

Wise-Love v 60 Broad St., LLC

2009 NY Slip Op 32336(U)

October 8, 2009

Supreme Court, New York County

Docket Number: 113020/04

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON

PART 55

Index Number : 113020/2004

WISE-LOVE, GWENDOLYN

vs

60 BROAD STREET

Sequence Number : 002

RESTORE ACTION TO CALENDAR

INDEX NO. _____

MOTION DATE 6/18/09

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

The following papers, numbered _____ this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-9
12-11
12

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with the annexed memorandum decision and order.

FILED
OCT 13 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 10/8/09

JANE S. SOLOMON ^{SG}

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):

FSUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----x

GWENDOLYN WISE-LOVE and CLEVELAND LOVE,

DECISION and ORDER

Plaintiffs,

Index No. 113020/04

-against-

60 BROAD STREET, LLC, COGSWELL REALTY
GROUP, LLC, CRG MANAGEMENT, LLC and
HARVARD MAINTENANCE, INC.,

Defendants.

-----x

Jane S. Solomon, J.:

Plaintiffs move to reargue and renew a prior motion by
defendants for summary judgment. That motion was granted by an
order issued on January 13, 2009 (Prior Order), which dismissed
the complaint. This motion is denied for the reasons below.

Plaintiff Gwendolyn Wise-Love (Wise-Love) was hurt when
she slipped on some water in the entrance lobby of 25 Beaver
Street, a building owned by defendant 60 Broad Street, LLC
(Owner). Wise-Love entered the lobby on her way to work on a
rainy morning. The lobby had three doors from the street, but a
rain mat was put down in the lobby only in front of the center
door that Wise-Love used. She walked over the rain mat, taking
fifteen to twenty steps on it. The mat was put down by employees
of defendant Harvard Maintenance, Inc. (Harvard Maintenance), the
maintenance contractor. Employees were required to pass through
a turnstile in the rear of the lobby, but the mat ended before
the turnstile entrance. While waiting to pass through the

turnstile, Wise-Love observed a person shake a large, wet umbrella in front of her while passing through the turnstile a few seconds ahead of her. As Wise-Love passed through the turnstile, she slipped, did not fall, but nevertheless injured her back.

At deposition, a Harvard Maintenance employee testified that there was a procedure in place for rainy days. Floor mats and a warning sign were placed in the lobby, and a security guard was charged with keeping an eye out for accumulations of water. If he saw a puddle, he would call a Harvard Maintenance porter to mop it up, and would direct employees to step around it in the meantime. There were three mats available for the lobby, one for each door from the street, and a sign warning of the danger of a wet floor was put out. According to Wise-Love, only one mat was present at the time of her accident, the one she walked over, and she did not see any warning sign.

Wise-Love testified that when she fell, the security guard told her that another person had fallen in the same place earlier in the morning. The security guard, Tito Figueroa, was deposed, and testified that he knew of a person who fell on a different day after walking in a place where there was no mat, approximately twenty feet from where Wise-Love fell. He had no recollection of telling Wise-Love about another slipping incident. He verified that if he observed an accumulation of

water, he would call Harvard Maintenance to eliminate the hazard, and that a porter would come to mop every fifteen to twenty minutes. He had a specific recollection of seeing a porter in the lobby on the morning of the accident, and of seeing a warning sign to alert pedestrians that the floor was wet.

Defendants moved for summary judgment dismissing the complaint, arguing that Wise-Love had not made a prima facie showing of negligence because she could not establish actual or constructive notice of a slipping hazard. Wise-Love opposed the motion and cross moved to strike defendants' answer for a failure to provide certain material demanded in the disclosure phase of the action. In opposing the motion, Wise-Love submitted expert opinion affidavits of an architect and a floor mat seller. The architect identified code provisions requiring a property owner to maintain a safe premises, opined that mats should be provided, and that accumulations of water should be mopped up. She also opined that terrazzo, the material the lobby floor is made of, is not sufficiently slip-resistant as measured by a minimum coefficient of friction. She provided no data on whether the subject floor meets this requirement or not. The mat seller opined that a mat should be provided for each lobby door up to the point where the turnstile is located.

The Prior Order was made in reliance upon several Appellate Division cases, including *Gibbs v Port Auth. Of New*

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York (17 AD3d 252 [1st Dept 2005]), which reversed the trial court's denial of summary judgment dismissing the complaint, where the plaintiff alleged that she slipped on water, having seen water dripping from umbrellas and from people walking in ahead of her. The Appellate Division held that Gibbs could not establish constructive notice of a dangerous condition because she did not show that the alleged defect was visible and apparent for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it (*see also, Nu Li Lin v NYCHA*, 36 AD3d 409 [2d Dept 2005] [complaint dismissed where plaintiff slipped on water, and she observed water dripping from the umbrellas of people entering the building onto the lobby floor]).

The Prior Order concluded that defendants had made a prima facie showing of entitlement to summary judgment, and that Wise-Love had not raised a triable issue of fact requiring a trial. She testified that she had observed water dripping to the floor where she slipped a few seconds before her accident, and her only evidence of notice was that the security guard said to her that a person previously had slipped on water in the lobby in a different location. There was no evidence that the alleged prior incident arose from the same condition as caused her to slip.

The Prior Order makes no reference to plaintiff's

expert affidavits. In describing the facts, the Prior Order refers to floor mats, i.e., it suggests that there was more than one mat in the lobby, and it states that she slipped and fell, when in fact she slipped but did not fall.

Wise-Love contends that the court misapprehended certain material facts. Notably, she argues that the reference to more than one floor mat and to her falling are material misapprehensions of fact. That she slipped and did not fall is not relevant to the discussion of defendants' liability. Although the Prior Order referred to mats in the plural, the discussion involves only the mat that Wise-Love admits to traversing. These factual distinctions, and the others referenced in plaintiff's motion, are not material to the dispute and are not a basis for granting reargument.

Plaintiffs' expert affidavits also raise no factual issues. The mat expert opined that more mats were warranted, and should have extended up to the turnstile. This opinion does not address the problem of lack of actual and constructive notice to defendants that water had dripped to the floor from an umbrella in the turnstile area a few seconds before Wise-Love's accident. Nor does it address the problem that, even if mats in other locations would have been beneficial to others, Wise-Love herself had the benefit of a mat. This fact likewise negates the architect's opinion that mats should have been provided to

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protect pedestrians (Affidavit of Elise Dann, Ex. 1 to the underlying cross-motion, paragraph 3). And as stated above, her opinion that the floor was too slippery is not supported by any data.

Wise-Love further argues that defendants' motion should have been denied under *Bernhard v Bank of Montreal* (41 AD3d 180 [1st Dept 2007]). In *Bernhard*, the Appellate Division affirmed a trial court decision granting summary judgment in defendant's favor where plaintiff slipped on water in a bank lobby after a heavy rain. Bank security cameras showed that customers were in the bank with umbrellas, and the area had been mopped seven minutes before plaintiff's accident. The court rejected plaintiff's argument, relying on an expert opinion, that the area should have been covered with floor mats. The Appellate Division held, citing *Gibbs v Port Auth. Of NY, supra*, that defendants did not have a sufficient opportunity to remediate the hazard (41 AD3d 181). The gist of Wise-Love's reliance on this case appears to be that surveillance video could be relevant to a determination regarding constructive notice, but the lack thereof does not compel a denial of defendants' motion.

The Prior Order also properly denied the cross motion to strike the answer, which was premised on defendants' failure to provide a surveillance video tape and report regarding the alleged prior accident, on the grounds that plaintiff had not

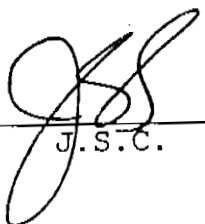
established that the prior incident had occurred as alleged, or that a tape or report existed.

Finally, Wise-Love does not submit new facts not offered on the prior motion because they were unavailable at the time, or identify a change in law that would change the prior determination, so that branch of the motion seeking renewal is denied (CPLR 2221[e][2]). Wise-Love's other arguments have been considered, and they are unavailing. Accordingly, it hereby is

ORDERED that Wise-Love's motion to renew is denied, and the motion to reargue is granted to the extent that the prior motion has been reviewed again in light of the expert opinions offered, and the original determination is adhered to.

Dated: October 8, 2009

ENTER:



J.S.C.

JANE S. SOLOMON

FILED

OCT 13 2009

**COUNTY CLERK'S OFFICE
NEW YORK**