippery. No blemishes or scars were visible to indicate that the sealant was still wet when Plaintiff fell; similarly, there had been no "lifting" of the product. Mr. Weisel additionally testified that the

Gilsonite sealed surface was no more slippery than any other surface when water is on top of it, citing wood as one such example.

In Roland v. Kravco, Inc., 513 A.2d 1029 (Pa.Super. 1986) the plaintiff was injured when she slipped and fell on a parking lot owned and operated by the defendant. The plaintiff testified that on the day of her fall it was "misty" and the ground was wet. In granting summary judgment in favor of the defendant the court held, "In Pennsylvania **there is no liability created by a general slippery condition on the surface of a parking lot**. It must appear that there were dangerous conditions due to ridges or elevations, which were allowed to remain for an unreasonable length of time." Id. At 1032. (Emphasis added). In reviewing the ground conditions on the day of the plaintiff's fall the court noted, "She was looking at the ground and observed no obstacles or hazardous conditions whatsoever, and the only condition on the surface was that it was wet. There is simply no indication that there was a dangerous condition on the land." Id. Likewise, in the instant case, Plaintiff has not proven a dangerous condition, but merely that the Hampton Inn parking lot was wet on May 29, 2002.

Wetness, or a "general slippery condition" without more, does not give rise to a finding of liability. The mere happening of an accident does not impose liability upon a party. Martino v. Great Atlantic & Pacific Tea Co., 213 A.2d 608 (Pa. 1965). Thus the plaintiff has failed to establish any breach by the defendant of its duty of care.

Although the Plaintiff additionally claims that the Defendant should be held liable for removal of the signs and barricades prior to her fall, insufficient evidence has been presented to establish when and by whom the barricades and signs were removed. Plaintiff testified during direct examination that she could not recall whether barricades

were in place on May 29, 2002. Although the Plaintiff had a clear recollection that a caution sign had been removed prior to her fall on May 29, 2002, the Plaintiff had no knowledge of who removed the sign. If the sign was not removed by the Defendant, the Defendant cannot be held liable for removal of the caution sign. If, however, the Defendant removed the sign prior to Plaintiff's fall, according to the testimony of Mr. Weisel, such removal would not have occurred prior to inspection of the sealant, painting of the lines and relinquishment of the lot to the owner of the premises. It is the Plaintiff who bears the burden of proving her claims. Plaintiff has similarly failed to meet her burden of proof on this issue. In short, negligence has not been established.

ORDER

AND NOW, this 21st day of May, 2008, this Court enters a verdict in favor of the Defendant, Brandon Construction, LLC.

BY THE COURT,

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Richard A. Gray, J.

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