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SCANNED ON 6/20/2007

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. SHIRLEY WERNER KORNREICH

Index Number : 103005/2005

PART 54

JUDICE, PATRICIA

vs

NINETY PARK PROPERTY

INDEX NO. 103005/05

Sequence Number : 002

MOTION DATE 3/21/07

SUMMARY JUDGMENT

MOTION SEQ. NO. 002

MOTION CAL. NO.

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits	2
Replying Affidavits	

FILED

JUN 20 2007

COUNTY CLERK'S OFFICE
NEW YORK

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION AND ORDER.

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

Dated: 6/13/07

HON. SHIRLEY WERNER KORNREICH

J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if

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

----------X

PATRICIA JUDICE

Plaintiff,

-against-

NINETY PARK PROPERTY, LLC., VORNADO 90 PARK AVENUE, LLC., and VORNADO OFFICE MANAGEMENT. LLC.,

Defendants.

----------X

Index No.: 103005/05

DECISION ORDER and JUDGMENT

KORNREICH, SHIRLEY WERNER, J.:

This is an action for damages arising out of the defendants' purported negligent failure to remove accumulated water from floor mats in the lobby of its building. Plaintiff Patricia Judice ("Judice") slipped and fell on the mats, causing injury. She contends that defendants, Ninety Park Property, L.L.C. (owner of land), Vornado 90 Park Avenue, L.L.C. (lessee of building), and Vornado Office Management, LLC. (on-site managing agent), collectively referred to as "Vornado," had notice of--and negligently failed to remedy--the slippery condition. Defendants now move for summary judgment asserting that no triable issues of fact exist as to the absence of either actual or constructive notice.

I. Facts

The following facts are not in dispute. On April 4, 2004, plaintiff slipped on mats set out in the lobby of 90 Park Avenue, hitting the ground and suffering injury. On the day of the accident, defendant Vornado was the on-site managing agent responsible for a wide range of duties including maintenance, tenant relations, construction, and staffing. Vornado had protocols whereby carpet mats, "wet floor" signs, and stanchions would be set out during periods

of rain. Vornado claims that wet floor signs and stanchions were in place on the date of the accident. Plaintiff does not recall seeing them.

The Park Avenue entrance to the building had four doors: two sets of swinging doors and two revolving doors. Plaintiff entered through a revolving door and immediately found herself on a mat that had been set out due to rain. This mat extended straight outwards, approximately ten feet, and intersected at a right angle with a second mat, which ran to the right. According to her testimony, plaintiff took approximately eight steps on the first mat, attempted to turn right onto the second mat, and slipped and fell onto the ground. She suffered a shoulder injury, and eventually required surgery.

II. Conclusions of Law

In order to hold a landowner liable for a dangerous condition on its premises, a plaintiff must demonstrate that the defendant either created, or had actual or constructive notice of the hazardous condition which precipitated the injury. *Zuk v Great Atl. & Pac. Tea Co.*, 21 AD3d 275 (1st Dept. 2005); *Mejia v New York City Tr. Auth.*, 291 AD2d 225, 226 (1st Dept. 2002). "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 defendant's employees to discover and remedy it." *Gordon v. American Museum of Natural History*, 67 NY2d 836 (1986). The duration of the defect must afford the defendant "a sufficient opportunity, within the exercise of reasonable care, to remedy the situation" after receiving such notice. *Lewis v Metropolitan Transp. Auth.*, 99 AD2d 246, 250 (1st Dept. 1984), *affd* 64 NY2d 670 (1984) citing *Madrid v City of New York*, 42 NY2d 1039 (1977).

In the instant case, there is no evidence that the slippery condition resulted from any affirmative act on defendant's part. Thus liability must be predicated, if at all, on the theory of constructive notice.

Plaintiff has failed to raise an issue of fact to rebut defendants' prima facie assertion that they lacked constructive notice of the slippery condition. According to her own testimony, plaintiff never saw a puddle of water on the mats prior to her fall; she noticed wetness only after she hit the ground and "felt it." Moreover, she offers not a single witness to attest to the possibility that water had accumulated to the point of forming a "pool" visible enough to allow discovery upon reasonable inspection. Even if such a pool were present, plaintiff fails to show that it existed long enough to afford the defendants an opportunity to mop it up. *See O'Rourke v. Williamson, Picket, Gross, Inc.*, 260 A.D.2d 260, 260 (1st Dept. 1999); *Keum Choi v. Olympia & York Water Street Co.*, 278 AD2d 106 (1st Dept. 2000). It is undisputed that it was raining on the day of the accident. Soaked, umbrella-wielding pedestrians were likely passing through the lobby at high volume. Indeed, it is quite possible that the alleged "pool" was created by a wet passerby who elected to shake out her umbrella mere moments before the plaintiff's slip. *See Keum Choi, supra*, at 107.

Plaintiff asserts that the defendants should be imputed with constructive notice because the condition was recurring. However, it is well settled that a "general awareness" that a dangerous condition may be present is legally insufficient to constitute notice of the particular condition that caused the plaintiff's fall. *See Gordon, supra*, at 838. *Solazzo v. New York City Transit Authority*, 21 AD3d 735, 736 (1st Dept. 2005); *Yearwood v. Cushman & Wakefield, Inc.*, 294 AD2d 568, 569 (2d Dept. 2002). This is particularly true in situations where building owners and/or agents provide mats to shield visitors from slippery floors during periods of rain,

as is the case here. Ultimately, whether a plaintiff has established a defendant's awareness of a dangerous condition at a level of specificity sufficient to establish constructive notice turns on the facts of each case. *Gonzalez v. Wal-Mart Stores, Inc.*, 299 FSupp2d 188, 194 (S.D.N.Y. 2004) (applying New York law).

Here, plaintiff proffers several "accident reports" describing a variety of slips and falls over the course of preceding months, apparently to show that the mats themselves brought about conditions ripe for water accumulation and consequent slips and falls. However, the court finds these reports to have little probative force. The descriptions on the reports are not nearly specific enough to indicate the presence of a recurring dangerous condition identical to the type alleged to have caused plaintiff's accident (*e.g.* involving water accumulation on the mats). General descriptions such as "[he] fell as he stepped off the mats in the lobby that were in place due to rainy weather[,]" or "she walked off the mats that were in place due to rain and fell on her right knee," do not indicate that the falls resulted from a slippery condition due to a pool of water on the mats. At best the reports establish a "general awareness" that the mats become slippery when it rains, which is legally insufficient to prove constructive notice under the theory of reoccurring dangerous condition. *Pacquadio v. Recine Realty Corp.*, 84 NY2d 967, 969 (1994). Taken together, the reports fail to achieve their intended effect of proving that a prior similar condition existed in a recurring and predictable pattern as to make the very act of placing the mats sufficient, without more, to put the defendants on constructive notice of a dangerous condition.

Plaintiff's final argument that the defendants are liable for violation of New York City Administrative Codes §§27-127, 28, is meritless. The Codes set general requirements for building maintenance and safety, and have recently been applied to water accumulation leading

to a slip-and-fall accident. *Kelly v. City of New York*, 6 AD3d 188 (1st Dept. 2004). However, the case at bar is distinguishable from *Kelly*. In that case, the evidence was undisputedly sufficient to support the plaintiff's common law negligence claim. Here, plaintiff has failed to proffer sufficient evidence to raise an issue as to defendants' lack of notice of the slippery condition. Accordingly it is

ORDERED that defendants' motion for summary judgment is granted and this action dismissed; and it is further

ORDERED that the clerk be directed to enter judgment in favor of defendants and against plaintiffs together with costs and disbursements to defendant as taxed by the clerk of the court upon submission of an appropriate bill of costs.

ENTER:

SHIRLEY WERNER KORNREICH

Date: June 4, 2007
New York, New York