

Gettas v 332-336 E. 77th St. Assoc.

2005 NY Slip Op 30483(U)

November 15, 2005

Supreme Court, Nassau County

Docket Number: 107343/02

Judge: Shirley Werner Kornreich

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SHIRLEY WERNER KORNREICH
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

0107343/2002

PART 54

GETTAS, PHILLIP
vs
332-336 EAST 77TH STREET

INDEX NO. 107343/02

MOTION DATE 6/30/05

MOTION SEQ. NO. 2

MOTION CAL. NO. _____

SEQ 2

SUMMARY JUDGMENT

The following papers, numbered 1 to 2 were read on this motion to/for 82

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	FILED NOV 23 2005 CLERK COURT OFFICE	PAPERS NUMBERED _____
Answering Affidavits — Exhibits _____		_____
Replying Affidavits _____		_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with the annexed decision and order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 11/16/05

[Signature]
SHIRLEY WERNER KORNREICH
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X
PHILLIP GETTAS,

Plaintiff,

Index No.: 107343/02

-against-

**DECISION AND
ORDER**

332-336 EAST 77TH STREET ASSOCIATES, a/k/a
332-336 EAST 77TH STREET OWNERS CORP.,
KENILWORTH EQUITIES, LTD., and ARLENE WEST,

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Defendants.

-----X
KORNREICH, SHIRLEY WERNER, J.:

This is an action to recover for personal injury allegedly sustained on April 16, 1999, while plaintiff was entering the lobby of his apartment building at 334 East 77th Street, in New York City. Plaintiff alleges that defendants, the building owner, management company and managing agent, negligently failed to remove an "accumulation of water upon the lobby floor" that was caused by "tracking in of water and/or rain water from the outside", causing plaintiff to slip, fall and sustain injury.

I. Summary Judgment

Defendant 332-336 East 77th Street Owners Corp ("Owners") (s/h/a 332-336 East 77th Street Associates) now moves for summary judgment dismissing the complaint. Owners submits the affirmation of its attorney, together with copies of pleadings and deposition testimony of

plaintiff, and co-defendant Kenilworth Equities Ltd. (“Kenilworth”).¹ In opposition, plaintiff submits his attorney’s affirmation, the affidavit of his engineer, Stanley Fein, P.E., and transcripts of depositions.

II. Facts

Plaintiff testified as follows. The accident occurred between 6:00 p.m. and 6:30 p.m. on April 16, 1999. EBT of P. Gettas, p. 6. Rain had been falling intermittently throughout the day; just before the accident, the rain “was starting to get quite heavy.” *Id.* at 11. Plaintiff entered the building through the main entrance on 77th Street, passed through the vestibule, and entered the lobby, where he slipped on the granite floor. The floor of the vestibule was covered by a doormat, but the floor in the lobby was uncovered. *Id.* at 11. Plaintiff was carrying his “furled umbrella” in his right hand. *Id.* at 15.

After the accident, plaintiff noticed that the floor was wet. *Id.* at 18. Plaintiff described the wet condition as “water splashes and wet footmarks, things like that ... like wet footprints leading from the door, from the interior door into the lobby area into across the granite.” *Id.* at 21. When plaintiff left the building, only several minutes prior to the incident, to meet his guest at a nearby subway station, he had passed through the same area, and had not noticed the wet condition. *Id.* at 22. Plaintiff had not seen any mats or carpets on the lobby floor on that day, or on previous rainy days. *Id.* at 26.

After slipping, plaintiff did not hit the floor, but struck a wall with the right side of his torso. *Id.* at 20. Several days later, he was admitted to Lenox Hill Hospital to receive treatment

¹Co-defendants Kenilworth and Arlene West have made no submissions in the instant motion.

for a collapsed lung. *Id.* at 51.

Giovanna Grech, the superintendent of the building, testified on behalf of her employer, Kenilworth, that her job was to maintain the building. EBT of G. Grech, p. 22. She testified that the vestibule floor was covered by a “coco mat” approximately five feet by five feet in dimension. *Id.* at 25. She stated that the lobby floor was partly uncovered granite (the part near the entrance from the vestibule) and partly covered by carpet. *Id.* at 31. She routinely washed and swept the floor area where the accident occurred. *Id.* at 37.

Ms. Grech did not have any mats that were to be placed on the lobby floor in case of wet conditions due to rain, nor was she instructed on what she should do to the floor in such conditions, nor had anyone ever asked her to put any floor covering there. *Id.* at 50. Prior to the accident, she had not ever observed any water on the lobby floor. *Id.* at 70. She stated that plaintiff reported the accident to her, but did not say anything about a wet floor. *Id.* at 55.

Plaintiff's engineer, Stanley H. Fein, P.E., submits an affidavit, to which is annexed a report. The report states that the floor upon which plaintiff allegedly slipped was constructed of “granite/ceramic tile.” Affirmation of A. Silvera, Exhibit A. According to Mr. Fein, the floor was dangerously slippery:

the measured coefficient of friction of the nonabsorbent ceramic floor where the accident occurred was 0.38 which is well below the 0.7 required for a slip-proof condition. Since the floor was nonabsorbent, when water would be deposited on top of it, the coefficient of friction would be even lower and the floor, even in the dry condition, was extremely slippery.

Id.

III. *Conclusions of Law*

A. *Summary Judgment*

In order to prevail on a motion for summary judgment, the movant must establish its cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in its favor, and do so by tender of evidentiary proof in admissible form. *Zuckerman v. City of N.Y.*, 49 N.Y.2d 557 (1980). If the movant makes out a prima facie case, the opponent must come forward and “lay bare his proofs” of any alleged triable issues of fact. *See In re Dissolution of Rencor Controls, Inc.*, 263 A.D.2d 845 (3rd Dept. 1999) citing *Hanson v. Ontario Milk Producers Coop., Inc.*, 58 Misc.2d 138 (Sup. Ct. Oswego Co. 1968); *Bank of New York v. Spitzer*, 43 A.D.2d 105 (1st Dept. 1973). Owners argues that the complaint should be dismissed as against it because plaintiff has put forward no evidence that it either caused, or had notice of the alleged dangerous condition. The Court agrees.

In order to establish liability of a property owner or manager for a hazardous condition, the plaintiff must demonstrate that the defendant either created the hazard, or had notice (actual or constructive) of the dangerous condition. *See Gordon v. American Museum of Natural History*, 67 N.Y.2d 836, 837 (1986). Here, there is no evidence that Owners created a hazardous wet condition on the lobby floor, nor that they knew, or should have known, that one existed. Plaintiff testified that he noticed no wet condition shortly before the accident. His testimony that he observed a wet condition on the lobby floor, after the accident, is insufficient, on its own, to establish that the building owner/manager had either notice of, or created the condition. *See Keum Choi v. Olympia & York Water St. Co.*, 278 A.D.2d 106, 107 (1st Dept. 2000) (reversing

trial court's denial of defendants' summary judgment motion on ground that plaintiff failed to present evidence of notice or creation of hazard). Indeed, as in *Keum*, it is here "quite possible that any water on the floor had been tracked into the building by individuals immediately preceding plaintiff," or by plaintiff himself, who testified that the rainfall just before he entered was heavy, and that he carried in a furred umbrella. The Court in *Keum* held that the defendants "had no obligation to provide a constant remedy" for wet conditions caused by tracking in of rain water. *Id.* Similarly, defendants here had no duty to cover the lobby floors in the absence of a "general awareness of a dangerous, recurrent condition." *Id.* citing *Megally v 440 W. 34th St. Co.*, 246 A.D.2d 346, 347 (1st Dept. 1998) (other citations omitted). Plaintiff has provided no evidence of such an awareness. To the contrary, the testimony of the deponents shows that the building had no practice of putting mats down on the lobby floor, and had no history of complaints of dangerous wet conditions on the floor, or accidents arising therefrom. Moreover, a large mat was placed in the entry vestibule.

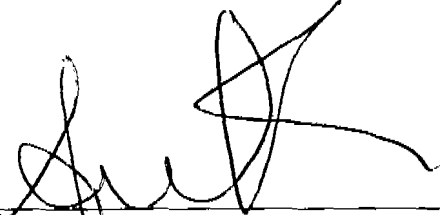
Nor does the report furnished by plaintiff's expert provide the necessary evidence of notice or creation of a hazard. The report is not germane to the issue of notice. Nor does the report's conclusion, that the lobby floor was dangerously slippery, establish that defendants created the hazardous condition. Plaintiff provides no authority, other than the report itself, that a lobby floor should be "slip-proof" or have a minimum "measured coefficient of friction." Accordingly, it is

ORDERED that the motion of defendant 332-336 East 77th Street Owners Corp. to dismiss the complaint as against it, is granted; and it is further

ORDERED that upon a search of the record, summary judgment is granted to defendants Kenilworth Equities, Ltd., and Arlene West, dismissing plaintiff's complaint; and it is further

ORDERED that the Clerk is directed to enter judgment dismissing the complaint as to all of the defendants herein.

Date: November 15, 2005
New York, New York



SHIRLEY WERNER KORNEICH

FILED
NOV 23 2005
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NEW YORK COUNTY OFFICE