

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12707
O/nl

_____AD3d_____

Argued - October 10, 2006

THOMAS A. ADAMS, J.P.
REINALDO E. RIVERA
PETER B. SKELOS
ROBERT A. LIFSON, JJ.

2005-04572

DECISION & ORDER

Yaakov Gerbi, et al., appellants, v Tri-Mac Enterprises
of Stony Brook, Inc., respondent.

(Index No. 25024-02)

Bauman, Kunkis & Ocasio-Douglas, P.C., New York, N.Y. (Jay L.T. Breakstone of
counsel), for appellants.

Morenus, Conway, Goren & Brandman, Melville, N.Y. (William G. Ford of counsel),
for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from
an order of the Supreme Court, Suffolk County (Jones, J.), dated December 7, 2004, which granted
the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the motion for
summary judgment dismissing the complaint is denied.

The injured plaintiff slipped and fell on soap on the bathroom floor of the defendant's
store. The defendant's assistant manager testified at a deposition as to the store's general
inspection/cleanup policy. However, he did not recall whether this policy was followed on the day
of the accident and no evidence was submitted as to what the condition of the bathroom floor was
within a reasonable time before the accident.

A defendant who moves for summary judgment in a slip-and-fall case has the initial
burden of making a prima facie showing that it neither created the hazardous condition nor had actual

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or constructive notice of its existence for a sufficient length of time to discover and remedy it (*see Valdez v Aramark Servs.*, 23 AD3d 639; *Britto v Great Atl. & Pac. Tea Co.*, 21 AD3d 436). Only after the movant has satisfied this threshold burden will the court examine the sufficiency of the plaintiff's opposition (*see Alvarez v Prospect Hosp.*, 68 NY2d 320; *Joachim v 1824 Church Ave.*, 12 AD3d 409).

The defendant failed to meet its initial burden as the movant and the Supreme Court should not have granted its motion for summary judgment. The defendant failed to submit evidence sufficient to demonstrate when the area in question was last inspected or cleaned before the injured plaintiff's accident (*see Valdez v Aramark Servs.*, *supra*; *Britto v Great Atl. & Pac. Tea Co.*, *supra*; *Joachim v 1824 Church Ave.*, *supra*). Since the defendant failed to meet its threshold burden as the movant, it is unnecessary to review the sufficiency of the plaintiffs' opposition papers (*see Britto v Great Atl. & Pac. Tea Co.*, *supra*; *Joachim v 1824 Church Ave.*, *supra*).

ADAMS, J.P., RIVERA, SKELOS and LIFSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court