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

PRESENT: MARTIN SHULMAN J.S.C. Justice

PART 1

Index Number : 119052/2006
ROSA, FERNANDEZ
VS
610 W. 204TH REALTY
Sequence Number : 002
SUMMARY JUDGMENT

INDEX NO. 119052/06

MOTION DATE

MOTION SEQ. NO. 002

MOTION CAL. NO.

his motion to/for

	PAPERS NUMBERED
Notice of Motion/ ~~Order to Show Cause~~ — Affidavits — Exhibits ...A-E	1
Answering Affidavits -- Exhibits A-F	2
Replying Affidavits	3

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the attached decision and order.

FILED

SEP 04 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: August 28, 2008

MARTIN SHULMAN 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 CITY OF NEW YORK
COUNTY OF NEW YORK: PART 1

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ROSA FERNANDEZ,

Plaintiff,

Index No.: 119052/06

-against-

DECISION AND ORDER

610 W. 204TH REALTY CO., LLC and
MILLER & MILLER REALTY CO., LLC,

Defendants.

----------x

MARTIN SHULMAN, J.

Plaintiff allegedly slipped on a wet and/or slippery substance on a staircase near the lobby of her apartment building. Issue has been joined, and defendants now move for summary judgment.

It had been snowing on the day of the alleged accident. According to plaintiff, she left her apartment for the first time that day in the late afternoon. Her children had been to school earlier and had returned home before she left the apartment, but, according to her examination before trial, they had not said anything about the staircase being wet. Plaintiff testified that she saw something wet or slippery on the stair as she was descending. She further testified that she did not see defendants or their employees spill anything on the stairs, nor did she know how long the substance might have been on the stairs.

In his deposition, the then building superintendent stated that he only mopped the lobby, not the stairs, on days when it snowed, that there was tape on each stair to prevent slippage, and, that when it snowed, sometimes the first few steps on the staircase got a little wet. His building notes, which he relied upon during his deposition,

did not indicate that there were any complaints made about the condition of the stairs on the day in question.

DISCUSSION

"The 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 eliminate any material issues of fact from the case [internal quotation marks and citation omitted]." *Santiago v Filstein*, 35 AD3d 184, 185-186 (1st Dept 2006). The burden then shifts to the motion's opponent to "present facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 (1st Dept 2006); *see Zuckerman v City of New York*, 49 NY2d 557, 562 (1980). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied. *See Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 (1978).

In *Curtis v Dayton Beach Park No. 1 Corp.* (23 AD3d 511, 512 [2d Dept 2005]), a case cited by plaintiff, the court stated:

> [a] defendant who moves for summary judgment in a slip and fall case has the initial burden of making a prima facie showing that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it [citations omitted].

The record contains no evidence as to the amount of time the water was on the stairs prior to the occurrence. *See also, Gordon v American Museum of Natural History*, 67 NY2d 836 (1986).

Plaintiff relies on this decision to oppose defendants' motion, indicating that defendants have not met their initial burden. However, the court in *Curtis* went on to say:

> [t]he defendants met their burden of establishing that they neither created the allegedly dangerous condition which caused the accident nor had actual or constructive notice of the defect. . . .
>
> A property owner is not obligated to cover all of its floors with mats or to continuously mop up all moisture resulting from tracked-in precipitation. In the absence of proof as to how long a chunk of ice was on the floor of the hallway, there is no evidence to permit the inference that the defendants had constructive notice of the alleged defect which caused the plaintiff to fall. Moreover, general awareness that ice may be tracked into a building during inclement weather is insufficient to establish constructive notice of the particular condition which caused the plaintiff to fall [citations omitted].

Curtis, id. at 512. In the instant matter, there has been no allegation that defendants created the condition that caused the alleged accident, nor has there been any evidence, beyond mere speculation, that defendants had actual or constructive notice of the condition.

Plaintiff's examination before trial and that of the building superintendent indicate that there were no other accidents on the stairs that day, that there were no complaints about the condition of the stairs, that plaintiff's children had used the stairs prior to plaintiff's accident and did not mention to plaintiff that the stairs were wet, and that plaintiff saw the stairs were wet prior to her fall as she was walking down. These factors meet defendants' prima facie showing to support their motion for summary judgment. *See Akhtar v Zucker*, 50 AD3d 932 (2d Dept 2008). "[T]he record is devoid of evidence that the landlord either created or had actual notice of the condition of

which plaintiff complains." *Soto v Michael's New York, Inc.*, 282 AD2d 300, 300 (1st Dept 2001).

In the instant case, plaintiff asserts that, according to the superintendent's testimony, defendants were aware that the stairs could become wet whenever it snowed, and, therefore, they had constructive notice of the dangerous condition. However, this only indicates that defendants had a general awareness that the stairs may be wet during inclement weather, not constructive notice that the stair in question becomes wet. Defendants are not required to continuously mop up all moisture resulting from tracked-in melting snow. *Id.*; *see also Curtis v Dayton Beach Park No. 1 Corp.* 23 AD3d 511, *supra.*

As stated in *Goodman v 78 West 47th Street Corp.* (253 AD2d 384, 386 [1st Dept 1998]):

> [T]he existence of a patch of oil or a slippery foreign substance on a floor does not, in and of itself, give rise to a cause of action sounding in negligence. To the contrary, the plaintiff must establish that the oil or foreign substance was present under circumstances sufficient to charge the defendant with responsibility therefor; in other words, to prove either that defendant had knowledge of the alleged dangerous condition, either actual or constructive, or that it caused the condition to be created by its own affirmative act. ... the conclusory, self-serving and highly speculative allegations proffered by the plaintiff are insufficient to defeat the motion for summary judgment [internal quotation marks and citations omitted].

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that defendants' motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendants as taxed by the Clerk of the Court upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: August 28, 2008

Martin Shulman, J.S.C.