

71638-7

71638-7

No. 71638-7-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

HELEN KATHLINE SULLIVAN

Appellant,

v.

SAFEWAY, INC.,

Respondent.

APPELLANT'S REPLY BRIEF

KING COUNTY SUPERIOR COURT
CAUSE NO. 13-2-06420-9

Appellate Counsel for Plaintiff/Appellant
Helen Kathline Sullivan:

DAVID A. WILLIAMS, WSBA #12010
Nine Lake Bellevue Drive, Suite 104
Bellevue, Washington 98005
Telephone: 425-646-7767
Facsimile: 425-646-1011

2013 SEP 29 11:11:35
COURT OF APPEALS
DIVISION I
CLERK OF COURT

REPLY TO SAFEWAY’S STATEMENT OF THE CASE

Sullivan has no quarrel with Safeway’s Statement of the Case, except that it “picks up the action” once “The Spill” in question was reported to Safeway’s employee, overlooking the critical question of whether there was evidence from which a reasonable jury could infer that reasonable prudence by Safeway employees would have led to discovery/clean-up sooner, thereby preventing Sullivan’s fall.

REPLY TO ARGUMENT THAT “THE *PIMENTEL*
EXCEPTION DID NOT APPLY” TO THIS CASE

This appeal rests squarely upon Pimentel v. Roundup Company, 100 Wn.2d 39, 49, 666 P.2d 888 (1983), in which our Supreme Court held that a plaintiff need not show “actual or constructive” notice in premises cases, where “the nature of the proprietor’s business and his methods of operation are such that the existence of unsafe conditions on the premises is reasonably foreseeable”. Appellant’s Brief, p. 6.

Safeway argues that Sullivan must prove that “liquid soap on the floor in the area where she fell at the Safeway store was continuous or foreseeably inherent in the nature of Safeway’s business.” Respondent’s Brief, p. 13. Agreed; and yet, the very

product that was spilled on the floor---dishwashing soap---was sold in that very aisle. How is it not “reasonably inherent” that a product might be spilled in the very aisle in which it is on display?

Sullivan again submits that a reasonable jury could conclude that (1) it had been as much as half an hour before her fall, since that aisle had been inspected, and (2) given the obvious danger of any liquid, let alone liquid soap on the floor, more careful inspection was called for, based on the following language from the Supplement Declaration of Gwynn Graika:

“While I was manager of the store employees were instructed to pay attention to the floors and look for any foreign objects on the floor as they went about their work in the store. Employees were instructed to pick up or clean up any foreign objects on the floor immediately when they saw them. On average through the day, an employee would be on Aisle 9 at least 1-2 times per hour during the course of their work, either helping customers find products, stocking products, or traveling from one part of the store to another. In addition, at the time of Ms. Sullivan’s accident we had employees do an inspection of the entire store approximately twice per hour, checking for cleanliness and for any potential safety hazards, including foreign objects on the floor”.

CONCLUSION

It is respectfully submitted that Sullivan deserves a jury trial of her claim.

DATED this 8 day of September, 2014.

A large, stylized handwritten signature in black ink, appearing to read 'David A. Williams', is written over a horizontal line.

David A. Williams, WSBA #12010
Attorney for Plaintiff
9 Lake Bellevue Way, Suite 104
Bellevue, WA 98005
(425) 646-6676

PROOF OF SERVICE

I hereby certify that a copy of the Appellant's Brief, was

forwarded for service upon the counsel of record:

<p>Court of Appeals:</p> <p>Washington State Court of Appeals Division I 600 University St One Union Square Seattle, WA 98101-1176</p>	<p>Attorney for Respondent:</p> <p>Keith Alan Bolton Attorney at Law Bolton & Carey 7016 35th Ave NE Seattle, WA, 98115-5917 keith@boltoncarey.com</p>
<p><u>SENT VIA:</u></p> <p><input checked="" type="checkbox"/> US Mail</p>	<p><u>SENT VIA:</u></p> <p><input checked="" type="checkbox"/> US Mail</p> <p><input checked="" type="checkbox"/> Email</p>

DATED this 6 day of September 2014.



Lora Perry
Paralegal