STATE OF NEW YORK COURT OF CLAIMS

BRUCE MONROE,

Claimant,

DECISION

-v-

STATE OF NEW YORK,

Claim No. 129502

Defendant.

BEFORE: **HON. LINDA K. MEJIAS-GLOVER**
Judge of the Court of Claims

APPEARANCES: **For Claimant:**
ANDREW F. PLASSE & ASSOCIATES LLC
By: Andrew Plasse, Esq.

For Defendant:
LETITIA JAMES, ATTORNEY GENERAL
By: Heather Rubinstein, Esq.
Assistant Attorney General

A trial on the sole issue of liability was conducted before this Court on September 6 and 7, 2022 via Microsoft Teams upon the consent of all parties and counsel. Claimant called three witnesses to testify, and the Defendant called five witnesses to testify.

The Claim alleges that Claimant was injured on August 25, 2016, in the mess hall at Green Haven Correctional Facility (hereinafter "GHCF"), where the Claimant was incarcerated, as a result of a slip and fall. Claimant alleges the State is liable for negligently failing to provide a safe environment and by creating a dangerous condition. The State of New York denies all allegations of negligence and asserts that the Claimant's own actions caused his injuries.

Relevant Testimony

Claimant, Bruce Monroe

Mr. Monroe, an incarcerated person has been housed in GHCF since June of 2009. (T[1]. 9) and was programmed to work with food services in 2016 (T. 10). His work included cleaning tables in the west mess hall, cleaning off the trays, and wiping and sanitizing the tables (T.10, 11).

Claimant had worked in the mess hall for breakfast and lunch service since "2009 or early 2010" (T. 10, 13). He testified that he graduated from the industrial food service training in 2010 (T. 11), and that he worked "off and on" in the food services program "for about almost eight years" (T. 11) and worked other programs in food services such as counter worker, cleaning, beverage man, garbage, and feeder in industrial food services (T. 11, 12).

Claimant testified that on the date of the alleged incident, he was working in the west mess hall. He described the mess hall as having four rows of tables to the left "going back about 10 to 11, reaching all the way to the feeder line" with the same number of tables, four across and 10 to 11 back, on the right side (T. 12). He described the duties of a "beverage man", included making, retrieving, and preparing beverages, filling the urns and placing the urns on the counter (T. 12, 13). He testified that in 2016, he was responsible for two meals per day (T. 13) and that on August 25, 2016, he was working the west side mess hall as a "tabletop", which included cleaning off the trays and sanitizing the tables (T. 13, 18). Claimant testified that prior to that date of the incident, he noticed that the Cambro Urns were damaged and leaking, and that he advised the food service administrator, Mr. Trimarchi, that the water urns were leaking (T. 15-18).

Claimant testified that on the morning of the incident, he began working the "tabletop" at 6:00 a.m. (T. 24). He testified that breakfast was served between 7:00 a.m. and 7:30 a.m. (T. 24).

[1] "T." shall refer to Trial Transcript Page

He testified that at approximately 10:00 a.m3. he picked up a bag of garbage from one of the aisles, took it to the garbage area, and went to the west mess hall to join the "feed up line". (T. 25). Claimant testified that next thing he knew he was in the air and fell on the right side of the mess hall (from the entrance perspective) between "maybe the second or third table" while walking to the entrance (T. 24- 25). He testified that the water he slipped on "came across the floor under the tables from the urn" (T. 25). Claimant testified that he did not fall next to the table where the urn was dispensing water (T. 29).

Richard Chalk

Mr. Chalk testified that while incarcerated at GHCF, he worked in the mess hall, became a commissary worker, a fire and safety helper, a fireman's helper and then a maintenance man in the mess hall. (T. 40). He testified that his job as a maintenance man consisted of repairing water pipes, electrical equipment, and non-electrical equipment (T. 41). He testified that his supervisors at the time were Mr. Trimarchi and Mr. Johnson (T. 47). Mr. Chalk testified that in 2016, on many occasions, he repaired the plastic urns in the mess hall (T. 42).

Mr. Chalk went on to testify that the Cambro urns were plastic, brown in color with black latches, two of which were ten gallons, two five gallons and two half gallons (T. 44, 45). He testified that in 2016, there were issues with the urns, specifically with the seal, that he had to repair and replace two to three times per month (T. 45). He testified that in order to repair the seal he would have to take the seal apart and then put the valve and spigot back together. He testified that tightening the spigot too tight would cause the spigot to leak and destroy the flat rubber (T. 46, 47). He testified that if he was unable to repair them immediately, he would take the urn out of service.

Mr. Chalk was instructed by his supervisors to repair all the urns "as many times as it takes" and to order the parts to keep the urns working in good condition (T. 48). He testified that when

he ordered replacement parts for the urn, he had to fill out a purchase order, listing the parts, the company that the parts were purchased from and the part number (T. 48). He further testified that while waiting for the parts to come in he had to place a sheet pan underneath the urns to catch the leakage. Mr. Chalk went on to testify that the sheet pans did not prevent water from leaking onto the floor, and therefore, there was water on the floor from the urns every day (T. 49). He testified that he verbally advised both his supervisors of the water leakage, as well as the head cooks, Ahmed Amilaki and Lori Badger (T. 50).

Through Mr. Chalk's testimony, Claimant's Exhibit 1: the Cambro Owner's Manual came into evidence, subject to redaction to the handwritten notes (T. 53-55). Mr. Chalk testified that the "flat washer" of the urn, if damaged, could cause the recurrent leaking. He went onto testify that the "flat washer" is put in the groove at the end of the spout, put into the urn, then the washer is placed on the spout and the spout is pushed into the urn.

Dorian Epps

Mr. Epps testified that he worked in the mess hall in GHCF for approximately seven years (T. 65). He testified that he too worked the "tabletops," served incarcerated persons food, buffed the mess hall floor and cooked in the kitchen (T. 66). With respect to the date of the incident, August 25, 2016, he observed Claimant on the floor, he approached him, helped lifted him off the floor and waited for the nurse to arrive (T. 66-68). He testified that there was a puddle of water under the table which trailed to the first row of tables (T. 69).

Mr. Epps testified that the urns leaked at the valve, and he would tighten the valves as best he could. He further testified that he reported the leaks to the head administrator of the mess hall and Ms. Badger (T. 70). He further testified that the floors were mopped after every meal (T. 71). Mr. Epps could not remember what type of floor was in the mess hall, he testified that they were "the cleanest floors in the State of New York" (T. 73).

Claimant rested and Defendant made an oral application to dismiss for failure to make a *prima facie* case. The Court reserved decision on, and Defendant proceeded to call its first witness.

Jeffrey Cable

Officer Cable testified that he currently works at GHCF as a Fire and Safety Officer (hereinafter "FSO") (T. 80, 83-84). FSO Cable testified that he is responsible for logging and filing injury reports by both the incarcerated individuals and staff. (T. 84-85). FSO Cable reviewed the logs kept in his office and determined there were no falls in the mess hall at GHCF in the three-year period prior to August 25, 2016 (T. 86:1-14). FSO Cable said that there no system to look up specific types of claims (T. 89).

Lori Badger

Ms. Lori Badger, Head Cook at GHCF, also testified for Defendant. Ms. Badger testified that she has worked at GHCF since 2004 (T. 96). Ms. Badger testified that she did not recall any person coming to her with concerns related to the urns leaking (T. 100). She testified that if someone advised her that there was an issue with the urns, she would have taken it out of service and either replaced the parts or replaced the urn (*Id.*). Ms. Badger testified that she did not recall how often the spigots were replaced as replacing spigots was the responsibility of Mr. Chalk (T. 101, 102). She further testified that prior to August 2016, she received zero complaints from an incarcerated individual regarding the urns. (T. 102). Ms. Badger further testified that if an urn contained a hole, it would be put to the side, in order to assess whether the spigot could be used (T. 106). She testified that GHCF contained extra spigots in case of leakage from the urns, but was unaware of that at the time of the incident (T. 108).

Vincent Trimarchi

Mr. Trimarchi testified that he worked at GHCF as a Food Administrator II from 2016-2018 and was responsible for overall nutritional care. He testified that he retired from the

Department of Corrections and Community Service (hereinafter "DOCCS") in 2020. (T. 116). Mr. Trimarchi indicated that out of the 6 correctional facilities he worked in, all used the Cambro beverage containers (T. 117). He testified that he was unaware of any incarcerated individuals complaining about the Cambros at GHCF but was aware that there was occasional leaking from the Cambro spigots (T. 117, 118). Mr. Trimarchi testified that if he did receive complaints regarding the urns, he would remove it from service and have it repaired or replaced (T. 118).

CO Nicholas Anthony

Correction Officer (CO) Nicholas Anthony was also called by Defendant to testify. CO Anthony testified that he was assigned to work in the mess hall at GHCF from 2006-2019 (T. 131). CO Anthony testified that he worked the mess hall from 5:00 a.m. to 1:00 p.m. during breakfast and lunch service (T. 131). He testified that during his shift, he made five to ten rounds through the mess hall and indicated that he did not have concerns related to the safety of the floor[2] in the mess hall (T.132-133). He further testified that prior to the accident, he did not receive any complaints regarding the safety of the floor, or water on the floor nor did he witness anyone slip on the floor (T. 133, 134). CO Anthony testified that he had seen the urns broken, but not leaking any water onto the floor (T. 134).

CO Anthony indicated that the mess hall log book (*Defendant's Exhibit C*) reflected that he was working in the mess hall on the day Claimant fell, however there was no entry of Claimant's fall in the log book (T. 136, 143-145). CO Anthony testified that on the day of the incident, the logbook recorded 340 incarcerated persons at breakfast in the west mess hall and 593 in the east mess hall, both of which the Cambro urns were located in (*Id.)*

Gregory Rayburn

[2]A floor that CO Anthony personally had to walk on multiple times daily as a requirement of his employment.

Mr. Rayburn testified that he was the Fire and Safety Officer at GHCF from 2013 until 2016 and is now retired from DOCCS (T. 153). Mr. Rayburn testified that he was out of the facility due to a knee injury beginning in February 2016 and returned in August 2016 (*Id.)*

Law and Analysis

Defendant owes a "duty to use reasonable care to protect its [incarcerated individuals] from foreseeable risks of harm" (*Reid v State of New York*, 61 AD3d 1063, 1064 [3d Dept 2009], quoting *Melendez v State of New York*, 283 AD2d 729, 729 [3d Dept 2001], *appeal dismissed* 97 NY2d 649 [2001] [internal quotations and citations omitted]). This does not mean, however, that negligence will be inferred by the mere occurrence of an accident (*see Melendez*, 283 AD2d at 729; *Condon v State of New York*, 193 AD2d 874 [3d Dept 1993]). Rather, a claimant is required to demonstrate that the State, through its actions or omissions, breached its duty to protect claimant from foreseeable harm, and that the breach of such duty caused claimant's injuries.

Like other duties in tort, the scope of the State's duty to protect incarcerated individuals is limited to risks of harm that are reasonably foreseeable (*id.; see Villar v Howard*, 28 NY3d 74, 80 [2016] [finding facility need not foresee specific harm]). "To carry the burden of proving a *prima facie* case, the [claimant] must generally show that the defendant's negligence was a substantial cause of the events which produced the injury" (*Derdiarian v Felix Contr. Corp*., 51 NY2d 308, 315 [1980]). Claimant need not demonstrate that "the precise manner in which the accident happened, or the extent of injuries, was foreseeable" (*id.; see Harris v State of New York*, 117 AD2d 298, 303 [2d Dept 1986]).

Regardless of whether claimant slipped or tripped, this is a "slip and fall" case for purposes of the controlling law, as well as the descriptive options provided by DOCCS on required administrative forms. In a slip and fall case, it is incumbent upon claimant to establish that: "(1) a

dangerous condition existed; (2) Defendant either created the dangerous condition or had actual or constructive notice thereof and failed to alleviate the condition within a reasonable time; and (3) such condition was a substantial factor in the events that caused the injury suffered by Claimant" (*Braithwaite v State of New York*, 26 Misc 3d 1239[A] [Ct Cl 2009], citing *Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]; *see Medina v Sears, Roebuck & Co*., 41 AD3d 798, 799 [2d Dept 2007]).

Moreover, a Claimant has the duty to use reasonable care to observe his or her surroundings, to see what is there to be seen and to avoid accidents (*Weigand v United Traction Co*., 221 NY 39, 42 [1917]). With respect to dangerous or defective conditions, there is no minimal dimension test or *per se* rule that a defect must be of a certain minimum height or depth in order to be actionable. Rather, it is generally a question for the trier of fact to determine whether such conditions exist based upon "facts presented, including the width, depth, elevation, irregularity and appearance of the defect along with the 'time, place and circumstance' of the injury" (*Trincere v County of Suffolk*, 90 NY2d 976, 978 [1997], quoting *Caldwell v Village of Is. Park*, 304 NY 268, 274 [1952]). Some physical defects, however, may be too trivial and slight in nature to be actionable (*Lamarre v Rensselaer County Plaza Assoc*., 303 AD2d 914 [3d Dept 2003]; *Guerrieri v Summa*, 193 AD2d 647 [2d Dept 1993]). Where the condition is open and obvious, "the condition is a warning in itself" (*Tarricone v State of New York*, 175 AD2d 308, 309 [3d Dept 1991], *lv denied* 78 NY 2d 862 [1991]; *see Herman v State of New York*, 94 AD2d 161[2d Dept 1983], *affd* 63 NY2d 822 [1984]).

CPLR 1411 provides that in an action to recover damages for personal injury, "the culpable conduct attributable to the claimant . . . , including contributory negligence or assumption of risk, shall not bar recovery, but the amount of damages otherwise recoverable shall be diminished in

the proportion which the culpable conduct attributable to the claimant bears to the culpable conduct which caused the damages." Such culpable conduct "shall be an affirmative defense to be pleaded and proved by the party asserting the defense"[3] (CPLR 1412). Under the doctrine of comparative negligence, when defendant's negligence is established, the factfinder must still determine whether claimant was negligent and whether such negligence "was a substantial factor in causing [claimant's] own injuries" (*see Rodriguez v City of New York*, 31 NY3d 312, 324 [2018]).

Here, the Court finds that the parties share in the liability. Based upon the credible testimony and evidence, it is clear that a dangerous condition existed in that the Cambro urns would regularly leak liquids onto the floors. The State was aware that the Cambro urns often leaked and required frequent repairs and upkeep, and therefore given the frequency of the condition, the State should have ensured that the Cambro urns were placed on the counter or in a special unit in such a manner so that any leakage could be caught by a basin rather than hitting the floor. The credible testimony demonstrates that the wet floor caused Claimant's injuries. On the other hand, the testimony is clear that Claimant had been programmed as a "beverage man" and had ample experience with the Cambro urns. Claimant was also aware that the Cambro urns often leaked and required frequent repairs, and therefore, he should have been more mindful of the possibility of liquids on the floor surrounding the Cambro. Based upon the testimony, the Court is not satisfied that Claimant demonstrated use of reasonable care to observe his surroundings, including the floor, to see what is there to be seen and to avoid his slipping on the liquid.

Accordingly, the Court finds that while Claimant did establish by a preponderance of the evidence that a dangerous condition existed, which the Defendant had notice of and failed to

[3] Defendant pleaded such affirmative defense in its Verified Answer.

alleviate, and which did result in his injury, the Court also finds his own negligence was a substantial factor in his slip and fall.

Therefore, upon consideration of all the evidence, including a review of the exhibits and listening to the witnesses testify and observing their demeanor as they did so, the Court finds that Claimant established, by a preponderance of the credible evidence, that Defendant was negligent. Furthermore, based on the facts of this case, the Court finds Defendant 75 percent liable and Claimant 25 percent liable. All motions not previously decided are hereby denied.

The Court will contact the parties upon the filing of this decision to schedule any further proceedings and a trial on the issues of serious injury (in the event the Court deems it required), and on damages. Let interlocutory judgment be entered accordingly.

Dated: June 26, 2023
New York, New York

Linda K. Mejias-Glover

LINDA K. MEJIAS-GLOVER,
Judge of the Court of Claims