

<b>Forman v New York City Hous. Auth.</b>
2008 NY Slip Op 32234(U)
August 6, 2008
Supreme Court, New York County
Docket Number: 0101887/2006
Judge: Barbara R. Kapnick
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **BARBARA R. KAPNICK**  
*Justice*

PART 12

Index Number : 101887/2006  
FORMAN, DELORES  
vs  
HOUSING AUTHORITY  
Sequence Number : 001  
SUMMARY JUDGMENT

INDEX NO. 101887/06

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

MOTION SEQ. NO. 001

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

**MOTION IS DECIDED IN ACCORDANCE WITH  
ACCOMPANYING MEMORANDUM DECISION**

**FILED**

AUG 11 2008

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 8/6/08



**BARBARA R. KAPNICK** *J.S.C.*

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION *J.S.C.*

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 : IA PART 12

-----X

DELORES FORMAN,

Plaintiff,

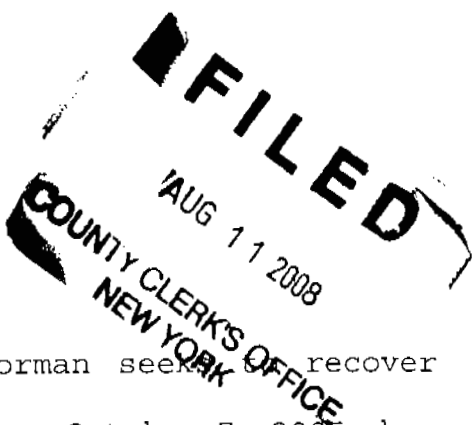
DECISION/ORDER  
Index No. 101887/06  
Motion Seq. No. 001

- against -

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

-----X  
BARBARA R. KAPNICK, J.:



In this action, plaintiff Delores Forman seeks to recover damages for personal injuries she sustained on October 7, 2005 when she slipped and fell in the 14<sup>th</sup> floor hallway of defendant New York City Housing Authority's building located at 60 East 106<sup>th</sup> Street in Manhattan where she lived. Plaintiff claims that the floor was covered with collections and/or 'clots' of wax, causing her to lose her balance and fall.

Defendant does not dispute that the hallway had been waxed, but claims that the waxing was completed approximately 17 hours prior to plaintiff's accident and that the floor was dry.

Defendant now moves for summary judgment dismissing plaintiff's Complaint on the ground that plaintiff, who did not see the wax on the floor before she fell, has failed to present any evidence that the hallway was improperly waxed.

In *Caran v Hilton Hotels Corp.*, 299 AD2d 252 (1st Dep't 2002), *lv dismissed*, 3 NY3d 693 (2004), *rearg. den.* 4 NY3d 847 (2005), the Appellate Division, First Department, held that

Plaintiff's assertion that the slippery condition of the floor was created by excessive or improper waxing is based on nothing more than her observation that the floor was "shiny." Since neither smoothness nor slipperiness, without more, permits an inference of negligent waxing or polishing, the action was properly dismissed.

See also, *Davies v City of New York*, 39 AD3d 390 (1<sup>st</sup> Dep't 2007), *lv denied*, 9 NY3d 808 (2007); *Mallios v B. Smith's Restaurant*, 8 AD3d 117 (1<sup>st</sup> Dep't 2004), *lv denied*, 3 NY3d 612 (2004).

In the instant case, plaintiff has not merely alleged that the floor was "shiny", but also claims that there was an accumulation of wax on the floor.

Defendant contends that this claim is not supported by plaintiff's own deposition testimony, and argues that there is no evidence to support a finding that the alleged piles of wax were more than *de minimus*.

Plaintiff testified that she walked along the floor three times after it was waxed and before her accident, and admitted that she did not notice anything about the condition of the floor when she walked from the elevator to her apartment the night before.

Plaintiff, however, also testified that she saw a neighbor, who they call Martin, in the elevator earlier that morning after dropping her daughter off at the bus, and that they commented that "the floor looked nice today, but it was slippery." Plaintiff acknowledged that she did not see the wax that caused her to slip before her accident, but testified that after she turned the corner and slipped, she saw

[l]ike clots of white wax. Clot like cross the side. Like where I fell at, you could see where I slipped at. It's like clot, like you put wax on the floor and you don't clean it good.

Plaintiff has also submitted an affidavit from another resident of the building, Ernestine Blount, who claims that she "was able to see many piles of wax all over the hallway floor, also near Ms. Forman's and my apartments, such that walking in the hallway was very dangerous." She further claims that defendant's workers who waxed the floor "were very sloppy and left big piles of the wax all over the hallway and did not spread it out or buff the floor enough to get rid of the piles of wax."

In addition, plaintiff has annexed an affidavit from her son, Eric Forman, who claims that he "saw a large pile or collection of

wax on the hallway floor where [his] mother fell." He further alleges that

[t]here were other collections of wax as well, as if someone had heaped a tremendous amount of wax on the floor and smeared it a bit with a waxing machine without getting to or picking up whatever residual there was after using the machine. Walking in the hallway was very dangerous due to the wax.

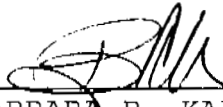
Based on the papers submitted in which plaintiff sets forth more than just that the floor was shiny or slippery, and the oral argument held on the record on June 4, 2008, this Court finds that there are outstanding issues of fact as to whether defendant was negligent in the manner in which it applied the wax and whether the wax condition was a substantial factor in causing plaintiff's accident.

Accordingly, defendant's motion for summary judgment is denied.

This constitutes the decision and order of this Court.

Dated: August 6, 2008

**FILED**



BARBARA R. KAPNICK  
J.S.C.

AUG 11 2008

COUNTY CLERK'S OFFICE  
NEW YORK