

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

D19453
X/prt

_____AD3d_____

Argued - April 21, 2008

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY, JJ.

2007-01896

DECISION & ORDER

Annie Lawson, respondent, v OneSource
Facility Services, Inc., appellant.

(Index No. 13463/05)

McKeegan & Shearer, P.C., New York, N.Y. (Douglas Shearer of counsel), for
appellant.

Baker, Leshko Saline & Blosser, LLP, White Plains, N.Y. (Mitchell J. Baker of
counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an
order of the Supreme Court, Westchester County (Giacomo, J.), entered January 30, 2007, which
denied its 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 granted.

While at her workplace, the plaintiff allegedly slipped and fell on a freshly mopped
hallway floor. The plaintiff commenced this action against the defendant, OneSource Facility
Services, Inc., which provided janitorial services to the building, alleging that it had negligently
performed its duties and caused her injuries. At the close of discovery, the defendant moved for
summary judgment dismissing the complaint. The Supreme Court denied the motion on the ground
that, in support of its contention that it did not owe the plaintiff a duty of care, the defendant had
failed to establish, prima facie, that it had not entirely displaced the building owner's duty to safely
maintain the premises, and because in opposition to the defendant's prima facie showing that it used
reasonable care in how it cleaned the hallway floor, the plaintiff raised a triable issue of fact. We
reverse.

May 27, 2008

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LAWSON v OneSOURCE FACILITY SERVICES, INC.

Generally, an independent contractor will not be held liable for the injuries of noncontracting third parties (*see Espinal v Melville Snow Contrs. Inc.*, 98 NY2d 136, 138). The plaintiff contends that two exceptions to this general rule are applicable to the instant case: “where the contracting party, in failing to exercise reasonable care in the performance of his duties, launch[es] a force or instrument of harm” and “where the contracting party has entirely displaced the other party’s duty to maintain the premises safely” (*id.* at 140 [internal citations and quotations omitted]).

The defendant met its prima facie burden of establishing that it did not displace the building owner’s duty to safely maintain the premises by submitting two affidavits from its vice president of operations averring that the building owner retained its own operations and maintenance staff and that the defendant’s employees took orders from that staff (*see Roveccio v Ry Mgt. Co., Inc.*, 29 AD3d 562, 562-563; *Romeo v Ronald McDonald House*, 25 AD3d 681, 683; *Hagen v Gilman Mgt. Corp.*, 4 AD3d 330, 331). In opposition, the plaintiff failed to raise a triable issue of fact (*cf. Rapone v Di-Gara Realty Corp.*, 22 AD3d 654, 656).

Further, although the defendant did not establish prima facie that it did not create a dangerous condition, the wet hallway floor upon which the plaintiff allegedly slipped and fell was readily observable by a reasonable use of the plaintiff’s senses, and the condition of the floor being mopped was not inherently dangerous (*see Ramsey v Mt. Vernon Bd. of Educ.*, 32 AD3d 1007). Accordingly, the defendant’s motion for summary judgment dismissing the complaint should have been granted.

MASTRO, J.P., RIVERA, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:


Clerk of the Court