

Kazantzis v Georgia Props., Inc.

2007 NY Slip Op 32051(U)

July 5, 2007

Supreme Court, New York County

Docket Number: 0100956/2006

Judge: Shirley W. Kornreich

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. SHIRLEY WERNER KORNREICH
Justice

PART 94

Index Number : 100956/2006
KAZANTZIS, GEORGE
vs
GEORGIA PROPERTIES
Sequence Number : 003
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

1, 2
3
4

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED
JUL 10 2007
NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 7/5/07

HON. 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
GEORGE KAZANTZIS and MARY KAZANTZIS,

Plaintiffs,

Index No.: 100956/06

-against-

GEORGIA PROPERTIES, INC., RUDD REALTY
MANAGEMENT CORP., FREDERICK J. RUDD,

Defendants.

KORNREICH, SHIRLEY WERNER, J.:

FILED
JUL 10 2007
NEW YORK
COUNTY CLERKS OFFICE

**DECISION,
ORDER and
JUDGMENT**

This action seeks recovery for personal injury allegedly caused by the negligence of defendants. Defendant Georgia Properties, Inc., ("Georgia") moves for summary judgment against plaintiff and dismissal of all cross-claims against it.

I. *Background*

Plaintiff George Kazantzis, an 83 year old, testified to the following. He has resided at 275 Central Park West, New York, New York, 10024 for 45 years. On December 9, 2005, he entered the lobby by himself, between 11:30 AM and 12:30 PM. The lobby had an outer door and a second inner door, approximately 25 feet away, which was open. A runner carpet extended from the front door towards the second door, and Mr. Kazantzis slipped between the end of the carpet and the inner door of the lobby while his right foot was on the tile of the floor and his left foot on the runner. He did not completely fall, but could not maintain his balance and heard his left foot break.

The concierge and doorman were present at the time of the accident and called for the superintendent. The superintendent lifted Mr. Kazantzis from where he was sitting on the floor and assisted him to the elevator and then to his apartment on the fourth floor. Jackie Kazantzis,

his daughter who also lived in the building, called the ambulance from the apartment, and Mr. Kazantzis was taken to St. Luke's Hospital. He was diagnosed with a broken ankle, which required an operation and physical therapy.

At the time he fell, Mr. Kazantzis was wearing "regular walking shoes" with leather soles and was looking straight, and there was sufficient lighting to see clearly. As he fell, he felt "a slippage." He did not remember seeing or feeling any water on the floor before or after his fall, but it had been snowing earlier that morning. The snow had stopped by 11:00 AM. Mr. Kazantzis believed that the floor had been waxed two days before because the floor had been dull and became shiny, but he did not actually see anyone clean or wax the floor. *Id.*, p. 20.

Mr. Kazantzis had never fallen in the lobby before and had never complained about the condition of the floor. He was not aware of any complaints about the floor or any falls following his. Approximately a week after Mr. Kazantzis's accident, the runner in the lobby was replaced.

Omar Chavez, an employee of the building for 23 years, testified to the following. Mr. Chavez's shift was from seven to three. His responsibilities as a doorman were to open the door, attend to the tenants, and clean the building around the front door. When it rained, Mr. Chavez used a mop, kept in a bucket behind the door, to clean the floor. If the mop was dirty, he took it to the basement to clean it.

On December 9, 2005, Mr. Chavez arrived at the building for his shift. It had rained all night, but stopped around 6:30 AM. The lobby was clean, and the runner was already on the lobby floor; it and the floor around it was dry. In addition, the mop was in its usual place but was wet because the nighttime workers had used it; it was not so wet that it dripped. Mr. Chavez, therefore, did not wring out the mop, since it did not need to be squeezed out; it was "okay."

Mr. Chavez witnessed Mr. Kazantzis's fall. Mr. Kazantzis fell on the carpet "in a slow

motion” and did not drop the two shopping bags he had in his hands. Mr. Chavez called the concierge, Gregory Shikel, to help pick up Mr. Kazantzis and put him on the bench by the door. Mr. Chavez then called for the superintendent on his cell phone and returned to the door while two people helped Mr. Kazantzis to his apartment.

Thirty minutes prior to the accident, Mr. Chavez used the mop in the lobby. He did not see any water on the floor, but he liked “to see the floor nice.” He was not aware of any puddles of water in the lobby that day, and he was not aware of anyone reporting to anyone, including himself, that the lobby floor was wet. Mr. Chavez stated that he checked and cleaned his area all the time. The floor was waxed in the nighttime two weeks before the accident. Mr. Chavez has never witnessed anybody not walking on the carpet and never received a complaint about the carpet not taking up the full floor in the lobby. The carpet is removed when the street is dry.

Mikhail Golovin, the building superintendent testified to the following. He has been the superintendent for 275 Central Park West since July 2005 and served as the superintendent of a different building prior to that time. His duties as superintendent are to “watch all the building, instruct the people who work in the building...Do the maintenance. Small repairs.” He works from eight to four every day.

On December 9, 2005, Mr. Golovin arrived at the building in the morning and followed his usual procedure in checking everything. The lobby floor was not wet around 8:30 AM, and Mr. Golovin did not remember if it was raining when he came to work that day, but recalled it was raining a little the night before.

Mr. Golovin was working in the building’s basement shop when Mr. Chavez and Mr. Shikel called him about Mr. Kazantzis’s accident. Golovin EBT, p. 11. He immediately went upstairs and asked Mr. Kazantzis how he felt. Mr. Kazantzis said “okay.” Mr. Golovin and the

porter Sandy Leo helped Mr. Kazantzis to his apartment. Mr. Kazantzis was walking himself and was not carried. After asking if Mr. Kazantzis was okay, Mr. Golovin left Mr. Kazantzis on a bench in his apartment. When he returned to the lobby, Mr. Golovin inspected the spot between the two doors and the hallway and saw that it was “dry. Nice and clean.”

The lobby floor is made of a ceramic tile. The metal door frame is a little higher than the tile. Mr. Golovin stated that the doormen are supposed to mop the floor all the time. When the mop is a little wet, the doormen are supposed to squeeze it in the basement. The rugs are put down right away when it starts raining and the sidewalk is a little wet. The doormen remove the rugs when the sidewalk is dry. The floor is waxed once a month, in the nighttime. It was waxed around two weeks before December 9, 2005. A “wet floor” sign during mopping, but the sign is not used when it is raining outside.

Mr. Golovin has never witnessed anybody falling in the lobby and has never been told that somebody fell in the lobby other than Mr. Kazantzis. Nor did anyone complain to Mr. Golovin about the floor being overly slippery in the two weeks prior to Mr. Kazantzis’s accident. Moreover, when doing his inspections, Mr. Golovin has never noticed puddles of water in the lobby near the door.

Defendant Georgia presents a certified copy of weather reports from the U.S. Department of Commerce for Manhattan in December 2005. The weather report shows that on December 9, 2005, there was light snow around 4 AM, snow and freezing fog around 7 AM, and unknown precipitation and mist around 10 AM. Plaintiff and defendant present photographs of the building lobby without carpet, with the carpet in use at it was on the day of Mr. Kazantzis’s accident, and with the new carpet.

Plaintiff, by Stanley H. Fein, a licensed engineer, avers the following. He inspected the

lobby of 275 Central Park West on February 2, 2006 and reviewed photographs of the lobby taken about the time of Mr. Kazantzis's accident. His inspection showed that the lobby was approximately ten feet wide and fifteen feet long. The measure coefficient of friction of the ceramic floor, with an application of wax on it in a dry condition, was 0.35. The coefficient would be even lower in a weather damp condition. 0.7 is required for a slip proof condition. Mr. Fein stated that "good and excepted [*sic*] engineering safety practice would require that the entire floor be covered with proper absorbent matting," and that the lobby was "extremely dangerous and hazardous."

II. *Conclusions of Law*

To prevail on a motion for summary judgment, the movant must establish a *prima facie* showing of entitlement to judgment as a matter of law by producing sufficient evidence to demonstrate the absence of any material issue of fact. *Giuffrida v. Citybank Corp.*, 100 N.Y.2d 72, 81 (2003). Once the movant has made a *prima facie* showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial. *Zuckerman v. New York*, 49 N.Y.2d 557, 560 (1980).

In order for a defendant landowner to be held negligent and therefore liable for injuries, the evidence must show that: 1) there was a dangerous condition on the property, and 2) the defendant either created the condition or had actual or constructive notice of the condition and a reasonable time to correct or warn about its existence. *See Mercer v. City of New York*, 88 N.Y.2d 955, 956 (1996); *Gordon v. American Museum of Natural History*, 67 N.Y.2d 836, 837 (1986); *Kovelsky v. City University of New York*, 221 A.D.2d 234, 235 (1st Dept. 1995); *Lewis v. Metropolitan Transportation Authority*, 99 A.D.2d 246, 249 (1st Dept. 1984). For constructive notice, a defect must be visible and apparent and must exist for a sufficient length of time prior to

the accident to permit defendant to discover and remedy it. *Gordon*, 67 N.Y.2d at 838. A mere general awareness that a dangerous condition may exist is not sufficient for liability. *Gordon*, 67 N.Y.2d at 838; *Curtis v. Dayton Beach Park No. 1 Corp.*, 23 A.D.3d 511, 512 (2nd Dept. 2005). Subsequent remedial measures are not evidence of negligence. *Getty v. Hamlin*, 127 N.Y. 636, 638 (1891). Further, there must be evidence that any negligent actions of the defendant were a “substantial cause” of plaintiff’s injuries. *Lynn v. Lynn*, 216 A.D.2d 194, 195 (1st Dept. 1995). Liability cannot be based on speculation as to causation. *Id.*; *Silva v. 81st Street & Avenue A. Corp.*, 169 A.D.2d 402, 404 (1st Dept. 1991).

A property owner has no obligation to continuously mop up water that is tracked into a building or cover all of its floors with mats. *See Kovelsky*, 221 A.D.2d at 235; *Choi v. Olympia & York Water Street Co.*, 278 A.D.2d 106, 107 (1st Dept. 2000); *Curtis*, 23 A.D.3d at 512. In addition, the presence of a 24-hour doorman on the property is not sufficient to prove actual or constructive notice of a wet entryway even if it had been raining for several hours. *Verde-Stefani v. Melohn Properties, Inc.*, 13 A.D.3d 255, 256 (1st Dept. 2004).

Defendant Georgia has made a prima facie showing by presenting the testimony of Mr. Chavez and Mr. Golovin in addition to Mr. Kazantzis’s own testimony. Georgia has established that no water was seen in the lobby before or after Mr. Kazantzis’s accident and the floor was waxed approximately two weeks before the accident, not two days before. Mr. Kazantzis himself stated that he did not remember seeing any water. There is no evidence that any other dangerous conditions existed in the lobby at the time. Without evidence of a dangerous condition, determining the cause of Mr. Kazantzis’s accident and attempting to link Georgia to that cause would result in impermissible speculation.

Even if the presence of water was assumed, as the court did in *Choi*, 278 A.D.2d at 106-

107, water tracked on to a floor where a mat is not present is not in itself sufficient evidence of negligence. There is no evidence that defendant Georgia had the required actual or constructive notice of the alleged dangerous condition.

Mr. Fein's expert opinion that the lobby floor was inherently slippery and a violation of engineering safety practice is to no avail. Ordinarily, the opinion of a qualified expert that a deviation from industry standards caused plaintiff's injuries would raise an issue of triable fact. *Diaz v. New York Downtown Hosp.*, 99 N.Y.2d 542, 544 (2002); *Murphy v. Conner*, 84 N.Y.2d 969, 972 (1994). However, an expert's conclusions cannot be speculative and must be supported by facts. *Id.* When the expert fails to identify the basis for the standards he used, his opinion does not raise a triable issue. *Id.* Here, Mr. Fein does not identify the basis for the standard he uses. Aside from making conclusory statements, plaintiff presents no evidence of any issues of fact. Moreover, the smoothness alone is not an actionable defect. *Murphy, supra*; *Palermo v. Roman Catholic Diocese*, 20 A.D.3d 516, 517 (2nd Dept. 2005); *Portanova v. Trump Taj Mahal Assocs.*, 270 A.D.2d 757, 758 (3rd Dept. 2000). Therefore, summary judgment is appropriate in this case. Accordingly, it is

ORDERED that defendant Georgia's motion for summary judgment is granted, and any cross-claims against it are dismissed; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

Date: July 5, 2007
New York, New York

ENTER:

J.S.C.

FILED
JUL 10 2007
NEW YORK
COUNTY CLERK'S OFFICE

