SHORT FORM ORDER

INDEX No. 04-11395
CAL. No. 06-01651-OT

SUPREME COURT - STATE OF NEW YORK
POST-NOTE MOTION PART - SUFFOLK COUNTY

PRESENT:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATE 9/28/06
ADJ. DATE 11/16/06
Mot. Seq. # 003 - MG; CASEDISP

JANE RUIC, Plaintiff, - against - ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE and OUR LADY OF PERPETUAL HELP SCHOOL, Defendants.	KUJAWSKI & DELLICARPINI Attorneys for Plaintiff 1637 Deer Park Avenue, P.O. Box 661 Deer Park, New York 11729-0661 PATRICK F. ADAMS, P.C. Attorney for Defendants 49 Fifth Avenue, P.O. Box 1089M Bay Shore, New York 11706-7306

Upon the following papers numbered 1 to 18 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 7; Notice of Cross Motion and supporting papers ____; Answering Affidavits and supporting papers 8 - 17; Replying Affidavits and supporting papers 18; Other ____: (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that this motion by defendants, Roman Catholic Diocese of Rockville Centre and Our Lady of Perpetual Help School ("OLPH"), for an order granting them summary judgment dismissing the complaint of plaintiff, Jane Ruic, is granted.

Plaintiff instituted this slip and fall action to recover damages allegedly suffered as a result of defendants' negligence. The action arises out of an accident that took place on the morning of December 7. 2002 in the cafeteria area of OLPH. On that date, plaintiff, who was a volunteer special education religion teacher, was attending to a student, Anthony, who had become disruptive in class. Anthony, one of many special education students present in the building that day, was dropped off by his mother for a Saturday morning special education religion class that was taught by plaintiff. When his mother dropped him off at school that day, she indicated to plaintiff and the special education coordinator, Jane DeGirolamo, that Anthony, who was emotionally disturbed, was not "himself" and not listening very well. As the one hour class drew to a close, Anthony continued to fail to listen to his teachers and plaintiff made the decision to wait with Anthony for his mother outside of the class area, on

a bench facing the door which led to the stairs to the parking lot. At some point prior to his mother's arrival, Anthony sprinted for the door, causing plaintiff to run after him. As she approached the door, plaintiff slipped and fell, sustaining the injuries complained of herein. In her complaint, plaintiff alleges defendants were negligent in allowing Anthony to attend class that day and that defendants had actual or constructive notice of the wet condition that precipitated plaintiff's fall.

Defendants now move for summary judgment dismissing plaintiff's complaint, arguing that they were not negligent in allowing Anthony to attend class that day and that they had neither actual or constructive notice of a wet condition in the area where plaintiff fell. Plaintiff, in opposition to defendant's motion, states that there was no precipitation falling before or during the time of plaintiff's fall, that water was visible to plaintiff in the area where she fell in the hour preceding her accident and that the special education coordinator, Jane Ms. DeGirolamo, saw the water, tried ineffectually to clean it up and summoned the janitor who did not arrive prior to plaintiff's accident. In addition, plaintiff argues that defendants were aware that Anthony was having problems that day and they were therefore negligent in allowing him to attend class that day.

It is fundamental that to recover in a negligence action, plaintiff must establish that the defendant owed plaintiff a duty to use reasonable care, that the defendant breached that duty, and that a resulting injury was proximately caused by the breach (*see,* ***Turcotte v Fell***, 68 NYS2d 432, 510 NYS2d 49 [1986]). To establish a prima facie case of negligence in a slip and fall action, the plaintiffs are required to show that the defendant created the condition which caused the accident or that it had actual or constructive notice of the condition (*see,* ***Bradish v Tank Tech Corp.***, 216 AD2d 505, 628 NYS2d 807 [1995]; ***Gaeta v City of New York***, 213 AD2d 509, 624 NYS2d 47 [1995]; ***Pirillo v Longwood Assocs.***, 179 AD2d 744, 579 NYS2d 120 [1992]). Liability is predicated only on a failure of defendant to remedy the danger after actual or constructive notice of the condition (*see*, ***Piacquadio v Recine Realty Corp.***, 84 NY2d 967, 622 NYS2d 493 [1994]). "To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit [a defendant] to discover and remedy it" (***Gordon v American Museum of Natural History***, 67 NY2d 836, 837, 501 NYS2d 646, 647 [1986]; ***Bykofsky v Waldbaum's Supermarkets, Inc.,*** 210 AD2d 280, 619 NYS2d 760 [1994]).

Further, courts have held that property owners must be permitted a reasonable period of time after the cessation of a storm to correct any dangerous condition created by the inclement weather (***Harper v United States,*** 949 F.Supp 130 [1996]; ***Porcari v S.E.M. Management Corp.,*** 184 AD2d 556, 584 NYS2d 331 [1992]; ***Kovelsky v City of New York,*** 221 AD2d 234, 634 NYS2d 1 [1995]. Owners of property are also not required "to cover up all its floors with mats, nor to continuously mop up all moisture resulting from tracked-in rain" (***Negron v St. Patrick's Nursing Home***, 248 AD2d 687, 671 NYS2d 275 [1998]).

In the instant case, defendants have met their prima facie burden in establishing that they lacked sufficient notice of a wet condition in the precise area of plaintiff's accident and plaintiff's evidence fails to refute this contention. Plaintiff herself testified during her deposition that it had snowed a few inches during the morning of her accident, was flurrying as she arrived at the school and that wetness in the entry way to the cafeteria was being tracked in by staff and students. Defendant established that while water may have existed earlier in the morning on the floor in the cafeteria entrance area, it was

completely dried through the use of paper towels by Jane DeGirolamo. Furthermore, Ms. DeGirolamo testified that this spot, which had been wet but made dry through her efforts, was not in same location as plaintiff's fall. Additionally, although plaintiff states she saw wetness on the floor in the vicinity of her accident when she first entered the building, she did not notify anyone of this fact nor did she view any water on the floor during the entire time she was sitting with Anthony facing the door which leads to the outside.

Finally, while plaintiff attempts to argue that the school was negligent in allowing a special education student to attend school that day after his mother commented that he was not acting himself, this argument is unavailing. The program in which plaintiff volunteered her services was specifically designed to provide religious education to special education students. There is nothing in his mother's statements which would put the school on notice that Anthony was likely to try and run from the building. When Anthony began acting out in class, Ms. DeGirolamo used reasonable efforts to attempt to locate his mother and was doing so when plaintiff's accident occurred. Additionally, no school official had directed plaintiff to remove Anthony from class. Indeed, it was plaintiff who chose to remove Anthony from the class and sit with him in close proximity to the outside door.

Consistent with the aforementioned, defendants' motion for an order granting them summary judgment dismissing the complaint of plaintiff is granted.

Dated: MAR 0 5 2007

J.S.C.

__X__ **FINAL DISPOSITION** _____ **NON-FINAL DISPOSITION**