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

PRESENT: Hon. MICHAEL D. STALLMAN PART 7
Justice

SHIRLEY SANDELL,

Plaintiff,

- v -

BOARD OF MANAGERS OF PARC VENDOME CONDOMINIUM, and its directors, officers, agents, servants, and employees, and CHARLES H. GREENTHAL MANAGEMENT CORP. aka CHARLES H. GREENTHAL & COMPANY, aka CHARLES H. GREENTHAL & CO., INC. aka THE CHARLES H. GREENTHAL GROUP, INC., as Managing Agent, and its agents, servants and employees,

Defendants.

INDEX NO. 100415/2007

MOTION DATE 10/2/08

MOTION SEQ. NO. 001

MOTION CAL. NO. 105

The following papers, numbered 1 to 9 were read on this motion and cross motion for summary judgment

	PAPERS NUMBERED
Notice of Motion— Affirmations — Exhibits A-T	1-3
Answering Affirmation — Exhibits A-C	4
Replying Affirmation	5
Notice of Cross Motion— Affirmation— Exhibits A-E	6-7
Answering Affirmation	8
Replying Affirmation	9

FILED
FEB 27 2009
COUNTY CLERK'S OFFICE
NEW YORK

Cross-Motion: X Yes ☐ No

Upon the foregoing papers, it is ordered that this motion and cross motion are decided in accordance with the annexed memorandum decision and order.

Dated: 2/23/09
New York, New York

J.S.C.

Check one: ☐ FINAL DISPOSITION X NON-FINAL DISPOSITION
Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

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

HON. MICHAEL D. STALLMAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 7

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SHIRLEY SANDELL,

Index No. 100415/07

Plaintiff,

Decision and Order

-against-

BOARD OF MANAGERS OF PARC VENDOME CONDOMINIUM, and its directors, officers, agents, servants, and employees, and CHARLES H. GREENTHAL MANAGEMENT CORP. aka CHARLES H. GREENTHAL & COMPANY, aka CHARLES H. GREENTHAL & CO., INC. aka THE CHARLES H. GREENTHAL GROUP, INC., as Managing Agent, and its agents, servants and employees,

Defendants.

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HON. MICHAEL D. STALLMAN, J.:

In this personal injury action, plaintiff Shirley Sandell moves for partial summary judgment on the issue of liability, pursuant to CPLR 3212. Plaintiff also moves for a special trial preference, pursuant to CPLR 3403 and 22 NYCRR § 202.24, on the ground that she is more than 70 years of age.

Defendants Board of Managers of Parc Vendome Condominium, and its directors, officers, agents, servants, and employees, and Charles H. Greenthal Management Corp. aka Charles H. Greenthal & Company, aka Charles H. Greenthal & Co., Inc. aka The Charles H. Greenthal Group, Inc., as Managing Agent, and its agents, servants and employees, cross-move for an order dismissing the complaint, pursuant to CPLR 3212.

Background

Defendant Parc Vendome is a domestic corporation that owns and operates a residential condominium located at 333 West 56th Street in Manhattan (Premises). Each of the remaining defendants Charles H. Greenthal Management Corp., Charles Greenthal & Company, Co., Inc., and the Charles H. Greenthal Group, Inc., all of whom being domestic corporations located at 340 West 57th Street in Manhattan, are the managing agents of the Premises.

Plaintiff is a New York City resident.

The following facts are undisputed. On October 8, 2005, during a period of heavy rain, plaintiff, a resident of the Premises, exited the elevator and walked across the marble lobby floor toward the mailboxes. While traversing the lobby, plaintiff allegedly slipped and fell due to water being present and sustained various injuries. Security footage of the lobby area shows the doorman mopping the floors of the entranceway from 4:12 pm until 4:13:13 pm, and plaintiff is shown slipping and falling at 4:14:23 pm, on an area which the mop appears to have passed over.

As a result, plaintiff commenced this action based upon a theory of negligence, alleging that defendants failed to maintain its lobby in a reasonably safe condition. Consequently, plaintiff seeks damages, the sum of which is to be determined at trial.

Plaintiff argues that she is entitled to summary judgment because: (1) defendants created a dangerous condition when one of its employees mopped a section of the lobby prior to plaintiff's arrival, and (2) defendants had actual or constructive notice of the dangerous condition and failed to remedy the situation, and thus breached their duty to plaintiff.

Defendants argue that plaintiff is not entitled to summary judgment because: (1) they did not create the alleged dangerous condition, (2) they did not have a reasonable time to remedy the

situation, and (3) they neither had actual or constructive notice of the particular condition that caused plaintiff to slip.

Discussion

A party moving for summary judgment must demonstrate its entitlement thereto as a matter of law. To defeat summary judgment, the party opposing the motion must show that there is a material question of fact that requires a trial (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Defendants' storm in progress argument is not applicable under the circumstances. Although defendants have submitted evidence of a storm in progress on October 8, 2005 by submitting climatological data from the National Climatic Data Center (Exhibit F to Affidavit of A. Jeffrey Spiro, dated July 28, 2008) (Spiro Aff.), the issue of defendants' liability is not whether defendants had a duty to clear away any accumulated water at the plaintiff's slip and fall. Videotape footage, submitted on a CD-R (and also shown frame-by-frame in printouts), clearly indicates that a doorman was mopping the entryway from 4:12 pm until 4:13:13 pm. Rather, the issue is whether defendants created a hazardous, slippery condition that caused plaintiff to slip and fall, or whether defendants had actual or constructive notice of the allegedly hazardous condition. It would appear from the frame by frame surveillance footage that the doorman mopped the area where plaintiff fell at 4:12:57 to 4:12:58 pm, and the plaintiff slipped and fell at 4:14:23 pm, as indicated on the surveillance tape. See Clausen Affirm, Ex S. The doorman testified at his deposition that he had mopped the area where plaintiff fell. Clausen Affirm, Ex P, at 29. He testified that he was mopping drops off the floor, and the mop that he was using was "kind of damp" (*id.* at 21).

Thus, it is reasonable to infer that the doorman saw the area where plaintiff slipped and fell

a minute and half before plaintiff's fall. It is also reasonable to infer that the area mopped may have been wet, inasmuch as the doorman was mopping drops off the floor and passed the mop over that area. Consequently, questions of fact arises as to whether the doorman had actual notice of the allegedly wet area where plaintiff fell, and/or whether the doorman's mopping created the condition which caused plaintiff to slip and fall. Defendants' contention that the doorman had mopped up any water in the area raises a triable question of fact. The doorman testified at his EBT that, after he mopped the floor, he did not know the condition of the area where plaintiff fell, i.e., whether it was wet, if it was dry, if it was damp (*id.* at 32).

Defendants also argue that the source of the water was plaintiff's own slippers, in that plaintiff walked on the mats when she exited the elevator to reach the mail room, and that the doorman testified at his EBT that mats were wet because it had been raining outside. Defendants' alternative explanation as to why plaintiff slipped and fell on the area where the doorman had mopped raises an issue of causation, which "is generally resolved by the fact finder" (*Mercado v Vega*, 77 NY2d 918, 920 (1991). Defendants do not establish, as a matter of law, that the area that the doorman mopped was dry when plaintiff slipped and fell, and that what caused plaintiff to fall was water that plaintiff herself had tracked from the mats. As plaintiff points out, the doorman's testimony did not state that the section of the mats that plaintiff walked upon was wet, or even wet enough for plaintiff's slippers to have transferred the water to the uncovered areas of the floor.

Therefore, defendants' cross motion for summary judgment dismissing the complaint is denied.

As to plaintiff's motion for summary judgment, plaintiff essentially contends that the videotape footage, corroborated by the doorman's and plaintiff's deposition testimony, establishes

defendants' negligence as a matter of law. Plaintiff also argues that the doorman did not warn plaintiff about the floor being slippery, even though he saw her coming down from the elevator and walking directly to the mail room.

Plaintiff highlights portions of the doorman's deposition testimony, wherein he states that he knows that the floor is marble, and that the marble becomes slippery when it is wet, and that, except for the mats which ran parallel to the elevator and perpendicular to the elevator to the outside door, there were no other mats in the lobby, and no mats from the elevator to the mail room. To the extent that plaintiff's affidavit attempts to attribute the accident to defendants' failure to place mats on the entire lobby floor "defendants are under no obligation to cover the entire floor with mats" during a rain storm (*Gonzalez-Jarrin v New York City Dept. of Educ.*, 50 AD3d 334, 335 [1st Dept 2008]). In addition, "a 'general awareness' that a dangerous condition may be present is legally insufficient to constitute notice of the particular condition that caused plaintiff's fall" (*Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969 (1994).

"Only if it can be concluded as a matter of law that defendant was negligent, may summary judgment be granted in a negligence action" (*Ugarriza v Schmieder*, 46 NY2d at 471, 474 [1979]). Although the doorman's actions are clearly seen on the videotape footage, there are issues of fact as to whether the doorman created the slippery condition, as discussed above. Therefore, the branch of plaintiff's motion for summary judgment is denied.

The branch of plaintiff's motion seeking a special preference for trial based on age is granted without opposition. It is uncontested that plaintiff is currently almost 90 years old.

Conclusion

Accordingly, it is

ORDERED that plaintiff's motion is granted to the extent that she is granted a special preference for trial, and the motion is otherwise denied; and it is further

ORDERED that defendants' motion for summary judgment is denied.

Dated: New York, New York
February 23, 2009

E N T E R:

J.S.C.

HON. MICHAEL D. STALLMAN

FILED
FEB 27 2009
COUNTY CLERK'S OFFICE
NEW YORK