

BENNETT, BRICKLIN & SALTZBURG LLC

Subject: Summary of Cases Reported in Pa. Law Weekly of September 21, 2009

Date: September 30, 2009

Federal Practice - Civil Rights Actions

Binder v. Kenderski, U.S.D.C., E.D. Pa., opinion by Stengel, J., filed 9/4/09.

In a civil rights action brought under 42 U.S.C. §1983, a claim against a municipality or other political subdivision cannot be maintained on the basis of *respondeat superior*.

Premises Liability - Constructive Notice

Murray v. Dollar Tree Stores, U.S.D.C., E.D.Pa., opinion by Kelly, S.J., filed 9/10/09.

In granting defendant's motion for summary judgment, the court reiterated Pennsylvania law that the plaintiff has the obligation of establishing either actual or constructive notice upon the defendant in order to prevail. In the case at hand, plaintiff claimed that she slipped and fell on a liquid on the floor of the aisle in defendant's store, but did not know how long the liquid was there before she fell. Further, there was no evidence about when the spill occurred. Holding that there was no proof that the condition was present long enough that in the exercise of reasonable care the defendant should have known of it, the court found that there was no constructive notice and that the defendant's motion for summary judgment would be granted.

Pa. Practice - Forum Non Conveniens

Zappala v. James Lewis Group, Pa. Superior Court, opinion by Donohue, J., filed 9/11/09.

Plaintiff, a resident of Delaware County, was injured on a construction site in Chester County. She sued various defendants in Philadelphia County. Some of these defendants were Philadelphia businesses while others were Chester County businesses.

After the Philadelphia County defendants were dismissed as a result of summary judgment, the Chester County defendants filed a motion to transfer venue to Chester County which the court granted.

However, on appeal, both the Pennsylvania Supreme and Superior Courts held that the motion to transfer could only be properly raised by preliminary objection and therefore reversed and remanded to the court in Philadelphia. The Supreme Court did note that a motion for forum *non conveniens* could still be raised.

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The Chester County defendants then filed a motion to transfer on the grounds of forum *non conveniens* which the trial court granted and the plaintiff, again, appealed. The Superior Court reversed and held that the trial court was in error in transferring the case. The only evidence presented by the Chester County defendants in support of vexatiousness was inconvenience to their witnesses and other traditional evidence on such motions. Without evidence of vexatiousness or the showing that the choice of forum was designed to harass the defendants, the trial court had no evidentiary basis for transferring the case.

JPF/mee