

Fifth Circuit Court of Appeal State of Louisiana

No. 25-C-376

JOHN GUTIERREZ

versus

CLEARWATER POOLS, SPAS AND SUPPLIES, LLC, AND
CLEARWATER POOL AND SPA SERVICE LLC D/B/A
CLEARWATER POOL AND SPA

IN RE CLEARWATER POOLS, SPAS, AND SUPPLIES, LLC AND CLEARWATER POOL
AND SPA SERVICE LLC
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL
DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE
HONORABLE LEE V. FAULKNER, JR., DIVISION "P", No. 852-144

TRUE COPY

December 15, 2025



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Fredericka Homberg Wicker,
Jude G. Gravois, and Marc E. Johnson

WRIT DENIED

Defendants/relators, Clearwater Pools, Spas and Supplies, LLC and Clearwater Pool and Spa Service, LLC, seek this Court's supervisory review of the trial court's July 18, 2025 judgment which denied relators' motion for summary judgment in this premises liability case. For the following reasons, on the showing made, we deny the writ application.

FACTS AND PROCEDURAL BACKGROUND

The underlying action arises from a trip-and-fall incident on March 7, 2023, at relators' Metairie, Louisiana store, in which plaintiff John Gutierrez alleges injury to his left knee, including a ruptured left quadriceps requiring

surgery and extensive physical therapy. Plaintiff's petition for damages pleads premises liability/negligence theories against relators, including failure to maintain the premises in a safe and orderly manner, negligent obstruction of store passageways with clutter and pallets, failure to warn of the dangerous condition, failure to provide and maintain a safe passageway and safe ingress/egress, failure to inspect, and allegations that relators created and/or had actual or constructive knowledge of the dangerous condition that posed an unreasonable and foreseeable risk of harm to plaintiff and others.

Relators moved for summary judgment under the Louisiana Merchant Liability Statute, La. R.S. 9:2800.6, contending that plaintiff cannot prove essential elements of his negligence claim, emphasizing plaintiff's deposition testimony that he does not know exactly where he fell, why he fell, or what caused him to fall.

In support of his opposition to summary judgment, plaintiff submitted an affidavit averring that he "tripped on something as a result of the clutter and congestion of the passageway" while carrying a fifty-pound bucket of chlorine he had just purchased, and that he "probably tripped on one of the pallets" on which the chlorine buckets were situated, as allegedly relayed to him by a store employee after the incident.

The trial court heard the motion for summary judgment on July 17, 2025, took the matter under advisement, and on July 18, 2025, denied the motion after consideration of the record, pleadings, evidence presented at the hearing, and counsel's arguments. This timely writ application followed.

ANALYSIS

"After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law." La. C.C.P. art. 966(A)(3). "The burden of proof rests with the mover. Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action,

or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law." La. C.C.P. art. 966(D)(1).

On appeal, our review of summary judgments is *de novo* under the same criteria that govern the district court's consideration of whether summary judgment is appropriate. *Bryant v. Ray Brandt Dodge, Inc.*, 19-464 (La. App. 5 Cir. 3/17/20), 292 So.3d 190, 195. Thus, appellate courts ask the same questions the trial court does in determining whether summary judgment is appropriate: whether there is any genuine issue of material fact, and whether the mover is entitled to judgment as a matter of law. *Breaux v. Fresh Start Properties, L.L.C.*, 11-262 (La. App. 5 Cir. 11/29/11), 78 So.3d 849, 852.

A decision as to the propriety of a grant of a motion for summary judgment must be made with reference to the substantive law applicable to the case. *Bach v. Bd. of River Port Pilot Comm'rs*, 15-765 (La. App. 5 Cir. 5/12/16), 193 So.3d 355, 362.

The substantive law applicable to this case is the Louisiana Merchant Liability Statute, La. R.S. 9:2800.6, which provides as follows:

- A. A merchant owes a duty to persons who use his premises to exercise reasonable care to keep his aisles, passageways, and floors in a reasonably safe condition. This duty includes a reasonable effort to keep the premises free of any hazardous conditions which reasonably might give rise to damage.
- B. In a negligence claim brought against a merchant by a person lawfully on the merchant's premises for damages as a result of an injury, death, or loss sustained because of a fall due to a condition existing in or on a merchant's premises, the claimant shall have the burden of proving, in addition to all other elements of his cause of action, all of the following:
 - (1) The condition presented an unreasonable risk of harm to the claimant and that risk of harm was reasonably foreseeable.

- (2) The merchant either created or had actual or constructive notice of the condition which caused the damage, prior to the occurrence.
- (3) The merchant failed to exercise reasonable care. In determining reasonable care, the absence of a written or verbal uniform cleanup or safety procedure is insufficient, alone, to prove failure to exercise reasonable care.

C. Definitions:

- (1) “Constructive notice” means the claimant has proven that the condition existed for such a period of time that it would have been discovered if the merchant had exercised reasonable care. The presence of an employee of the merchant in the vicinity in which the condition exists does not, alone, constitute constructive notice, unless it is shown that the employee knew, or in the exercise of reasonable care should have known, of the condition.
- (2) “Merchant” means one whose business is to sell goods, foods, wares, or merchandise at a fixed place of business. For purposes of this Section, a merchant includes an innkeeper with respect to those areas or aspects of the premises which are similar to those of a merchant, including but not limited to shops, restaurants, and lobby areas of or within the hotel, motel, or inn.

D. Nothing herein shall affect any liability which a merchant may have under Civil Code Arts. 660, 667, 669, 2317, 2322, or 2695.

CONCLUSION

The duty imposed upon merchants by the Louisiana Merchant Liability Statute “to exercise reasonable care to keep his aisles, passageways, and floors in a reasonably safe condition” includes “a reasonable effort to keep the premises free of any hazardous conditions which reasonably might give rise to damage.” La. R.S. 9:2800.6(A). Upon *de novo* review, on the showing made, we conclude that the evidence presented in support of and in opposition to the motion for summary judgment as to where, why, and what caused plaintiff to fall is equivocal. Although relators emphasize plaintiff’s deposition testimony that he does not know exactly where he fell, why he fell, or what caused him to fall, plaintiff’s affidavit attributes his fall to an allegedly unreasonably dangerous condition—clutter and congestion in the aisle while he carried the

fifty-pound chlorine bucket he had just purchased—which he contends was created by relators and allegedly caused and resulted in his fall and injuries. Because genuine issues of material fact remain at this time as to the cause of plaintiff’s trip-and-fall incident, relators are not entitled to summary judgment as a matter of law. We thus find no error in the trial court’s judgment which denied relators’ motion for summary judgment.

DECREE

This writ application is denied.

Gretna, Louisiana, this 15th day of December, 2025.

**JGG
FWW
MEJ**

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



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CURTIS B. PURSELL
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SUSAN S. BUCHHOLZ
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LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **12/15/2025** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink, reading "Curtis B. Pursell", is written over a horizontal line.

CURTIS B. PURSELL
CLERK OF COURT

25-C-376

E-NOTIFIED

24th Judicial District Court (Clerk)
Hon. Lee V. Faulkner, Jr. (DISTRICT JUDGE)
Candace C. Chauvin (Relator)

Travis L. Bourgeois (Relator)

MAILED

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