

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

D36156
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_____AD3d_____

Argued - September 14, 2012

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
ROBERT J. MILLER, JJ.

2011-10255

DECISION & ORDER

Fran Petersel, appellant, v Good Samaritan Hospital
of Suffern, N.Y., respondent.

(Index No. 11098/09)

Neimark & Neimark LLP, New City, N.Y. (Ira H. Lapp and Mark Cambareri of
counsel), for appellant.

Geisler Gabriele & Marano, LLP, Garden City, N.Y. (Lori A. Marano and Anthony
M. Soscia, Jr., of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Rockland County (Jamieson, J.), dated October 4, 2011, 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 defendant's
motion for summary judgment dismissing the complaint is denied.

A defendant moving 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 or constructive notice of its existence for a sufficient length of time to discover and remedy
it (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 837; *Johnson v Culinary Inst.
of Am.*, 95 AD3d 1077, 1078; *Amendola v City of New York*, 89 AD3d 775, 775). "To meet its initial
burden on the issue of lack of constructive notice, the defendant must offer some evidence as to
when the area in question was last cleaned or inspected relative to the time when the plaintiff fell"
(*Birnbaum v New York Racing Assn., Inc.*, 57 AD3d 598, 598-599; *see Klerman v Fine Fare
Supermarket*, 96 AD3d 907).

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Here, affording the plaintiff the benefit of every reasonable inference that can be drawn from the testimony, the defendant failed to establish, prima facie, that it did not have constructive notice of the allegedly hazardous condition (*see e.g. Armellino v Thomase*, 72 AD3d 849, 850; *Secof v Greens Condominium*, 158 AD2d 591, 593).

The defendant's remaining contentions are without merit.

Accordingly, the Supreme Court should have denied the defendant's motion for summary judgment dismissing the complaint.

ANGIOLILLO, J.P., DICKERSON, BELEN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court