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| <b>Tawil v Caffe Tina, Inc.</b>  |
| 2008 NY Slip Op 30242(U)   |
| January 25, 2008   |
| Supreme Court, New York County   |
| Docket Number: 0101975/2006  |
| Judge: Joan Madden   |
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HOW JEAN A. MEDDA  
Justice

PART 11

Index Number : 101975/2006  
**TAWIL, AIDA**  
vs.  
**CAFFE TINA, INC.**  
SEQUENCE NUMBER : 002  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE 1/24/08  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
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 attached memorandum Decision + order.

**FILED**  
JAN 29 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: January 25, 2008

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate  DO NOT POST  REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: I.A.S. PART 11

-----X  
AIDA TAWIL and MOISES TAWIL,

Index No. 101975/06

Plaintiff,

-against-

CAFFE TINA, INC. and CAFFE TINA, INC.,  
d/b/a CAFFE TINA and NANCY LAUNI,  
d/b/a CAFFE TINA,

Defendants.

-----X  
JOAN A. MADDEN, J.:

**FILED**  
JAN 29 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

In this personal injury action, defendants move for summary judgment dismissing the complaint against them, and plaintiffs oppose the motion. For the reasons set forth below, the motion is denied.

Plaintiff Aida Tawil ("Tawil") seeks damages for personal injuries she allegedly sustained on November 21, 2005, when she fell at defendants' cafe/wine bar, Caffe Tina in Soho (the café). At her deposition, Tawil testified that the incident occurred as stood up from her chair at the outdoor seating area to use the restroom inside the café, and "the step was broken. I got my foot stuck and I fall (sic)." (Tawil Dep. Tr., at 10). She later described the incident in more detail and testified that "I stood up. I didn't go through the door on the left because it wasn't comfortable. There wasn't enough space because all of our shopping bags were there. So I turned right. So I tripped with

the broken tile of the step. My boot got stuck." (Id., at 55-56).

Tawil's friend Emilya Elo ("Elo"), who witnessed the accident, testified that Tawil fell on broken tile and that "there was one side that was maybe higher than the other." (Elo Dep. Tr. 90) When asked to describe how Tawil fell, Elo testified that "there was-it was the broken the floor. Okay? And so then she tripped with that piece and fell. And she fell onto the sidewalk right next to the restaurant," (Id.) Elo identified broken tile in a photograph and testified that she noticed the broken tile in the area after Tawil fell. (Id., at 150-153).

Defendants now move for summary judgment dismissing plaintiff's action, arguing that the record contains no evidence as to the proximate cause of Tawil's fall since neither Tawil nor Elo knew what caused Tawil's boot to get stuck and could not describe the broken tile with sufficient specificity. In support of this argument, defendants point to Tawil's testimony that she did not know what her boot got stuck in. Defendants also note that Tawil acknowledged that her testimony describing the tile on which she fell was based on photographs taken of the area where she fell and conversations she had with Elo after the incident.

Plaintiffs counter that there are triable issues of fact as to whether the broken tile was a substantial factor in causing Tawil's injuries, and that it is not necessary to establish the

precise cause of Tawil's fall.<sup>1</sup>

On a motion for summary judgment, the proponent "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." Wingrad v. New York Univ. Med. Center, 64 N.Y.2d 851, 852 (1985). Once the proponent has made this showing, the burden of proof shifts to the party opposing the motion to produce evidentiary proof in admissible form to establish that material issues of fact exist which require a trial. Alvarez v. Prospect Hospital, 68 N.Y.2d 320, 324 (1986).

Contrary to defendants' position, Tawil's failure to identify the precise cause of her fall is not fatal to her claims. "'To carry the burden of proving a prima facie case, the plaintiff must generally show that defendant's negligence was a substantial cause of the events which produced the injury...Plaintiff need not demonstrate, however, the precise manner in which the accident happened, or the extent of injuries was foreseeable.'" Klapa v. O&Y Liberty Plaza Co., 218 A.D. 2d 635 (1<sup>st</sup> Dept. 1995), quoting Derdiarian v. Felix Contracting Co., 51 N.Y.2d 308, 315 (1981).

Here, the testimony of Tawil and Elo regarding the broken tile in the area of the café is sufficient to raise a triable

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<sup>1</sup>Tawil initially argued that the summary judgment motion was untimely, but later acknowledge that the motion was made within the required time period.

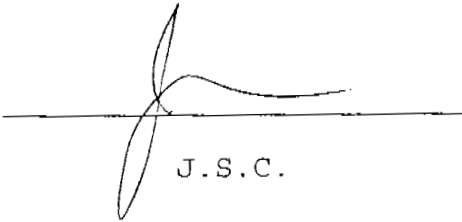
issue of fact as to whether defendants' negligence was a substantial factor in causing Tawil to fall, notwithstanding that at the time she fell Tawil may not have known the exact condition that caused her boot to become stuck.

Accordingly, summary judgment is not appropriately granted here.

In view of the above it is

ORDERED that defendants' motion for summary judgment is denied.

DATED: January 21, 2008

  
J.S.C.

**FILED**  
JAN 29 2008  
NEW YORK  
COUNTY CLERK'S OFFICE