SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

SCAN

Present:

HON. F. DANA WINSLOW,

Justice

TRIAL/IAS, PART 9

NASSAU COUNTY

LILIANA LEON-GRODIN AND JOHN GRODIN

MOTION DATE: 12/3/07
MOTION SEQ. NO.: 001

Plaintiff,

-against-

INDEX NO.: 10239/05

BROADWAY PARTNERS d/b/a 3 HQ OPERATING CO., LLC and BROADWAY REAL ESTATE SERVICES

Defendants.

The following papers having been read on the motion (numbered 1-3):

Notice of Motion for Summary Judgement.....1
Affirmation in Opposition.....2
Reply Affirmation.....3

Motion by defendant, 3 HQ Operating Co. LLC incorrectly sued herein as Broadway Partners d/b/a 3 HQ Operating Co., LLC. and Broadway Real Estate Services, LLC., pursuant to CPLR 3212, for an Order, granting summary judgment and dismissing the complaint of the plaintiffs, Liliana Leon-Grodin and John Grodin, is **granted** and the complaint is herewith **dismissed**.

This is an action in negligence by plaintiff, Liliana Leon-Grodin, a 28 year old woman at the time of her accident, and her husband, John Grodin, to recover for personal injuries sustained on Monday, January 19, 2004 at approximately 9:00 a.m., when she allegedly slipped on a wet marble floor in the south lobby of

the defendant's premises located at Three Huntington Quadrangle, Melville, New York. At deposition, plaintiff testified that this accident occurred first thing on Monday morning on her way into work. She approximated that her accident occurred at 8:30 a.m. to 9:00 a.m. Plaintiff worked at the defendants' premises at Three Huntington Quadrangle.

In her Verified Bill of Particulars, plaintiff claims that she slipped on a wet marble floor in the lobby of the defendant's premises. Plaintiff states that refuse or debris did not cause the accident. The Bill of Particulars also states that a heavy snow storm occurred on Sunday, January 18, 2004.

At deposition, plaintiff testified that the weather conditions on the morning of her accident were miserable. She stated that it had snowed the night before and that there was lot of snow on the ground outside. She stated that walkway outside the building had not been cleared of snow and that that Monday was a holiday but that her company was one of the few companies open during that holiday.

Plaintiff did not slip prior to entering the building. She fell inside the premises. Plaintiff testified that there is permanent carpeting for a certain distance and then runners take over. She allegedly slipped and fell after walking off the runner. She testified that the ground was wet and that was what caused her to slip. Specifically, she stated:

> "It didn't look like the floor had been wet. It looked like something had dripped. I now can describe it that the people were coming in with all the stuff on their shoes and they probably weren't keeping up with the cleaning" (*Liliana Tr.*, p.39).

Plaintiff alleges that the defendants were negligent in, *inter alia*, causing

and permitting water to accumulate on the marble floor in the lobby of the subject premises (*Bill of Particulars*, ¶14).

"In general, to impose liability for an injury proximately caused by a dangerous condition created by weather tracked into a building, a defendant must either have created the dangerous condition, or had actual or constructive notice of the condition and a reasonable time to undertake remedial actions" (*Friedman v Gannett Satellite Info. Network*, 302 AD2d 491 [2nd Dept. 2003]; *Yearwood v Cushman & Wakefield*, 294 AD2d 568 [2nd Dept. 2002]; *Negron v St. Patrick's Nursing Home*, 248 AD2d 687 [2nd Dept. 1998]).Defendant is not obligated to provide a constant remedy to the problem of water or snow being tracked into the premises caused by inclement weather (*Miller v Gimbel Bros.*, 262 NY107 [1933]; *Murphy v Lawrence Towers Apts., LLC*, 15 AD3d 371, 372 [2nd Dept. 2005]; *Ford v Citibank, N.A.*, 11 AD3d 508, 509 [2nd Dept. 2004]).

In this case, the defendants have made a prima facie showing of their entitlement to summary judgment by presenting sufficient evidence to show that they neither created nor had actual or constructive notice of the allegedly dangerous condition created by snow being tracked into the entranceway to the defendants' premises (*Curtis v Dayton Beach Park No. 1 Corp.*, 23 AD3d 511, 512 [2nd Dept. 2005]; *Bluman v Freeport Union Free School Dist.*, 5 AD3d 341, 342 [2nd Dept. 2004]; *Izrailova v Rego Realty*, 309 AD2d 902 [2nd Dept. 2003]). There is no evidence that the defendants created the wet condition. Further, there is no evidence that defendant had any actual notice of the particular accumulation of water that allegedly caused the plaintiff to fall. Since there is no evidence that the condition complained of was present for a sufficient period of time for the defendant to have discovered and remedied it, there is simply no basis for an

inference that the defendant had constructive notice of the condition (*Yearwood v Cushman & Wakefield*, supra at 569; *Ford v Citibank, N.A.*, supra at 509; *Spooner v New York City Tr. Auth.*, 298 AD2d 575, 575-576 [2nd Dept. 2002]).

In opposition, plaintiffs have failed to raise a triable issue of fact as to whether the defendants created the condition, or whether the alleged defect was visible and apparent for a sufficient period of time to be discovered and remedied by the defendants' employees (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837-838 [1986]; *Murphy v Lawrence Towers Apts.*, supra at 371-372; *Ford v Citibank, N.A.*, supra at 508-509; *Yearwood v Cushman & Wakefield*, supra at 568- 569).

In opposing summary judgment, the plaintiff relies solely upon the affirmation of his attorney, who is without personal knowledge of the facts. This does not supply the evidentiary showing necessary to successfully resist the motion (CPLR 3212[b]; *Rotuba Extruders v. Ceppos*, 46 NY2d 223, 229 [1978]).

Moreover, in opposition, plaintiff submits the deposition transcript of James Eng, an employee of Broadway Real Estate Services. Plaintiff argues that based on Eng's testimony, it can be reasonably inferred that the substance on which the plaitniff allegedly fell had been present for quite some time due to a heavy snow fall the night before. Plaintiff submits that this is sufficient to raise a triable issue of fact as to whether defendants' had knowledge as to the creation and continuance of the allegedly dangerous and hazardous condition. This Court disagrees.

There is nothing in Eng's testimony that creates a material triable issue of fact. Notably, Eng never testified that he or any employee of the defendants passed the location where the plaintiff fell or knew of water being on the floor that

morning. Eng's testimony also does not establish in any way that the alleged dangerous condition was an ongoing and recurring condition or that it existed in an area of the premises which was routinely left unaddressed by the defendant (*Colt v. Great Atl. & Pac. Tea Co.*, 209 AD2d 294 [1st Dept. 1994]; *Padula v. Big V Supermarkets*, 173 AD2d 1094 [3rd Dept. 1991]). There is also no evidence as to any prior complaints made to the defendant about the allegedly dangerous condition (accumulating water) that morning. Eng had no knowledge as to how long the water, if any, had allegedly been on the floor. However, he specifically testified that there were no other falls that day in the corridor.

Plaintiff, in opposition, submits that the defendants were regularly upon and frequented the aforesaid area, and knew or should have known by physical and actual inspection thereof of this dangerous and hazardous condition. However, in the absence of any proof, in admissible form to support this allegation, this Court is not persuaded that there exist material issues of fact which require a trial of the action (*see Zuckerman v City of New York,* 49 NY2d 557, 562 [1980]).

Accordingly, defendants' motion for summary judgment is **granted** and the complaint is herewith **dismissed.**

Settle Judgment on Notice.

This constitutes the Order of the Court.

Dated: 1/21/08

ENTER:

J.S.C.

ENTERED

FEB 19 2008

NASSAU COUNTY
COUNTY CLERK'S OFFICE