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

PRESENT: CAROL EDMEAD J.S.C. Justice PART 35

Index Number : 106680/2005
RIVERA, FELIX
VS.
ROXY ROLLER RINK
SEQUENCE NUMBER : 003
DISMISS ACTION

INDEX NO.
MOTION DATE 10/7/08
MOTION SEQ. NO.
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

FILED
NOV 13 2008
COUNTY CLERK'S OFFICE
NEW YORK

In accordance with the accompanying Memorandum Decision, it is hereby

ORDERED that the motion by defendant pursuant to CPLR § 3212 for summary judgment dismissing the complaint of plaintiff is denied; and it is further

ORDERED that the cross-motion by plaintiff for an order precluding defendant from offering evidence at trial relating to the condition of the roller skating rink at the time of plaintiff's accident, and to have an adverse inference charge issued regarding defendant's spoliation of evidence and costs associated with this motion is denied; and it is further

ORDERED that defendant serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: 10/30/08

CAROL EDMEAD J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☐ FINAL DISPOSITION ☑ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

FELIX RIVERA,

Plaintiff,

-against-

THE BEER GARDEN, d/b/a THE ROXY,

Defendant.

EDMEAD, J.S.C.

Index No. 106680/05

DECISION/ORDER

MEMORANDUM DECISION

In this action, plaintiff seeks damages for injuries he sustained when he allegedly fell at a roller skating rink owned by the defendant, The Beer Garden, Inc., doing business as The Roxy ("defendant" or "The Roxy"). Defendant now moves pursuant to CPLR § 3212 for summary judgment dismissing the complaint of plaintiff Felix Rivera ("plaintiff").

In response, plaintiff cross moves for an order precluding defendant from offering evidence at trial relating to the condition of the roller skating rink at the time of plaintiff's accident. Plaintiff additionally moves to have an adverse inference charge issued regarding defendant's spoliation of evidence and costs associated with this motion.

Background

The Roxy had a bar and a dance floor, and on Wednesdays, the dance floor was converted to a roller rink. On or about August 14, 2002, plaintiff was roller skating at defendant's premises when he fell due to liquid on the floor of the rink.[1]

Prior to commencement of suit, on November 22, 2002, plaintiff's counsel sent a letter to

[1]This fact was taken from plaintiff's complaint and was neither disputed nor acknowledged by defendant.

defendant requesting that defendant contact its insurance company regarding plaintiff's accident and provide insurance information to plaintiff's counsel. The letter also advised defendant that legal action would be pursued if counsel did not hear from defendant or defendant's insurance company.

During the course of this ensuing action, plaintiff served a demand, and a preliminary conference order was issued, for defendant to produce, *inter alia*, maintenance records and complaints regarding "liquid" hazards, the name and address of the contractor who performed maintenance of the rink for the two years prior to the accident, and the names and addresses of potential witnesses. When defendant failed to comply with the order in its entirety, plaintiff moved to compel discovery. By order dated March 18, 2008, the Court directed defendant to produce the names and last known addresses of the employees responsible for the cleaning and maintenance of the rink at the time of plaintiff's accident in addition to the name and last known address of the person who signed plaintiff's incident report.

Defendant's Motion

In support of summary judgment, defendant asserts that there is no other cause of plaintiff's accident other than the alleged liquid. As there is no evidence that defendant created the alleged dangerous condition, or had actual or constructive notice of the liquid on the floor where plaintiff fell, or that the liquid condition was a dangerous recurring condition, summary dismissal of the complaint is warranted.

Defendant cites to plaintiff's deposition testimony, wherein plaintiff testified that he had not made any prior complaints to anyone at the Roxy about any condition at the roller skating rink, that he saw no liquid during the 30-40 minutes that he had been roller skating prior to the

fall; nor did he look at the liquid after the fall. Nor did plaintiff know for how long the liquid on which he fell had been there.

Defendant also asserts that the deposition testimony of Eugene Dinino ("Mr. Dinino"), president of defendant at the time of plaintiff's accident testified that no injuries had occurred due to spilled liquid on the rink. Further, he had never heard of past incidents of drinks being spilled or of people even bringing drinks onto the rink. Mr. Dinino also stated that there was one bar at the premises but patrons were not permitted to bring drinks onto the skating floor. On the date of plaintiff's accident, defendant employed three skate guards, who patrolled the skating area and made sure that people were moving and that they were not going too fast. They skated with the customers and also checked the floor for any hazards. If a skate guard or one of the security guards saw someone with a drink on the rink, the guard would inform the skater that he or she could not have drinks on the rink.

Plaintiff's Contentions

Plaintiff contends that he is not alleging that defendant had actual notice of the liquid for a sufficient length of time to allow for discovery and remedy by the defendant. Instead, plaintiff alleges that "there is evidence that an ongoing and recurring dangerous practice of allowing skaters to skate around the rink with beverages, was routinely left unaddressed." Plaintiff argues that defendant had no signs posted warning against the practice, and even employed skate guards who were responsible to pick up the cups that were left on the rink by skaters. A jury could reasonably conclude that by failing to post such signs, defendant acquiesced to the practice, or failed to take sufficient steps to prevent this dangerous practice. Other than Mr. Dinino's self-serving testimony, there is no evidence that skating with drinks was prohibited.

Plaintiff asserts that his testimony that the liquid on which he fell smelled like alcohol, that he witnessed skaters carrying cups in the rink, and that he saw defendant's employees sweeping cups off of the floor, coupled with Mr. Dinino's testimony that The Roxy served drinks in plastic cups, establishes a recurring dangerous practice that would demonstrate constructive notice. Thus, a question of fact exists as to whether defendant had notice of the recurrent condition which caused plaintiff's fall.

Plaintiff also contends that defendant created the recurrent conditions that caused plaintiff's fall by failing to warn skaters not to bring drinks onto the rink or to warn skaters of the potential dangers of spilled drinks.

Plaintiff further argues that defendant's motion should be denied because of defendant's spoliation of crucial evidence. Despite being on notice as of November 2002 of the need to maintain maintenance and payroll records, defendant now claims that it no longer has access to such records. Plaintiff asserts that such evidence is necessary to prove the existence of a recurring condition, and that he has been prejudiced by defendant's failure to produce these records. Plaintiff therefore seeks an order precluding defendant from offering any evidence at trial regarding the condition of the rink and directing that an adverse inference charge be issued. Sanctions can be imposed for the destruction of evidence even before the spoliator becomes a party, provided that the spoliator was on notice of the need to preserve evidence. Defendant was on notice of the need to preserve such records, well before the Roxy closed in 2007, when it prepared the accident report, and certainly on November 25, 2002, when it received notice from plaintiff's counsel that a claim would be made. Further, plaintiff notes that neither wilfulness nor bad faith is required when determining whether sanctions are warranted.

Plaintiff additionally asserts that he is not merely "seiz[ing] upon the missing records as a basis for opposing defendant's motion for summary judgment." Plaintiff points out that he served a Notice to Produce these records "as soon as this action commenced," which was followed by the Preliminary Conference Order directing that such records be produced. Further, plaintiff claims that defendant's ability to produce the subject incident report belies Mr. Dinino's testimony that he no longer has access to payroll and maintenance records from the time of the accident.

Defendant's Reply

In reply, defendant reiterates that there was no evidence on the record of actual or constructive notice, or that defendant created the wet condition that caused plaintiff's fall. Defendant argues that the mere service of drinks at a nightclub is not evidence of negligence. Furthermore, defendant contends that defendant was not on notice of recurrent practices and condition, as there is no evidence of a recurrent incidence of wet liquids on the roller rink or of drinks being spilled on the floor. Plaintiff's accident was not caused by the service of drinks at ths club. And, plaintiff only testified that he saw some cups on the floor while he was skating and that he never observed any liquids or wet conditions on the floor. Nor is there any evidence that defendant failed to warn patrons not to bring drinks on the skating floor.

In response to plaintiff's motion for sanctions, defendant asserts that it never created or kept any maintenance records reflecting a transient wet condition or of patrons bringing drinks on the skating floor. Also, defendant asserts that payroll records were never demanded by the plaintiff or directed in the Preliminary Conference Order. Furthermore, defendant notes that it is no longer in business and has no employees, and plaintiff failed to show that he is prejudicially

bereft of means to prosecute his action. Plaintiff is already in possession of the name and address of the night manager who had prepared the incident report for plaintiff's accident. Thus, sanctions based on spoliation are not warranted.

Plaintiff's Reply

In further support of his cross-motion for sanctions, plaintiff state that he has been attempting to acquire payroll evidence for years. Although defendant identified the night manager who signed the incident report and provided his last known address, defendant failed to provide the last known addresses of the two members of the cleaning staff it identified. Therefore, defendant's claim that it lost the payroll records lacks credibility. Nor has defendant provided the records of any identifying information of the skate guards. Essentially, the only witness identified by defendant is the one who refuses to cooperate. Plaintiff emphasizes that he is merely attempting to "level the playing field" by asking the Court to prohibit defendant from offering evidence at trial regarding the condition of the skating rink. That is, the remedy sought merely addresses the prejudice experienced by plaintiff due to defendant's failure to produce the necessary records - specifically the payroll records that would have given plaintiff access to key witnesses regarding the recurrence of a dangerous condition on the skating rink.

Analysis

Summary Judgment

It is well settled that where a defendant is the proponent of a motion for summary judgment, the defendant must establish that the "cause of action . . . has no merit" (CPLR § 3212[b]), sufficient to warrant the court as a matter of law to direct judgment in his or her favor (*Bush v St. Claire's Hosp.*, 82 NY2d 738, 739 [1993]; *Winegrad v New York Univ. Med. Ctr.*, 64

NY2d 851, 853 [1985]; *Wright v National Amusements, Inc.*, 2003 N.Y. Slip Op. 51390(U) [Sup Ct New York County, Oct. 21, 2003]). This standard requires that the proponent of a motion for summary judgment make a *prima facie* showing of entitlement to judgment as a matter of law, by advancing sufficient "evidentiary proof in admissible form" to demonstrate the absence of any material issues of fact (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Silverman v Perlbinder*, 307 AD2d 230, 762 NYS2d 386 [1st Dept 2003]; *Thomas v Holzberg*, 300 AD2d 10, 11, 751 NYS2d 433, 434 [1st Dept 2002] [defendant not entitled to summary judgment where he failed to produce admissible evidence demonstrating that no triable issue of fact exists as to whether plaintiff would have been successful in the underlying negligence action]). Thus, the motion must be supported "by affidavit [from a person having knowledge of the facts], by a copy of the pleadings and by other available proof, such as depositions" (CPLR § 3212[b]).

Alternatively, to defeat a motion for summary judgment, the opposing party must show facts sufficient to require a trial of any issue of fact (CPLR §3212[b]). Thus, where the proponent of the motion makes a *prima facie* showing of entitlement to summary judgment, the burden shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for his or her failure to do so (*Vermette v Kenworth Truck Co.*, 68 NY2d 714, 717 [1986]; *Zuckerman v City of New York, supra*, 49 NY2d at 560, 562; *Forrest v Jewish Guild for the Blind*, 309 AD2d 546, 765 NYS2d 326 [1st Dept 2003]). Like the proponent of the motion, the party opposing the motion must set forth evidentiary proof in admissible form in support of his or her claim that material triable issues of fact exist (*Zuckerman, supra* at 562). Opponent "must assemble and lay

bare [its] affirmative proof to demonstrate that genuine issues of fact exist" and "the issue must be shown to be real, not feigned since a sham or frivolous issue will not preclude summary relief" (*Kornfeld v NRX Technologies, Inc.*, 93 AD2d 772 [1st Dept 1983], *affd*, 62 NY2d 686 [1984]).

"It is well established that a landowner is under a duty to maintain its property in a reasonably safe condition under the extant circumstances, including the likelihood of injuries to others, the potential for any such injuries to be of a serious nature and the burden of avoiding the risk" (*O'Connor-Miele v Barhite & Holzinger, Inc.*, 234 AD2d 106, 650 NYS2d 717 [1st Dept 1996] *citing Basso v Miller*, 40 NY2d 233, 241 [1976]; *Karamarios v Bernstein Mgt. Corp.*, 204 AD2d 139 [1st Dept 1994]). However, "as a prerequisite for recovering damages, [plaintiff] must establish that the landlord created or had either actual or constructive notice of the *hazardous condition that precipitated the injury* (*O'Connor-Miele v Barhite & Holzinger, Inc.*, 234 AD2d 106 *citing Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969; *Gordon v American Museum of Natural History*, 67 NY2d 836, 837-838), and by the rule that, "[t]o constitute constructive notice, a defect [or dangerous condition] must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit [the owner's] employees to discover and remedy it" (*supra*, at 837). A defendant/property owner may also have constructive notice of a dangerous condition if the plaintiff presents evidence that the condition was ongoing and recurring in the area of the accident, and such condition was left unaddressed (*see Gordon v American Museum of Natural History*, 67 NY2d 836, *supra*; *Uhlich v Canada Dry Bottling Co. of New York*, 305 AD2d 107, 107, 758 NYS2d 650, 651 [1st Dept 2003]; *see also O'Connor-Miele v Barhite & Holzinger, Inc.*, 234 AD2d 106, 650 NYS2d 717 [1st Dept 1996]). By

contrast, a mere general awareness of the presence of some dangerous condition is legally insufficient to establish constructive notice (*see Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 622 NYS2d 493 [1994]; *see also Gordon v American Museum of Natural History*, 67 NY2d 836, *supra*; *Segretti*, 256 AD2d 234, *supra*).

Caselaw clearly holds that where one claims that the condition of a floor surface was defective, or that a floor surface was improperly maintained (*i.e.*, contained debris or foreign objects such as garbage or a hose), the claimant must establish actual or constructive notice of such defect or object (*see Engstrom v City of New York*, 270 AD2d35 [1st Dept 2000] ["To the extent the condition of the ice [on the ice skating rink] may have proximately contributed to plaintiff's injury, there is no evidence that defendants had notice or any alleged defect"]; *O'Connor-Miele v Barhite & Holzinger*, 234 AD2d 106 [1st Dept 1996][defendants failed to show that plaintiff cannot satisfy burden at trial; there was evidence that fall was due to debris, *i.e.*, soap powder, on floor, which was frequently present in stairwell due to spillage by tenants moving from floor to floor]; *Lyons v State of New York*, 27 Misc 2d 75 [Ct of Claims 1961] [where skater's skate hit a protruding gummy divider between pavement and cement base of roller skating rink, there was no evidence of improper construction or maintenance of rink, and "claimant failed to establish notice to the State, either actual or constructive, of the existence of the alleged defect in the rink"]; *see also Jenkins v New York City Housing Auth.*, 11 AD3d 358, 784 NYS2d 32 [1st Dept 2004] ["To the extent plaintiff's claim is based on defendant's failure to remedy the transient hazardous condition allegedly created by the puddle on the third stair, plaintiff failed to offer any evidence rebutting defendant's showing that its staff had no actual or constructive notice of the presence of the puddle prior to the subject accident"]; *Hendricks v 691*

Eighth Ave. Corp., 226 AD2d 192, 640 NYS2d 525 [1st Dept 1996] [defendants established entitlement to judgment as a matter of law where defendants' employees did not observe any liquid on the stairs of their store leading to the basement, or receive any complaints about the stairs on the day in question, and were not even aware of the incident until five months later]).

In this regard, defendant established, and plaintiff does not contest, that defendant did not have actual or constructive notice of the *particular* liquid on which plaintiff allegedly fell. As made plain in plaintiff's opposition, plaintiff is *not* alleging that defendant had actual notice of the liquid for a sufficient length of time to allow for discovery and remedy by the defendant. In any event, the Court notes that there is no indication in the record that defendant received any complaints from plaintiff or from any other source of the particular liquid that caused plaintiff's fall. Nor is there any indication that the particular liquid at issue was present on the rink for any period of time so as to permit defendant to discover and remove the liquid at issue.

However, is it clear that plaintiff is asserting that there was an ongoing and recurring dangerous *practice* of allowing skaters to skate around the rink with beverages, and that this dangerous practice "was routinely left unaddressed."

In this regard, *Eagle v Chelsea Piers* (46 AD3d 367 [1st Dept 2007]) is instructive. In *Eagle*, plaintiff fell off of his bicycle while riding over a water hose stretched along a pathway of Pier 60 at Chelsea Piers. Co-defendant, which had a vessel docked at the pier, ran a garden-type hose from the vessel across the pathway to a water supply inside the pier's parking area. Citing *O'Connor-Miele v Barhite & Holzinger* (*supra*), which involved a fall that was due to soap powder in a stairwell due to spillage by tenants, the First Department held that Chelsea was not entitled to summary judgment given that issues of fact existed as to whether Chelsea was aware

of co-defendant's "recurrent, dangerous practice of improperly placing the hose across the subject path on defendant's premises." It appears that knowledge of a recurrent, dangerous "practice" of permitting an object or debris to remain on one's premise may satisfy the notice requirement required to impose liability upon a landowner for unsafe conditions existing on its premises.

Here, the record contains sufficient evidence from which a jury may infer that patrons brought cups, containing drinks from defendant's bar, onto defendant's roller skating rink and that defendant was aware of this dangerous practice. Mr. Dinino testified that patrons were not allowed to bring drinks onto the floor, but that in the event patrons did, defendant's employees were instructed to advise them that drinks were not allowed. Mr. Dinino's knowledge that his employees would instruct patrons with drinks on the floor, coupled with evidence that defendants's employees were seen removing cups from the rink, raises an issue of fact as to whether defendant was aware of the "recurrent, dangerous practice" of drinks being brought onto the roller skating rink.

The Court observes that plaintiff also asserts that defendant failed to post signs warning against the dangerous practice, and failed to take sufficient steps to prevent patrons from engaging in the dangerous practice of bringing drinks onto the rink..

In this latter regard, *Levy v Jacobs* (131 Misc 824 [City Court, Bx. County 1928]) is also instructive. In *Levy*, plaintiff fell and was injured when her skate, which was equipped with toe guards, came into contract with the skate of other patron unequipped with toe guards. Defendant testified that there were signs posted prohibiting the use of skates without toe guards, and that he instructed his employees to enforce this rule by excluding from the ice any patron with skates

unequipped with toe guards. The Court held that such circumstances, "remove[]d from the case" the issue of whether defendant knew the use of skates unequipped with toe guards was dangerous. Thus, the jury was entitled to find that "defendant knew his patrons might be subject to injury unless such precautions" were taken, which imposed upon defendant a duty to exercise that degree "vigilance" to "guard against the very risk his own evidence shows might be reasonably have been anticipate." Since plaintiff testified that there were no signs warning against the use of skates unequipped with toe guards, and that defendant did not attempt to observe the skates worn by its patrons, and prevent skating with unequipped toe guards, such issues were better left for the jury to decide.

Here, there is no evidence that defendant placed any warning signs prohibiting patrons from bringing drinks onto the rink, although defendant instructed its employees to enforce such a rule. Defendant failed to establish, as a matter of law, that it exercised that degree of "vigilance" to guard against the very risk of roller skaters falling due to spilled drinks on the rink. The Court cannot state, as a matter of law, that defendant fulfilled its duty by instructing its skate guards to inform patrons who were carrying beverages while skating that drinks were prohibited.

Therefore, summary judgment dismissing the complaint on the grounds that plaintiff cannot establish that defendant had notice of the dangerous practice at issue is unwarranted.

Spoliation Sanctions

Courts have broad discretion to fashion a remedy for spoliation in the interest of justice (*Ortega v City of New York*, 9 NY3d 69 [2007]), generally finding that sanctions are warranted when prejudice is severe (*see e.g., Kirkland*, 236 AD2d at 175; *Squitieri v City of New York*, 248 AD2d 201, 204 [1st Dept 1998]). Courts have defined spoliation as the intentional or negligent

destruction of "key" or "crucial" evidence, and have held that sanctions are warranted when "*crucial* items of evidence" are destroyed (*Kirkland v New York City Hous. Authority*, 236 AD2d 170, 173 [1st Dept 1997] [emphasis added]; *see also Atlantic Mutual Insurance Co., v Sea Transfer Trucking Corp.*, 264 AD2d 659, 660 [1999]; *see DeKenipp v Rockefeller Center, Inc.*, 856 NYS2d 23, 23 [S Ct NY Cty 2007] [holding that "[s]poliation is the loss, destruction, or alteration of key evidence to a lawsuit"]; *see also Squitieri v City of New York*, 248 AD2d 201 [1997]; *Mudge, Rose, Guthrie, Alexander & Ferdon v Penguin Air Condition Corp.*, 221 AD2d 243 [1st Dept 1995]). The destruction of the allegedly defective, or defectively installed product warrants such remedies as dismissal (*e.g.*, *Kirkland, supra*), summary judgment (*e.g. Amaris v Sharp Electronics Corp.*, 304 AD2d 457 [1st Dept 2003]) or preclusion of evidence (*e.g., Strelov v The Hertz Corp.*, 171 AD2d 420 [1st Dept 1991] [precluding defendant from offering evidence concerning the condition of the car parts that had been negligently destroyed]).

As noted by plaintiff, the destruction of records considered crucial has also warranted sanctions (*see Dorsa v National Amusements, Inc.*, 6 AD3d 652, 653 [2d Dept 2004] [preclusion of evidence was warranted when maintenance records of an allegedly defective drinking fountain had been destroyed]). However, the *Dorsa* court noted that the destruction of the records "prevented the plaintiff from obtaining evidence from which a trier of fact may have been able to reasonably infer that the defendant had actual notice of a recurring dangerous condition" (*id.*). A search of the case law did not yield any New York cases holding that the failure to produce payroll records or other documentation potentially leading to witnesses of a recurring condition constituted "key" or "crucial" evidence, necessitating the remedy of preclusion (*but see Mohamed v Cellino & Barnes*, 300 AD2d 1116, 1117 [4th Dept 2002] [holding that the negative

inference charge given by the lower court was an appropriate remedy for defendant's failure to produce eye witnesses to an accident when plaintiff, on appeal, attempted to assert that testimony preclusion was also warranted - the court noted that she failed to preserve that claim]).

The facts of the instant case do not lend themselves to the interpretation that crucial evidence was destroyed by the defendant or that plaintiff was severely prejudiced in his ability to prove his claim. Plaintiff cross-moved for spoliation sanctions based on the destruction of both maintenance and payroll records; however the deposition testimony of defendant's witness establishes that the defendant kept no maintenance records that would have reflected spilled liquids on the floor of the rink. While defendant's personnel records may have assisted plaintiff in finding witnesses who could potentially have provided evidence relevant to defendant's constructive notice of recurring spilled drinks, absence of these records do not "severely prejudice" plaintiff, as defendant has provided plaintiff with the name and last-known address of the night manager who was on duty the night of plaintiff's accident and the names of two cleaning personnel employed by defendant at that time. Furthermore, unlike *Dorsa*, the payroll records, in and of themselves, could not have contained evidence of notice, but rather, were a means of accessing potential witnesses who may or may not have been able to provide evidence to substantiate plaintiff's claims. Therefore, the cross-motion by plaintiff is unwarranted.

Conclusion

Based on the foregoing, it is hereby

ORDERED that the motion by defendant pursuant to CPLR § 3212 for summary judgment dismissing the complaint of plaintiff is denied; and it is further

ORDERED that the cross-motion by plaintiff for an order precluding defendant from

offering evidence at trial relating to the condition of the roller skating rink at the time of plaintiff's accident, and to have an adverse inference charge issued regarding defendant's spoliation of evidence and costs associated with this motion is denied; and it is further

ORDERED that defendant serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: October 30, 2008

Hon. Carol Robinson Edmead, J.S.C.