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

PRESENT: MARTIN SHULMAN J.S.C. PART 1

Index Number : 150415/2007
OFFICER, JOAN
VS
450 PARK LLC
Sequence Number : 002
DISMISS

INDEX NO. 150415/07
MOTION DATE
MOTION SEQ. NO. 002
MOTION CAL. NO.

...ls motion to/for

	PAPERS NUMBERED
Notice of Motion/ ~~Order to Show Cause~~ — Affidavits — Exhibits ..! - 16	1, 2, 3, 4
Answering Affidavits — ~~Exhibits~~	5, 6
Replying Affidavits	

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
MAY 11 2009
NEW YORK
COUNTY CLERK'S OFFICE

Dated: APR 29 2009

MARTIN SHULMAN J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

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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JOAN OFFICER and DAVID OFFICER,

Plaintiffs,

Index No.: 150415/07

-against-

DECISION

450 PARK LLC, TACONIC INVESTMENT PARTNERS LLC and GUARDSMARK, LLC,

Defendants.

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SHULMAN, J.:

Defendants 450 Park LLC and Taconic Investment Partners LLC (collectively "defendants"), the owner and management agent of the subject premises, move, pursuant to CPLR 3211(a) and 3212, for summary judgment dismissing the complaint. Defendants have also moved for leave to file this motion beyond the 60-day period, which has already been granted by this court, rendering that portion of this motion moot.

Plaintiff was allegedly injured on February 14, 2007, when she entered the lobby of the office building where she worked and slipped. The day was wet, snowy and rainy, and the lobby of the office building had a marble floor. The incident occurred between 8:30 and 8:45 a.m., and approximately 100 people had traversed the lobby for the half-hour or so prior to plaintiff's arrival. The lobby floor had been mopped 20 minutes before the alleged accident. None of these facts is controverted. However, in her bill of particulars, plaintiff states that defendants were negligent in failing to properly and timely place mats on the lobby floor.

Video surveillance cameras were operating on that day, and still photographs from that film indicate that mats were placed at the two working entrance doors, connecting into a long intersecting mat, which, in turn, connected with several other intersecting mats. The photographs also show a cord railing in the lobby, and a yellow cone outside the middle revolving door, which was not working. In her opposition, plaintiff states that the photographs indicate that there was no mat at the door by which she entered the building, but the photographs are timed, and show a workman actually placing the mats down. Before plaintiff entered the building, mats had been placed on the floor as described above.

In her deposition, plaintiff indicates that she entered the building, took a few steps, and then slipped, which severely injured her shoulder. Plaintiff does not know definitively whether she slipped on the marble or a mat.

Defendants state that in addition to the mats, there were two warning signs posted and several warning cones, but these are not visible in the photographs. Plaintiff states that she did not notice any signs, but also states that such signs may have been there.

The security guard on duty that day stated that the mats that were placed on the floor were, what he termed, the "good weather" mats, being slightly smaller and thinner than what he describes as the "bad weather" mats. This testimony is disputed by the management company, which maintains that the inclement weather mats were in service on the day and time in question.

In support of the instant motion, defendants provide the affidavit of Carl J. Abraham ("Abraham"), a licensed professional engineer, an expert in safety analysis and

National Floor Safety Institute requirements, among other things. Abraham reviewed the pleadings, the transcripts, the deposition exhibits, the discovery documents and the photographs attached as exhibits. Based on his review, within a reasonable degree of scientific certainty, he states that the mats shown in the photographs were heavy-duty mats appropriate for the circumstances, and that defendants took reasonable precautions to remedy wet conditions in the building entrance area in which the accident took place.

In opposition, plaintiff provides the affidavit of William Marletta, Ph.D., CSP ("Marletta"), a certified safety professional. In drawing his conclusions, Marletta only refers to plaintiff's testimony, and never indicates whether he viewed the photographs or considered the other depositions and exhibits in the case. Marletta's conclusions are general statements of precautions that must be taken to insure safety in inclement weather, with references to reports and building codes. Marletta states that defendants' negligence was the proximate cause of plaintiff's injuries.

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, Inc. v Ceppos*, 46 NY2d 223, 231 (1978).

> To impose liability for an injury proximately caused by a dangerous condition created by water, snow, or ice tracked into a building, a defendant must have either created the dangerous condition, or had actual or constructive notice of it, and a reasonable time to undertake remedial action.

Ruic v Roman Catholic Diocese of Rockville Centre, 51 AD3d 1000 (2d Dept 2008).

In the instant matter, the crux of plaintiff's assertions is that defendants were negligent in that the precautions they took were inadequate to prevent the accident. However, defendants mopped the floor 20 minutes prior to the occurrence, and mats were placed on the floor, both actions of which have been deemed reasonable precautions to remedy wet conditions. *Ford v Citibank, N.A.,* 11 AD3d 508 (2d Dept 2004). There is no legal requirement that defendants "provide a constant remedy to the problem of water being tracked into a building in rainy weather." *Id.* at 509. Furthermore, there is no obligation for defendants to cover the entire floor with mats and to continually mop up all tracked-in water. *Choi v Olympia & York Water St. Co.,* 278 AD2d 106 (1st Dept 2000).

In *Bernhard v Bank of Montreal*, 41 AD3d 180, 180-181 (1st Dept 2007), a case strikingly similar to the case at bar, the court said:

> Plaintiff's slip and fall on a wet floor in the lobby of defendant's bank branch was captured on a security videotape, which also showed that the accident occurred during a heavy rain, that people with umbrellas entered the lobby area just minutes before plaintiff's slip and fall and that the area of the accident had been regularly mopped, one such mopping having occurred only seven minutes before the accident. In light of this evidence, the motion court correctly concluded, as a matter of law, that defendants did not have a sufficient opportunity to remediate the hazard.

The affidavit of plaintiff's expert, submitted in opposition to this motion, contains only conclusory assertions that are unsupported by anything other than plaintiff's testimony and, consequently, is insufficient to raise an issue of fact. *Ford v Citibank, N.A., supra; see also Bernhard v Bank of Montreal, supra.* The court also notes that none of the cases cited by either party specifies the exact type of mat that needs to be placed on a wet floor to constitute a reasonable precaution.

Based on the foregoing, it is hereby

ORDERED that defendants' motion for summary judgment dismissing the complaint is granted and the complaint is dismissed with costs and disbursements to defendants 450 Park LLC and Taconic Investment Partners LLC as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: April 29, 2009

ENTER:

Martin Shulman, J.S.C.