

**IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA – FIFTH DISTRICT**

DONNA RUTH and
TIMOTHY RUTH,

Appellants,

v.

CASE NO.: 5D23-2723

L.T. No.: 2020-CA-491

GUERRIERI MANAGEMENT, INC.
d/b/a TACO BELL,

Appellee.

ANSWER BRIEF OF APPELLEE

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PREFACE

In this Answer Brief, Appellee Guerrieri Management, Inc., d/b/a Taco Bell, will be referenced as Taco Bell. The Record on Appeal will be cited with page numbers as R. ____ with pinpoint line cites where applicable. Appellants, Donna and Timothy Ruth, will be referenced as Ruth jointly.

This Answer Brief is filed on behalf of Taco Bell. Taco Bell respectfully requests that the trial court's detailed, clear, and thorough thirteen (13) page written order granting final summary judgment be affirmed. In addition, the Final Judgment in favor of Taco Bell should be affirmed, which was issued on August 8, 2023. R. 907-908.

STATEMENT OF THE CASE AND OF THE FACTS

Appellee provides the following additions, corrections, and/or needed clarification to the Appellants' Statement of the Case and Facts. These additions are to provide additional record evidence, supplement, or clarify details regarding Ruth's Statement of the Case.

1. Ruth's cause of action sounds in her theory that the premises were not kept in a reasonably safe condition, and/or that

she did not have adequate warning of a wet floor, that Taco Bell knew or should have known was wet. R. 383, Interrog. 9.

2. Ruth admits that there were no lighting conditions that contributed to and/or made it difficult for her to see on the date of incident. R. 429: 21-24; R. 430: 1-3.

3. Ruth claims she came inside to the premises, took a right turn, walked four to five steps and went into the bathroom. She denied the hallway was wet or slippery. R. 430: 4-22. She described the flooring as being orange bronze or brownish/orangey, which is the same tile depicted in the bathroom and hallway photos from the incident date. *Id.*

4. Ruth denied that the same tile that was in the hallway, that was in the bathroom, was slippery and denied she had issues keeping her balance. R. 430: 18-22.

5. She admitted there was a wet floor sign in the hallway, near the bathroom, “similarly placed.” R. 433: 17-25. Ruth clearly stated that the photos taken the day of the incident by manager Sterling had the same signage and “[t]he signage on the date of the incident was similarly placed.” *Id.*

6. Ruth went on to admit that the sign was at the corner of the hallway, leading to the dining area, adjacent to the bathroom. R. 434:4-11. Ruth clearly admitted that the sign “[i]t was at the—it was at the corner of the hallway leading into the dining room.” *Id.* Ruth goes on to admit that the sign was there, as pictured in exhibits, but then tried to disclaim she saw it. *Id.*

7. Ruth claims that after she took two steps into the bathroom, she “slip on the water” and fell on “tile ridges” and claims that she did not feel “excessive wetness” until she was on the ground. R. 437: 1-8; R. 438:1-18. She fell near to the drain on the floor, pictured in the exhibits. R. 440: 3-20.

8. After the incident, Ruth claims she got up on her own and immediately asked for help from a manager. R. 443: 9-15.

9. Sterling, a manager at the restaurant, checked the bathroom and floor right after the fall was reported and the floor was not wet. Some parts at best, were damp, but not wet. R. 536: 9-24. Sterling noted that the floor is angled to the drain and at best, the grout was damp. *Id.* She visually inspected them and “they were not to the standard of wet.” *Id.*

10. Sterling visually observed Ruth's clothing and it was fully dry after the alleged fall on a wet floor. R. 537: 16-23. Specifically, they were blue jeans, they were "void of moisture" and "there was no wetness on them." *Id.* Sterling specifically visually observed where Plaintiff identified on her body where she landed and saw no wetness whatsoever on the clothing. R. 537: 24-25; R. 538: 1-4.

11. Sterling testified that the floors would have been dry mopped possibly around 30 minutes before the alleged fall, but possibly more than an hour or hour and a half. Sterling clearly stated that by the time customers would use the area after mopping, it would have been dry "one hundred percent." R. 539: 5-25; R. 540:4; R. 541. 1-15. The lobby of the building would be cleaned first, then the bathroom right after. *Id.*

12. In terms of timing, Sterling recalls that the incident was reported at 10 or 10:30 a.m. by Ruth. R. 539: 5-12. The bathrooms are typically mopped at 9 a.m. R. 539: 24-25; R. 540: 1; 21-25. They cleaned the bathrooms around 9 a.m., to avoid the customer lunchtime traffic. R. 541: 1-15.

13. Dry mopping was used and consists of using a mop, wringing it out at least three times before using it, so it is barely

moist. Sterling testified that if one dry mops, the mop is almost dry. R. 541: 19-25; R. 542: 1-3.

14. Sterling confirmed on the date of the incident, policy was followed by placing a wet floor sign outside of the bathroom, leading to it, to warn customers. This sign was in place on the incident date. R. 544: 19-25; R. 545: 2-5. Sterling did not move anything and “took the pictures as I saw them.” *Id.*

15. The floor at issue on the date of incident required no additional warning, due to the sign in place and condition of the floor, per Sterling. Sterling took a photo no more than 10 minutes post fall of the area, which was attached to the lower court’s Order. R. 548: 7-15. Sterling explained that the “floors were dry at that point” when the incident occurred. *Id.*

16. Photos taken by Sterling were included in Taco Bell’s Summary Judgment motion and may be found in this Court’s record at R. 565-569.

17. Restaurant ownership further confirmed that the floors were dry mopped in the morning, before opening. The owner explained that when one dry mops, you do not even bring a mop bucket with you from the back, and that the mop is “very, very dry.”

R. 580: 21-25; R. 581: 1-5; R. 594:1-14. The owner also denied that the bathroom floors were wet mopped and stated that with dry mopping, the floors dry very quickly. R. 580: 10-11.

18. The owner further confirmed Sterling's testimony, in that the bathroom floor had been dry mopped as part of the opening cleaning procedure, before Ruth's incident. R. 588: 2-9; 13-16. Dry mopping was described as being a process with an almost dry mop, perhaps damp, "that when you touch the floor it will dry pretty quickly." R. 594: 19-25; R. 595: 1-2.

19. Importantly, the incident report, signed by Ruth, indicated that the incident occurred at 10:30 a.m., that the report was filled out at the same time, and the record evidence above indicates that the time of dry mopping the area at issue was 9 a.m. R. 644.

20. The trial court's findings of fact, as well as record citations are hereby incorporated into Taco Bell's Statement of Facts by reference and Taco Bell relies upon same. R. 892-906.

SUMMARY OF THE ARGUMENT

The trial court's order granting summary judgment to Taco Bell and entry of Final Judgment for Taco Bell should be affirmed and upheld by this Court. Ruth has not identified any valid legal grounds

under which the trial court erred. Specifically, the trial court applied the proper standard of review, exercised the standard of review properly, and Ruth has not and cannot present sufficient reasonable evidence to overcome summary judgment.

Rather, Ruth seeks to use this appeal to argue that the floor was wet and Taco Bell knew this, but failed to warn her, when there is zero evidence to support this or any of the other theories raised in the case/briefing. Notably, all testimony was that the floor was dry mopped, with a mop that was at best damp, anywhere from thirty minutes to an hour and half before the incident.

Critically, the testimony of Sterling, the manager, established that the floor at issue would have been dry mopped at about 9 a.m. and this fall occurred according to all record evidence at 10:30 a.m., which is one and a half hours later. Objective photographs, taken no less than ten minutes post alleged incident documented the condition and did not depict what Ruth alleged. Moreover, there was a yellow wet floor sign placed in the hallway, mere steps from the bathroom at issue, that Ruth admits was present on the incident date. Simply stated, Ruth has not and cannot present any evidence that is not blatantly contradicted by the record. Specifically, the only record

evidence that supports Ruth's theories and arguments are her own statements/testimony and no reasonable jury could accept or believe it, in light of the record evidence, including Ruth's own testimony cited within this brief. The trial court did not err, did not ignore evidence of Ruth, and did not abandon any standards or misapply the law. Instead, this is simply a case where Ruth claims to have fallen upon the premises of another and because that occurred, seeks to argue that the premises owner must be negligent, which is prohibited.

Ruth's argument particularly fails when Ruth admits that the hallway that she walked on to enter the bathroom was dry but claims that the bathroom was wet. The record establishes that the areas were mopped at the same time or within minutes of one another and that would have been 1.5 hours before the alleged fall. Further, Ruth seems to ignore the fact that there was a wet floor sign that was clearly visible and does not address that all record evidence, other than what Ruth claims, supports that the floor was dry. As stated by the trial judge, "[t]he testimony established that the hallways and bathrooms would have been mopped at the same time, thus the reason for the wet floor sign when the dry mopping occurred.

Therefore, the posture of water in the grout lines as causing the fall, appears to have no reasonable basis in fact. Moreover, there was a wet floor sign in the hallway, which Plaintiff claims to have not seen, but Defendant did in fact, attempt to warn, in the event that the floor was wet. However, the hallway allegedly was not wet, and it follows to reason that the bathroom floor was not wet from dry mopping if the hallway was not wet.” R. 904.

ARGUMENT

A. The Trial Court Correctly applied Florida’s Summary Judgment Standard and Law and Summary Judgment should be Affirmed for Taco Bell

"In Florida it will no longer be plausible to maintain that 'the existence of any competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the 'slightest doubt' is raised.'" *In re Amendments to Fla. Rule of Civil Procedure 1.510*, 317 So. 3d 72, 76 (Fla. 2021) (quoting Bruce J. Berman & Peter D. Webster, *Berman's Florida Civil Procedure* § 1.510:5 (2020 ed.)). Under the federal summary judgment standard that is now applicable in Florida's state courts where, as here, the non-moving party bears the burden of proof on a dispositive issue at trial, the

moving party need only demonstrate "that there is an absence of evidence to support the non-moving party's case." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); Fla. R. Civ. P. 1.510(c)(1)(B) (providing that the party moving for summary judgment may support the assertion that a fact cannot be disputed by "showing . . . that an adverse party cannot produce admissible evidence to support the fact"). The trial court, in its detailed order, R. 892-906, cited this standard in detail and the requirements of the standard, as well as the burdens. The case law cited by the trial court is also adopted by reference by Taco Bell in this Answer Brief.

Under the new standard from 2021 that applies to this case, once the moving party satisfies this initial burden, the burden then shifts to the non-moving party to "make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp.*, 477 U.S. at 322. Specifically, it is incumbent upon the non-moving party to come forward with evidentiary material demonstrating that a genuine issue of fact exists as to an element necessary for the non-movant to prevail at trial. *Id.* at 324; *See Fla.*

R. Civ. P. 1.510(c)(1)(A) ("A party asserting that a fact . . . is genuinely disputed must support the assertion by . . . citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials[.]"). Importantly, though, "[i]f the evidence [presented by the non-movant] is merely colorable, or is not significantly probative, summary judgment may be granted." *In re Amendments to Fla. Rule of Civil Procedure 1.510*, 309 So. 3d 192, 193 (Fla. 2020) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)).

The trial court, therefore, must determine — as is the case with a motion for a directed verdict — whether the non-movant's "evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-52. That is to say, the non-movant's evidence must be of sufficient weight and quality that "reasonable jurors could find by a preponderance of the evidence that [the non-movant] is entitled to a verdict." *Id.* at 252. "Where the record taken

as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986) (quoting *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 289, 88 S. Ct. 1575, 20 L. Ed. 2d 569 (1968)).

In the instant case, once Taco Bell met its initial burden, the burden shifted to Ruth "to 'come forward with counterevidence sufficient to reveal a genuine issue.'" See *Oliver*, 291 So. 3d at 129 (quoting *Capotosto v. Fifth Third Bank*, 230 So. 3d 891, 892 (Fla. 4th DCA 2017)). Ruth was unable to do so, as detailed in the trial court's lengthy and well-thought-out order. See *Cordoba v. Dillard's Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) ("Speculation does not create a genuine issue of fact; instead, it creates a false issue, the demolition of which is a primary goal of summary judgment." (quoting *Hedberg v. Ind. Bell Tel. Co.*, 47 F.3d 928, 931-32 (7th Cir. 1995))). Although a jury could choose to disbelieve Ruth's testimony, this is not enough to survive summary judgment under these circumstances. See *Zhanadova v. Wal-Mart Stores E., LP*, No. 23-10545, 2023 U.S. App. LEXIS 26636, 2023 WL 6534188, at *4 (11th Cir. Oct. 6, 2023) ("At the summary judgment stage, '[i]t is not enough for the non-moving

party to merely assert [] that the jury might, and legally could, disbelieve the moving party's evidence. Instead, the non-moving party must present affirmative [, concrete] evidence that would allow a reasonable jury to rule for [her]." (alterations in original) (*quoting Hinson v. Bias*, 927 F.3d 1103, 1115-16 (11th Cir. 2019))). As such, Ruth "needed to 'do more than simply show that there is some metaphysical doubt as to the material facts.'" *See Whitlow*, 2023 Fla. App. LEXIS 5754, 48 Fla. L. Weekly D1647 (*quoting Matsushita Elec.*, 475 U.S. at 586); *see also In re Amends. to Fla. Rule of Civ. Proc. 1.510*, 317 So. 3d 72, 76 (Fla. 2021) (explaining that "slightest doubt" no longer precludes summary judgment).

In the instant case, Ruth cannot establish and has not established that the trial court erred in considering and applying the summary judgment standard to the case at hand. Moreover, there is no record evidence to support that the trial court disregarded or ignored evidence put forth by Ruth. Rather, the trial court followed the law and reached a result that was contrary to Ruth's requested outcome, which is the source of this appeal. The trial court's order, well thought out rationale and reasoning, and thorough examination of the case should be upheld by this Court. Ruth's version of events

is contrary to all record evidence and no reasonable jury could accept it, and moreover, her version of events is contrary to documentary photographs taken less than ten minutes post alleged incident. Merely colorable evidence is not sufficient to avoid summary judgment and Ruth was required to present affirmative, concrete evidence that would allow a reasonable jury to rule for her and she did not and has not. Summary judgment and final judgment should be affirmed.

B. The Trial Court Correctly considered Fla. Stat. 768.0755 and properly applied it in the instant case and as such, Summary Judgment should be Affirmed

In actions arising from a plaintiff's slip and fall on a transitory substance in a business establishment, proof of the breach element is 'statutorily constrained' by section 768.0755, Florida Statutes." Welch, 357 So. 3d at 1278 (*quoting Encarnacion v. Lifemark Hosps. of Fla.*, 211 So. 3d 275, 278 (Fla. 3d DCA 2017)). Under Section §768.0755:

(1) If a person slips and falls on a transitory foreign substance in a business establishment, the injured person must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken

action to remedy it. Constructive knowledge may be proven by circumstantial evidence showing that:

(a) The dangerous condition existed for such a length of time that, in the exercise of ordinary care, the business establishment should have known of the condition; or

(b) The condition occurred with regularity and was therefore foreseeable.

§ 768.0755(1), Fla. Stat. (2019).

"Section 768.0755 specifically places the burden on the plaintiff to prove that the business establishment had constructive knowledge of the hazard." *Struck v. Wal-Mart Stores E., LP*, No. 21-11012, 2021 U.S. App. LEXIS 32455, 2021 WL 5052557, at *2 (11th Cir. Nov. 1, 2021) (*quoting Oliver*, 291 So. 3d at 128). "Because the mere presence of water on the floor is not enough to establish constructive notice, the record must contain additional facts in support of liability. . . ." *Delgado v. Laundromax, Inc.*, 65 So. 3d 1087, 1090 (Fla. 3d DCA 2011) (citation omitted) (*first citing Broz v. Winn-Dixie Stores, Inc.*, 546 So. 2d 83, 83 (Fla. 3d DCA 1989) *superseded by* statute as stated in: *Struck v. Wal-Mart Stores E., LP*, 2021 U.S. App. LEXIS 32455, 2021 WL 505255; and then *citing Winn Dixie Stores, Inc. v. White*, 675 So.

2d 702, 703 (Fla. 4th DCA 1996)); *see also Struck*, 2021 U.S. App. LEXIS 32455, 2021 WL 5052557, at *2 ("The record must contain additional facts to create a permissible inference that the defendant had constructive notice." These have been referred to as "plus" facts. *See Encarnacion*, 211 So. 3d at 278. The presence of dirt, wheel marks, and/or footprints in a transitory foreign substance are often sufficient "plus" facts to create a permissible inference about a defendant's constructive notice and survive summary judgment. *See, e.g., Sutton*, 64 F.4th at 1169 (explaining that footprints and track marks were sufficient to create genuine issue of material fact); *Welch*, 357 So. 3d at 1279 ("[F]ootprints are a common feature of analogous slip and fall cases that survive summary judgment because they allow a jury to find that the substance was on the ground long enough for the defendant to discover it before the plaintiff's fall."); *Norman v. DCI Biologicals Dunedin, LLC*, 301 So. 3d 425, 431 (Fla. 2d DCA 2020) (reversing summary judgment where dirty water coupled with muddy footprints, skid mark, and lack of evidence establishing that the bathroom was inspected on the day of the incident led to genuine issue of material fact because inferences were not impermissibly stacked); *Colon v. Outback Steakhouse of Fla., Inc.*, 721 So. 2d 769,

771 (Fla. 3d DCA 1998) (explaining that dirty appearance of potato was sufficient for competing inference that "it had gone undetected on the floor for a sufficient period of time to place Outback on constructive notice"). However, the mere existence of "plus" facts is not dispositive to the issue as their existence must allow a jury to infer that the condition existed for a length of time sufficient to establish constructive notice "without assuming other facts." See *Encarnacion*, 211 So. 3d at 278 (citing *Wilson-Greene v. City of Mia.*, 208 So. 3d 1271 (Fla. 3d DCA 2017)). Here, the record is devoid of any plus facts at all whatsoever.

Moreover, the fact that a person slips and falls does not provide or constitute evidence of negligence. *Bucholtz v. City of Jacksonville*, 72 So. 2d 52, 53 (Fla. 1954). In that case, the Florida Supreme Court rejected the claim of a slip and fall plaintiff when she claimed that the treads of stairs had been worn "slick and smooth" and caused her to fall. *Id.* The Court reaffirmed the position that just because someone is injured, it does not mean that someone else should pay for that injury. *Id.* If the facts of the case are undisputed and the evidence leads to but one conclusion, the question of negligence is a

legal question of law for the trial court. *Stirling v. Sapp*, 229 So. 2d 850, 853 (Fla. 1969).

The Third District Court of Appeal held that a grocery store should have received directed verdict over an alleged wet floor, when the Plaintiff's only evidence that the floor was wet and caused her fall, was her testimony that there was a man with a mop and that her pants were wet after falling. *Publix Super Mkts., Inc. v. Bellaiche*, 245 So. 3d 873, 876 (Fla. 3d DCA 2018). Given that, the grocery store should have received a directed verdict at trial, as there was no evidence of an actual dangerous condition, and the mere possibility of it is not enough to establish liability. *Id.* The appellate court held that the Plaintiff had not established any actual or constructive knowledge of a dangerous condition created by a transient foreign substance. *Id.* The Court explained that “[h]ere, there is no evidence that Publix had actual notice of the dangerous condition, presumably water on the floor based on her testimony that her pants were wet. The only evidence that Bellaiche presents to support her position that Publix had actual knowledge is that she saw a man holding a mop standing in front of her after falling.” *Id.*

Under the statute, if a party satisfies the burden to show that there are no disputed facts, the burden then shifts to the Plaintiff to reveal a genuine issue of material fact to prevent entry of judgment. *Oliver v. Winn-Dixie Stores, Inc.*, 291 So. 3d 126 (Fla. 4th DCA 2020). In *Oliver*, there was an alleged grape and/or liquid on the floor that apparently caused Plaintiff to fall, according to her testimony. *Id.* The Court noted that neither the Plaintiff, nor an employee saw the condition that allegedly caused the fall before the fall. *Id.*

Moreover, it has been well established that the transitory foreign substance statute exists because simply establishing “evidence” that a floor was wet and that a Plaintiff slipped and fell is not enough to support negligence. *Lago v. Costco Wholesale Corp.*, 233 So. 3d 1248, 1251 (Fla. 3d DCA 2017). As such, summary judgment was appropriate for the retailer, when a party claimed she slipped and fell on liquid, but there were no facts to suggest that the liquid had been there for a long time or that this happened regularly. *Id.* at 1252. In addition, summary judgment was proper for the defendant when a customer asserted that she fell on unnoticeable drops of water on the floor, that were there for less than 4 minutes

before she fell. *Walker v. Winn-Dixie Stores, Inc.*, 160 So. 3d 909 (Fla. 1st DCA 2014).

In a similar case, applying Florida law, the Southern District of Florida granted summary judgment for the defendant. *Feinman v. Target Corp.*, 2012 U.S. Dist. LEXIS 173138 (Fla. S.D. 12/6/12). In *Feinman*, the plaintiff went to Target, felt something under her shoe, and slipped on the floor. *Id.* She did not see what caused it before she fell. *Id.* After, the Defendant looked at the floor, and found nothing on the floor that could have caused the fall. *Id.* Target moved for summary judgment on the basis that it had no constructive or actual knowledge of any hazards on the floors and thus, could not do anything to prevent this incident. *Id.* When the Court weighed all the evidence and data, it came to the conclusion that “only one inference reasonably can be drawn from the evidence in this case, and that is that Mrs. Feinman's fall was not due to Target's failure to maintain its floor in a reasonably safe condition. This inference leads to the unavoidable conclusion that Plaintiffs cannot prove their claim of negligence as a matter of law.” *Id.* Further, the Court rejected the argument of Plaintiffs that a jury should decide if there was a foreign substance on the floor.

It was noted that "the right to recover in a slip and fall case requires more than a showing simply that the surface upon which the injured fell was slick, smooth or wet." *Williams v. Holland*, 205 So.2d 682, 683 (Fla. Dist. Ct. App.1968). Before there can be recovery for a slip and fall injury, the allegations must show some negligence on the part of the defendant. *Bucholtz*, 72 So. 2d at 53; *Commercial Credit Corporation v. Varn*, 108 So. 2d 638, 639-40 (Fla. Dist. Ct. App.1959). "Target met its initial burden of establishing that there was no actual or constructive knowledge of a substance on the floor, that there was no substance on the floor that was the proximate cause of Mrs. Feinman's injuries, and that Target did not fail to use reasonable care. *Williams*, 866 So.2d at 123. Having met its burden, the burden then shifted to Plaintiffs to show by reference to the record that there is indeed a genuine issue of fact regarding Target's alleged negligence. Plaintiffs have not met this burden. Put another way, there is not even a scintilla of evidence to create a material issue of fact for jury determination." *Feinman*, at *16. Similarly, in a case that alleged a slip and fall on water at a retail store, it was proper under Florida law to enter summary judgment for the store, when a party could not establish that the liquid was on the floor for a period

of time to charge the owner with constructive knowledge. *Berbridge v. Sam's East, Inc.*, 728 Fed. Appx. 929 (11th Circ. 2018).

Ruth appears to try to argue that the trial court disregarded Florida law on this matter, but that is incorrect. Rather, the case law above establishes that the trial court went through an exhaustive examination of the law in a thirteen (13) page written order, and considered a wide variety of similar cases, but reached the conclusion that Ruth's claim did not satisfy her discharge of burden, and thus, summary judgment was entered and then final judgment. This argument falls flat and there is no record evidence, as applied to the law, that would support such a conclusion. The trial court's entry of summary judgment and final judgment should be affirmed.

C. The Trial Court Correctly considered the Summary Judgment Evidence and properly rejected an attempt to stack inferences by Ruth, and as such, Summary Judgment should be Affirmed

To reach Ruth's desired inference that the bathroom floor was wet, and that Taco bell had actual or constructive knowledge of same, a jury would have to impermissibly stack inferences. *See Broward Exec. Builders, Inc. v. Zota*, 192 So. 3d 534, 537 (Fla. 4th DCA 2016) ("The purpose of th[e] rule against stacking inferences is 'to protect

litigants from verdicts based on conjecture and speculation." (quoting *Stanley v. Marceaux*, 991 So. 2d 938, 940 (Fla. 4th DCA 2008))). In other words, such an inference is not reasonable. See *Struck*, 2021 U.S. App. LEXIS 32455, 2021 WL 5052557, at *1 ("[W]e make all reasonable inferences in the light most favorable to the non-moving party." (citing *Pennington v. City of Huntsville*, 261 F.3d 1262, 1265 (11th Cir. 2001))). Under similar circumstances, courts have found the evidence presented to be insufficient to survive summary judgment. See *Wilson-Greene*, 208 So. 3d at 1276 (explaining that jury would have been required "to impermissibly stack inferences"); see also *McNeal v. Walmart Stores E., LP*, No. 2:21-cv-711-SPC-NPM, 2023 U.S. Dist. LEXIS 4430, 2023 WL 145012, at *6 (M.D. Fla. Jan. 10, 2023) ("[E]ven assuming it is reasonable to believe . . . that the footprint preceded McNeal's fall, it is unreasonable to stack on the inference that the dish soap had been on the floor for any meaningful length of time."); *Andrade v. Wal-Mart Stores E., LP*, No. 22-23488-CV, 2023 U.S. Dist. LEXIS 186052, 2023 WL 6846670, at *4 (S.D. Fla. Oct. 17, 2023) ("Plaintiff cannot establish that the footprints, and in turn, the dangerous condition, existed long enough to preclude summary judgment. At most, the water was on the floor for six

minutes—the time between Ms. Calvera exiting the bathroom and the incident.").

Ruth is unable to establish a claim for negligence without impermissibly stacking inferences. *See School Bd. of Broward County v. Beharrie*, 695 So. 2d 437, 438 (Fla. 4th DCA 1997) ("[I]f a party to a civil action depends upon the inferences to be drawn from circumstantial evidence as proof of one fact, it cannot construct a further inference upon the initial inference in order to establish a further fact....") (*quoting Nielsen v. City of Sarasota*, 117 So. 2d 731, 733 (Fla. 1960)). The *Nielsen* Court points out that under Florida law, the stacking of inferences is forbidden as it leads to the danger of speculation. *See Voelker v. Combined Ins. Co. of America*, 73 So. 2d 403, 407 (Fla. 1954). *See also Winn Dixie Stores, Inc. v. Manning*, 143 So. 2d 339, 342 (Fla. 2d DCA 1962) ("Circumstantial evidence in a civil action will not support jury inference if that evidence is purely speculative and is inadequate to produce an inference outweighing all contrary or opposing inferences.").

Ruth cannot reach her desired result unless impermissible stacking of inferences occurs. The law is clear that this is forbidden.

As such, the trial court's entry of summary judgment and final judgment should be affirmed.

D. The Trial Court's Order of Summary Judgment is well reasoned, properly supported, and correctly held that Ruth could not present sufficient credible evidence to reach a jury and as a such, Summary Judgment and Final Judgment should be Affirmed

Ruth argues that the trial court discounted her evidence and "cherry picked" testimony, but ignores that under the summary judgment standard, her version of events could not be accepted by a reasonable jury and was merely colorable, at best. There was not any improper weighing of credibility, and the trial court considered all the points raised by Ruth, but found that when applied to the law, she had failed to discharge her own burden to defeat summary judgment. There were no material facts in dispute and as such, Ruth did not prevail. Ruth argues that the floor was in fact wet, but one has to stack inferences on top of one another to reach that conclusion and at the same time, must then choose to disregard all record evidence that did not come from Ruth.

Ruth's argument is styled as an additional sub-argument but goes back to her primary argument that the standard of review is incorrectly applied. Florida law is clear that will no longer be

plausible to maintain the existence of any competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the slightest doubt is raised. As stated above, “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” Here, Ruth has presented evidence that is blatantly contradicted by the record and no reasonable jury would believe such evidence. At best, Ruth can establish that the floor was dry mopped, at approximately 9 a.m. and that she fell in the bathroom at 10:30 a.m., after walking down a short hallway that had been mopped at the same time, which was allegedly dry. Ruth cannot provide any photos, or other evidence, other than her own testimony, that the bathroom floor was wet, which is refuted by all other record evidence. The trial court committed no error, applied the standard and the law correct to the case at hand, and the summary judgment and final judgment entered should be affirmed by this Court.

CONCLUSION

The trial court did follow the proper standard that governs summary judgment in the state of Florida. The trial judge considered all evidence and considered all evidence in the light most favorable to Ruth, as required. The trial court did not do anything that was improper, but rather followed the law and applied it to the case at hand. For the reasons stated in this Answer Brief, Taco Bell respectfully requests that this Court affirm the entry of Summary Judgment by the Trial Court and affirm and uphold Final Judgment in Taco Bell's favor.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 13, 2024, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts e-Filing Portal System which will transmit a copy via e-mail to counsel for the Appellants as follows: MORGAN & MORGAN, P.A. Brian J. Lee, Esq., Florida Bar. No. 561681, 501 Riverside Ave., Suite 1200, Jacksonville, FL 32202, blee@forthepeople.com.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Answer Brief complies with the font requirements and word count requirements with a word count of 6,558, in accordance with Fla.R.App.P. 9.210.

/s/ Elizabeth C. Tosh

Attorney