

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

D16904
G/cb

_____AD3d_____

Submitted - October 17, 2007

FRED T. SANTUCCI, J.P.
GLORIA GOLDSTEIN
MARK C. DILLON
DANIEL D. ANGIOLILLO, JJ.

2007-02366

DECISION & ORDER

Eugene Van Dina, et al., appellants, v St. Francis
Hospital, Roslyn, New York, respondent.

(Index No. 11918/05)

John J. Appell, New York, N.Y. (Louis A. Badolato of counsel), for appellants.

Mulholland, Minion & Roe, Williston Park, N.Y. (John A. Beyrer of counsel), for
respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from
an order of the Supreme Court, Nassau County (O'Connell, J.), dated February 7, 2007, which
granted the defendant's motion for summary judgment dismissing the complaint.

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

The plaintiff Eugene Van Dina allegedly was injured when he slipped and fell on a wet
substance that covered the floor of the bathroom adjacent to his hospital bed in the defendant's
emergency room.

A landowner has a duty to maintain its premises in a reasonably safe condition (*see*
Basso v Miller, 40 NY2d 233, 241; *Miguel v SJS Assoc., LLC*, 40 AD3d 942; *Rodriguez v White*

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Plains Pub. Schools, 35 AD3d 704, 705). 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 dangerous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it (see *Miguel v SJS Assoc., LLC*, 40 AD3d 942; *Rodriguez v White Plains Pub. Schools*, 35 AD3d at 705; *Perlongo v Park City 3 & 4 Apts., Inc.*, 31 AD3d 409).

The defendant failed to satisfy its initial burden of submitting evidence sufficient to refute the injured plaintiff's deposition testimony, which gave rise to a reasonable inference that the defendant had created a dangerous condition on the bathroom floor by mopping (see *Dugan v Crown Broadway, LLC*, 33 AD3d 656; *Avellino v TrizecHahn Newport*, 5 AD3d 519, 520; *Stone v KFC of Middletown*, 5 AD3d 106; *Weingrad v Aguilar Gardens*, 227 AD2d 546). Furthermore, the defendant failed to meet its burden of demonstrating the absence of constructive notice of the dangerous condition since it failed to submit any evidence as to when the floor was last inspected or mopped prior to the injured plaintiff's accident (see *Ferrara v JetBlue Airways Corp.*, 27 AD3d 244; *Britto v Great Atl. & Pac. Tea Co., Inc.*, 21 AD3d 436, 437; *Joachim v 1824 Church Ave., Inc.*, 12 AD3d 409, 410). Accordingly, the Supreme Court should have denied the defendant's motion.

SANTUCCI, J.P., GOLDSTEIN, DILLON and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court