

**Spinner v 1725 York Ave. Owners**

2008 NY Slip Op 31150(U)

April 15, 2008

Supreme Court, New York County

Docket Number: 0104344/2006

Judge: Debra A. James

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

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

CHARLES SPINNER and RICKI SPINNER,  
Plaintiffs,

Index No.: 104344/2006

Motion Date: 11/27/07

- v -

1725 YORK AVENUE OWNERS and GUMLEY-HAFT  
LLC,

Motion Seq. No.: 003

Motion Cal. No.: \_\_\_\_\_

Defendants.

The following papers, numbered 1 to 8 were read on these motion and cross motion for summary judgment \_\_\_\_\_.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits	2
Notice of Cross Motion/Answering Affidavits - Exhibits	3
Replying Affidavits - Exhibits	3
Sur Replying Affidavits-Exhibits	4

**FILED**  
APR 22 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

Cross-Motion:  Yes  No

Upon the foregoing papers, the defendants' motion for summary judgment to dismiss plaintiffs' Complaint and the plaintiffs' cross motion for partial summary judgment of liability must be DENIED.

This action involves plaintiff who claims he slipped and fell on the wet floor in the lobby of his residence on December 25, 2005. He contends that defendant cooperative building owner and building managing agent were negligent when

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):

during steady rainfall outdoors, they failed to place mat/runners on the floors in the lobby area prior to the accident. He alleges injury and his wife asserts a derivative claim.

A DVD appended to defendants' papers establishes that plaintiff slipped and fell around 3 PM on Christmas day 2005. The National Weather Service report for that day appended to plaintiffs' papers shows that there was rainfall for about two and one half hours before the accident, with approximately 1/10 of an inch of rain or .09 inch falling between 1 and 3 that afternoon and another .16 inch of precipitation over the next hour.

Plaintiff claims that as he left the building on the day in question, he informed the door person in the lobby that the floor was wet, which notice is categorically denied by defendants, who refer to the DVD that they contend demonstrate that plaintiff never did. There is no dispute that defendants place mats or runners in the lobby during rainfall, and that there were no mats or runners in place at the time of plaintiff's accident. Plaintiff submits the affidavit of a certified Residential Apartment Manager, as an expert, who states under oath, in pertinent part, that

proper maintenance of a [Class A luxury building] mandates the placement of mats or runners in the lobby when it starts to drizzle or starts to rain. The building is required to put mats down to prevent the terrazzo floors, which are naturally slippery, from becoming dangerously slipper from the rain water which

is tracked into the building or which falls from umbrellas being carried into the building or otherwise.

Defendants' dispute with the qualifications of plaintiffs' expert implicates credibility, and the weight, if any, to be accorded to any such testimony is for the trier of fact to determine. Moreover, plaintiffs are correct that expert evidence of custom and practice in connection with the use of mats or other "protective materials" on terrazzo floors that tend to be slippery when wet is admissible on the question of reasonable care. Berman v H.J. Enterprises, Inc., 13 AD2d 199, 201 (1<sup>st</sup> Dept 1961).

Fortgang v Chase Manhattan Bank, 23 NY2d 895 (1969) is controlling precedent in this case. In its memorandum decision in Fortgang, the Court of Appeals held that "[a]n issue of fact was raised on the trial as to whether the building lessee maintained properly placed mats on the lobby floor during rainy weather and kept the uncovered areas free of excessive moisture." In reversing the Appellate Division's reversal of the trial verdict for plaintiff and granting a new trial, the Fortgang court also commented that the trial testimony of plaintiff's expert "could not be disregarded as a matter of law." Fortgang, 896.

Defendants' use of mats and runners and plaintiffs' introduction of an expert opinion distinguish this case from

Piacquadio v Recine Realty Corp, 84 NY2d 967 (1994) and Marks v Andros Broadway, Inc., 38 AD2d 926 (1<sup>st</sup> Dept 1972). Such evidence demonstrates more than a mere "general awareness" of a dangerous condition. However, such evidence is insufficient to determine liability in plaintiff's favor as a matter of law.

Accordingly, it is therefore,

ORDERED that defendants 1725 YORK OWNERS CORP. and GUMBLY-HAFT LLC's motion for summary judgment is DENIED; and it is further

ORDERED that plaintiffs CHARLES SPINNER and RICKI SPINNER's cross-motion for partial summary judgment of liability is DENIED; and it is further

ORDERED that the parties and their counsel are directed to attend a mediation conference before Part Mediation-1 on June 3, 2008, at 10:30 A.M. If the case does not settle in Part Mediation-1, the parties' counsel are directed to attend a pre-trial conference in IAS Part 59, Room 1254, 111 Centre Street, New York, NY 10013, on June 24, 2008, at 2:30 P.M. to set a trial date.

This is the decision and order of the court.

Dated: April 15, 2008

ENTER:

**FILED**

APR 22 2008

COUNTY CLERK'S OFFICE  
NEW YORK

DEBRA A. JAMES J.S.C.  
J.S.C.