

**Reece v City of New York**

2010 NY Slip Op 31655(U)

June 21, 2010

Supreme Court, New York County

Docket Number: 110713/07

Judge: Cynthia S. Kern

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

PRESENT: CYNTHIA S. KERN  
J.S.C.  
Justice

PART 52

Index Number : 110713/2007  
REECE, PATRICIA  
vs.  
CITY OF NEW YORK  
SEQUENCE NUMBER : 001  
SUMMARY JUDGMENT

INDEX NO. 110713/07  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001  
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 *is decided in accordance with the annexed decision.*

**FILED**

JUN 28 2010

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 6/21/10

CK  
CYNTHIA S. KERN 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 STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 52

-----X  
PATRICIA REECE,

Plaintiffs,

Index No. 110713/07

-against-

**DECISION/ORDER**

THE CITY OF NEW YORK, ALLIANCE FOR  
DOWNTOWN NEW YORK, AND ONESOURCE  
HOLDINGS, INC.,

Defendants.

-----X  
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion  
for : \_\_\_\_\_

Papers

Numbered

- Notice of Motion and Affidavits Annexed.....
- Answering Affidavits.....
- Cross-Motion and Affidavits Annexed.....
- Answering Affidavits to Cross-Motion.....
- Replying Affidavits.....
- Exhibits.....

- 1
- 2
- 3
- 4
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**FILED**  
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Plaintiff Patricia Reece commenced the instant action to recover damages for personal injuries she allegedly sustained when she slipped and fell on a blob of grease at the corner of Wall Street and Water Street in New York, New York. Defendant City of New York (the "City") moves for summary judgment dismissing the complaint and all cross-claims against it. Alliance for Downtown New York ("Alliance") and Onesource Holdings, Inc. ("Onesource") move for summary judgment dismissing the complaint. The City's motion for summary judgment is granted in its entirety without opposition. Defendants Alliance and Onesource's (the

“defendants”) summary judgment motion is granted for the reasons set forth below.

On November 16, 2006, at approximately 9:00 a.m., plaintiff was walking on the corner of Water Street and Wall Street in New York City. Plaintiff testified that while stepping up on the curb between Water Street and Wall Street from the crosswalk on Water Street, she allegedly fell and slipped on a blob of grease. Alliance, a not-for-profit business improvement district organization was responsible for sweeping the sidewalk at the location of the accident. Alliance contracted out the sweeping and cleaning of this area to Onesource.

Defendants are entitled to summary judgment dismissing the complaint against them as there was no proof submitted that defendants created or had actual or constructive notice of the allegedly dangerous condition which caused plaintiff to slip and fall. To establish a *prima facie* case of negligence in a slip and fall action, the plaintiff has the burden of establishing that the defendant had actual or constructive notice of an unsafe condition or that the defendant created the condition which caused plaintiff's injuries. *Gordon v. American Museum of Natural History*, 67 N.Y.2d 836 (1986). “To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it.” *Id* at 837. 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 did not cause the condition and that it did not have actual or constructive notice of the condition. *See Branham v. Loews Orpheum Cinemas*, 31 A.D.3d 319, 322 (1st Dep't 2006); *Stumacher v. Waldbaum, Inc.*, 274 A.D.2d 572 (2d Dep't 2000). Only after the moving defendant has established this threshold will the court look at the sufficiency of the plaintiff's opposition. *See Perez v. Rodriguez*, 25 A.D.3d 506 (1st Dep't 2006); *Yioves v. T.J. Maxx, Inc.*, 29 A.D.3d 572

(2d Dep't 2006).

In the instant action, defendants have met their *prima facie* burden of establishing that they did not cause the condition and that they did not have actual or constructive notice of the condition. Initially, this court finds that defendants have sufficiently shown that they did not place the blob of grease on the sidewalk. There is no evidence submitted with these papers which raises any disputed issues of fact as to whether defendants placed the blob of grease on the sidewalk.


Additionally, there is no evidence that defendants had actual or constructive notice of the grease on the sidewalk. First, the papers submitted do not provide any evidence as to how long the blob of grease may have been present and/or apparent on the sidewalk. Further, Jamel Homward, a supervisor at ABM (a company that bought out Onesource), affirmed under oath that after searching all Alliance files concerning the location of the accident, he didn't find any complaints concerning debris or oil spills at that location prior to November 2006. Moreover, plaintiff testified that she herself did not see the blob of grease before her fall and that although she noticed garbage cans and filled garbage bags at the street corner, she did not, at any point on the day of the accident notice any liquids coming out of the bags or cans. In opposition, plaintiff has not offered any evidence that defendants had actual or constructive knowledge that there was a blob of grease on the sidewalk at the corner of Wall Street and Water Street. Plaintiff has thus failed to rebut defendants' *prima facie* case for summary judgment. As such, there is absolutely no way to determine how the blob of grease came to be on the sidewalk other than mere speculation, which is an insufficient basis for holding defendants responsible.

Accordingly, defendant City's motion for summary judgment dismissing the complaint

and all cross-claims against it is granted, defendants Onsource and Alliance's joint motion for summary judgment is granted and plaintiff's complaint is dismissed in its entirety.

This constitutes the decision and order of the court.

Dated: 6/21/10

Enter:   
J.S.C.

**CYNTHIA S. KERN**  
J.S.C.

**FILED**  
JUN 28 2010  
NEW YORK  
COUNTY CLERK'S OFFICE