

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

D13561  
X/cb

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Argued - December 11, 2006

GABRIEL M. KRAUSMAN, J.P.  
ANITA R. FLORIO  
ROBERT J. LUNN  
JOSEPH COVELLO, JJ.

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2005-09020

DECISION & ORDER

Margaret Collins, respondent, v Laro Service Systems  
of New York, Inc., appellant.

(Index No. 5496/03)

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Martyn Toher & Martyn, Mineola, N.Y. (Thomas M. Martyn of counsel), for  
appellant.

Sawyer, Halpern & Demetri, Garden City, N.Y. (Michael Mosscrop of counsel), for  
respondent.

In an action to recover damages for personal injuries, the defendant appeals from an  
order of the Supreme Court, Nassau County (Galasso, J.), entered August 31, 2005, which denied  
its 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 granted.

The plaintiff allegedly slipped and fell on a light blue sticky substance on the floor of  
a Stop & Shop Supermarket (hereinafter Stop & Shop). After the alleged accident she commenced  
this action against the defendant, a cleaning company which contracted with Stop & Shop to clean,  
polish, and maintain the supermarket floors. The plaintiff alleged that the defendant created the  
dangerous condition by its negligent cleaning and polishing of the floor. The defendant moved for  
summary judgment contending that it did not owe a duty to the plaintiff since she was not a party to  
its contract with Stop & Shop and it did not create the allegedly dangerous condition. The Supreme  
Court denied the defendant's motion. We reverse.

January 23, 2007

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COLLINS v LARO SERVICE SYSTEMS OF NEW YORK, INC.

A defendant who negligently creates or exacerbates a dangerous condition while performing services pursuant to a contract may be liable for injuries sustained by a third party (*see Espinal v Melville Snow Contrs.*, 98 NY2d 136, 138; *Dappio v Port Auth. of N.Y. & N.J.*, 299 AD2d 310, 311). The defendant here, however, made a prima facie showing that its floor cleaning operations did not create the sticky substance on the floor (*see Santantonio v Stop & Shop*, 5 AD3d 659; *Schmidt v Promaster Cleaning Serv.*, 281 AD2d 468). In opposition, the plaintiff failed to raise a triable issue of fact as to whether the defendant created the alleged hazardous condition (*see Santantonio v Stop & Shop, supra*; *Schirripa v Waldbaums Supermarket*, 283 AD2d 632). The plaintiff submitted her attorney's affirmation, together with inadmissible hearsay documents, to prove that the cleaning product used by the defendant prior to her fall was similar in color to the substance she slipped on. Contrary to the determination of the Supreme Court, these submissions were insufficient to warrant denial of the motion (*see Heifets v Lefkowitz*, 271 AD2d 490). Moreover, it is mere speculation that the substance upon which the plaintiff slipped was the same as the cleaning product used by the defendant, or that it was the defendant who negligently put that substance on the floor (*see Hagan v P.C. Richards & Sons*, 28 AD3d 422, 423; *Gatanas v Picnic Garden B.B.Q. Buffet House*, 305 AD2d 457).

KRAUSMAN, J.P., FLORIO, LUNN and COVELLO, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court