

<b>Mansoori v New York City Tr. Auth.</b>
2008 NY Slip Op 30535(U)
February 14, 2008
Supreme Court, New York County
Docket Number: 0104726/2005
Judge: Donna Marie Mills
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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS  
*Justice*

PART 21

MANSOORI, AFROZ

INDEX No. 104726/058

Plaintiff,

MOTION DATE \_\_\_\_\_

-v-

MOTION SEQ. No. 001

NEW YORK CITY TRANSIT AUTHORITY, et. al.,  
Defendants.

MOTION CAL No. \_\_\_\_\_

The following papers, numbered 1 to 3 were read on this motion for \_\_\_\_\_.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1

Answering Affidavits- Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

CROSS-MOTION: \_\_\_\_\_ YES  NO

**FILED**  
FEB 28 2008  
NEW YORK  
COUNTY CLERK

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

Dated: 2-14-08

*Donna M. Mills*  
J.S.C.

Check one:  FINAL DISPOSITION

\_\_\_\_\_ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 21

-----X

AFROZ MANSOORI,

Plaintiff,

Index No. 104726/o5

-against-

NEW YORK CITY TRANSIT AUTHORITY,

Defendant

**FILED**  
FEB 28 2008

NEW YORK  
COUNTY CLERK'S OFFICE

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**Donna Mills, J.:**

This action arises from an accident in which plaintiff Afroz Mansoori was injured when she slipped on wet steps in a subway station. Defendant New York City Transit Authority (NYCTA) moves for summary judgment on the ground that plaintiff cannot prove that NYCTA had actual or constructive notice of the condition which caused plaintiff's accident.

The accident occurred on February 3, 2004 at the Grand Central subway station, on stairwell PL5. This stairway does not open directly on the street, but is an interior stairway. Plaintiff admits that it was drizzling at the time that she entered the station, while NYCTA offers a weather report which shows that it was raining at the time of the accident. NYCTA concedes, for the sake of this motion,

that the stairway was wet; that it was raining and the defendant knows that it was raining and that defendant knows that when it rains, stairways get wet from either direct exposure to the elements or from patrons' shoes,

umbrellas, etc.; that rain water gets dirty as people walk in it and that every time it rains, floors and stairways get wet.

Reply Affidavit, at 1.

“`[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.’” *Ayotte v Gervasio*, 81 NY2d 1062, 1063 (1993), quoting *Alvarez v Prospect Hospital*, 68 NY2d 320 (1986); see also *Winegrad v New York University Medical Center*, 64 NY2d 851 (1985); *Kesselman v Lever House Restaurant*, 29 AD3d 302, 303 (1st Dept 2006). Upon the presentation of a prima facie case by the movant, the burden then shifts to the motion’s opponent to offer evidentiary facts sufficient to raise a triable issue of fact. See *Alvarez v Prospect Hotel*, 68 NY2d 320, *supra*; *Kesselman, supra*. However, the movant’s failure to make a prima facie showing “`requires a denial of the motion, regardless of the sufficiency of the opposing papers.’” *Ayotte v Gervasio*, 81 NY2d at 1063, quoting *Alvarez v Prospect Hotel, supra*; see also *Greenidge v HRH Construction Corporation*, 279 AD2d 400 (1st Dept 2001).

NYCTA bases its prima facie case on plaintiff’s testimony at her statutory hearing, and weather reports for the day and time in question, to the effect that the weather was inclement at the time of her accident. However, NYCTA claims that plaintiff still

cannot establish either actual or constructive notice of the wet condition of the station floor, such as would implicate NYCTA in plaintiff's accident, due to the fact that it was raining at the time of the accident.

"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, 837 (1986). A dangerous condition which is reoccurring over a period of time, such as the accumulation of water on the floor of a building each time it rains, may support a claim that a defendant had constructive notice of the condition. See *David v New York City Housing Authority*, 284 AD2d 169 (1st Dept 2001).

Regardless, the present fact pattern, as alleged by plaintiff, finds NYCTA deserving of summary judgment, based on the ongoing storm rule. "A property owner will not be held liable in negligence for a plaintiff's injuries sustained as a result of [precipitation] occurring during an ongoing storm or for a reasonable time thereafter." *Solazzo v New York City Transit Authority*, 6 NY3d 734, 735 (2005) (ice on subway steps); see also *Evans v MTA/New York city Transit Authority*, 41 AD3d 533, 534 (2d Dept 2007) (slippery condition on bus).

Constructive notice of a wet condition on subway stairs is not found when a storm is ongoing, where, as here, the

accumulation of water "could have occurred as a result of water dripping from the clothing or umbrellas of [other] passengers" in the station immediately prior to the plaintiff's fall. See *Spooner v New York City Transit Authority*, 298 AD2d 575, 575 (2d Dept 2002) (puddle of water on bus near the steps); *Duncan v New York City Transit Authority*, 260 AD2d 213, 213 (1st Dept 1999) (puddle on subway floor); *Low v New York City Transit Authority*, 237 AD2d 493 (2d Dept 1997) (puddle on floor of subway car); *Alatief v New York City Transit Authority*, 256 AD2d 371 (2d Dept 1998) (accumulation of water on floor of elevated subway car). Further, a "general awareness" that the floors of the train station become wet during a storm, such as NYCTA admits, is "insufficient to establish constructive notice of the specific condition causing plaintiff's injury." *Solazzo v New York City Transit Authority*, 6 NY3d at 735; see also *Simpson v City of New York Transit Authority*, 44 AD3d 930 (2d Dept 2007) (water on bus steps); see also *Petty v Harran Transportation Co., Inc.*, 300 AD2d 290, 291 (2d Dept 2002) ("a general awareness that a dangerous condition may be present is legally insufficient to constitute notice of a particular condition") (wet bus steps). Therefore, NYCTA's statement admitting that it was aware that the subway stairs get wet during a storm does no harm to NYCTA's position. *Id.*; see also *Solazzo v New York City Transit Authority*, 6 NY3d 734, *supra*.

Plaintiff argues that she should have discovery from NYCTA regarding its clean-up procedures. However, such testimony would have no bearing on the issue of notice during an ongoing storm. Actual notice is irrelevant in the present instance, because “[i]t would be unreasonable to expect the defendant to constantly clean the floor of its [stations] during an ongoing storm.” *Spooner v New York City Transit Authority*, 298 AD2d at 575-576; *Duncan v New York Transit Authority*, 260 AD2d at 213 (unreasonable to have to clean floors in subway cars in midst of storm). “[A] station floor cannot be effectively kept dry in such circumstances.” *Hussein v New York City Transit Authority*, 266 AD2d 146, 147 (1st Dept 1999) (wet floors in subway cars). Plaintiff’s argument that these rules should not apply because she fell on water in an interior stairway is without merit. Courts have applied this rule to subway cars, as well as subway floors. *Id.*; see also *Duncan v New York Transit Authority*, 260 AD2d 213, *supra*. Further, plaintiff has herself recognized that the wet spot on which she fell was caused by water tracked or otherwise brought into the station from outside; she has not claimed that the wet condition of the interior stairwell was caused by any other condition of which defendant would have to have notice. See *Talavera v New York City Transit Authority*, 41 AD3d 135 (1st Dept 2007) (action where plaintiff claimed to have slipped on water caused by leaky pipe in subway station

distinguishable from cases involving the ongoing storm rule).

Plaintiff's argument that NYCTA's motion skews the burden of proof on a summary judgment motion, because NYCTA has not come forward with affirmative evidence of the lack of actual or constructive notice, citing *Rothbard v Colgate University* (235 AD2d 675 [3d Dept 1997]) and *Colt v Great Atlantic & Pacific Tea Company* (209 AD2d 294 [1st Dept 1994]), and NYCTA's rejoinder that plaintiff always has the burden of proof in a negligence action, which is not altered in on a summary judgement motion, citing *Strowman v Great American and Pacific Tea Company* (252 AD2d 384 [1st Dept 1998]), are irrelevant, as NYCTA, in bringing in the uncontroverted evidence that it was raining at the time of plaintiff's accident, established its burden on summary judgment to establish lack of appropriate notice.

Accordingly, it is

ORDERED that the defendant New York City Transit Authority's motion for summary judgment is granted, with costs and disbursements to this defendant as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: 2/14/08

ENTER: *Donna*

J.S.C.

**DONNA M. MILLS, J.S.C.**

**FILED**  
FEB 28 2008  
NEW YORK  
COUNTY CLERK'S OFFICE