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

D15931
O/kmg

_____AD3d_____ Argued - May 21, 2007

REINALDO E. RIVERA, J.P.
GLORIA GOLDSTEIN
PETER B. SKELOS
RUTH C. BALKIN, JJ.

2006-05930 DECISION & ORDER

Rosamond Beresford, appellant,
v Corlette Jasmattie, respondent.

(Index No. 22207/03)

Michael G. LoRusso, Syosset, N.Y. (Shayne, Dachs, Stanisci, Coker & Sauer [Jonathan A. Dachs] of counsel), for appellant.

Lester Schwab Katz & Dwyer, LLP, New York, N.Y. (Harry Steinberg and Steven B. Prystowsky of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Queens County (Dollard, J.), dated May 4, 2006, as granted the defendant's motion for summary judgment dismissing the complaint.

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

In opposition to the defendant's prima facie showing of entitlement to summary judgment dismissing the complaint, the plaintiff raised a triable issue of fact as to whether the defendant created or had actual or constructive notice of the wet condition on the platform area of the stairway where she slipped and fell (*see Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969; *Gordon v American Museum of Natural History*, 67 NY2d 836). The plaintiff's affidavit and the deposition testimony of a nonparty witness, submitted in opposition to the defendant's motion, raised a triable issue of fact as to whether the defendant's alleged cleaning activities on the day in question caused the wet condition on the stairway.

The parties' remaining contentions are without merit.

RIVERA, J.P., GOLDSTEIN, SKELOS and BALKIN, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court