

Koutsos v New York Presbyterian Hosp.-Weill Cornell Campus
2012 NY Slip Op 30672(U)
March 15, 2012
Supreme Court, New York County
Docket Number: 100501/2009
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Saliann Scarpulla
Justice

PART 19

Index Number : 100501/2009

KOUTSOS, MARKOS

VS.

PRESBYTERIAN HOSPITAL

SEQUENCE NUMBER : 001

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

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 is determined in accordance with the accompanying decision/order.

FILED
MAR 20 2012
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 3/15/12

Saliann Scarpulla
SALIANN SCARPULLA ^{AS C.}

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG.

☐ SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

----- X
MARKOS KOUTSOS AND HELEN GOUZOULIS,

Plaintiffs,

- against-

Index No.: 100501/09

Submission Date: 11/2/11

NEW YORK PRESBYTERIAN HOSPITAL-WEILL
CORNELL CAMPUS,

DECISION AND ORDER

Defendant.
----- X

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New York, NY 10271

For Defendant:

Keller, O'Reilly & Watson, P.C.
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Papers considered in review of this motion for summary judgment:

Notice of Motion 1
Aff in Opposition. 2
Reply 3

HON. SALIANN SCARPULLA, J.:

In this action to recover damages for personal injuries, defendant New York Presbyterian Hospital-Weill Cornell Campus ("NYPH") moves for summary judgment dismissing the complaint.

On March 17, 2007, plaintiff Markos Koutsos ("Koutsos") accompanied his brother, who was complaining of chest pain, to the NYPH emergency room. Koutsos' brother's wife, Joanna Koutsos ("Joanna"), then arrived at the emergency room. Sometime between 2:00 a.m. and 3:00 a.m, Koutsos accompanied Joanna outside to get a taxicab and when he returned inside to the emergency room approximately five minutes

later, he slipped and fell due to an alleged wet and slippery floor condition. Koutsos commenced this action seeking to recover damages for the injuries he sustained to his wrist as the result of his fall.¹ It is undisputed that a snow storm was in progress at the time of the incident and for at least several hours prior thereto.

Koutsos testified at an examination before trial that a security guard and triage nurse witnessed his accident. There were no mats on the floor in the area of his fall. After he fell, he noticed that the floor was wet. He testified that before he fell, he had been looking straight ahead while walking, and did not see any water on the floor prior to his fall, but then testified that he had seen water on the floor before he fell. He believed that the floor was wet because people who were coming into the emergency room were tracking in the snow from outside. Joanna also noticed that the floor was wet with muddy, slushy footprints.

Lauren Reed ("Reed") was a triage nurse working in the emergency room at the time of Koutsos' accident. She testified at an examination before trial that she filled out the incident report for Koutsos' accident. She did not recall the incident and did not recall whether there were mats or warning signs on the floor at that time. She explained that mats were supposed to be placed on the floor by someone from environmental services when it was raining.

¹ Claims on behalf of plaintiff Helen Gouzoulis were voluntarily discontinued with prejudice by stipulation of discontinuance dated February 17, 2010.

Environmental Service night manager Colin Christie ("Christie") testified at an examination before trial that pursuant to NYPH's hospital policy and procedure manual, NYPH employees were required to lay out mats on the floor at the emergency room entrance in "incumbent weather" which was defined by Christie as "at the first signs of rain or snow." They were also required to put wet floor signs out and monitor the entrance. He explained that this was all done to prevent people from slipping and falling.

NYPH now moves for summary judgment dismissing the complaint. NYPH first contends that Koutsos' injury occurred due to water tracked in to the emergency room lobby while a storm was in progress and NYPH does not have the obligation to constantly maintain dry floors during inclement weather.

NYPH next maintains that no evidence has been presented to establish its creation or actual notice of the condition. Finally, NYPH argues that Koutsos' claim of constructive notice can not be maintained because it only rises to the level of a general awareness that it was snowing outside and that water could have theoretically been tracked into the lobby of NYPH, which is insufficient to impute constructive notice to NYPH. No evidence has been presented that the condition existed for a sufficient period of time to allow NYPH to have discovered and remedied it.

In opposition, Koutsos argues that issues of fact exist as to whether NYPH had notice of the dangerous condition and as to whether it took reasonable measures to remedy a foreseeable hazard. Koutsos maintains that pursuant to NYPH's hospital policy

and procedure manual and Christie's testimony, NYPH employees were required to lay out mats on the floor at the emergency room entrance at the first signs of rain or snow. They were also required to put wet floor signs out and monitor the entrance.

Based on Koutsos' testimony, on the night of the subject incident, there were no mats or signs and no one was monitoring the entrance, even though the storm had long been in progress. Koutos further argues that NYPH fails to present any evidence that any of its employees were present at the time of the accident or inspected the accident area at a specified time. NYPH employees have merely provided that they had no recollection of conditions or remedial measures that may or may not have been implemented on the date of the accident.

Discussion

The owner or operator of a business must take reasonable care that the public shall not be exposed to danger of injury through conditions in the premises or at the entrance which it invites the public to use. *See Razla v. Surgical Sock Shop II, Inc.*, 70 A.D.3d 916 (2nd Dept. 2010); *Podell v. 1315 Second, LLC*, 23 Misc. 3d 1104A (Sup. Ct. N.Y. Co., 2009). However, the business owner or operator is not obligated to provide a constant remedy to the problem of water or snow being tracked into the premises caused by inclement weather. *Hackbarth v. McDonalds Corp.*, 31 A.D.3d 498 (2nd Dept. 2006).

Here, in support of its motion for summary judgment, NYPH simply argues that, because Koutos fell during a storm in progress, NYPH had no constructive notice of a

dangerous condition as a matter of law and no obligation to maintain the floor in a completely dry condition. However, Koutsos does not argue that NYPH had an obligation to keep the floor completely dry during the snow storm. Rather, Koutos argues that NYPH did not take any measures at all to remedy a foreseeable hazard – a wet floor during the progress of a long-lasting snow storm.

On its motion, NYPH fails to submit sufficient evidence that, at the time of Koutsos' fall, it took any measures to prevent or remedy the wet condition on its premises, even though it had been snowing for several hours. *Cf. Pomahac v. TrizecHahn 1065 Ave. of the Ams.. LLC*, 65 A.D.3d 462 (1st Dept. 2009); *Ford v. Citibank, N.A.*, 11 A.D.3d 508 (2nd Dept. 2004). The evidence presented shows that the floor was wet from water and snow tracked in from the outside and NYPH did not cover any part of the floor with mats or spend any time mopping up any snow or water. *Cf. Ford v. Citibank, N.A.*, 11 A.D.3d 508 (2nd Dept. 2004); *Sook Ja Lee v. Yi Mei Bakery Corp.*, 305 A.D.2d 579 (2nd Dept. 2003).

NYPH's policy and procedure required that mats be placed at the first signs of snow or rain, that warning signs be placed in the area and that an employee monitor the area.² Christie specifically testified that this policy and procedure was in place to prevent

² NYPH properly maintains that where a defendant's internal policy requires a standard that transcends the duty of reasonable care, a defendant's breach of the policy cannot be considered evidence of negligence (*see Pomahac v. TrizecHahn 1065 Ave. of the Ams.. LLC*, 65 A.D.3d 462 [1st Dept. 2009]). Here, however the court finds that NYPH's policy of placing mats and warning signs during a storm is entirely consistent

slips and falls. Further, Koutsos' deposition testimony that the floor was wet at the time of his fall and no mats or warning signs were placed in the location of the accident is un rebutted. *See Signorelli v Great Atl. & Pac. Tea Co., Inc.*, 70 A.D.3d 439 (1st Dept. 2010). Therefore, an issue of fact exists as to whether NYPH could have remedied a reasonably foreseeable hazard (water on the floor of its premises during a long-lasting snow storm) by the exercise of reasonable care.

In accordance with the foregoing, it is hereby

ORDERED that defendant New York Presbyterian Hospital-Weill Cornell Campus' motion for summary judgment dismissing the complaint is denied.

This constitutes the decision and order of the Court.

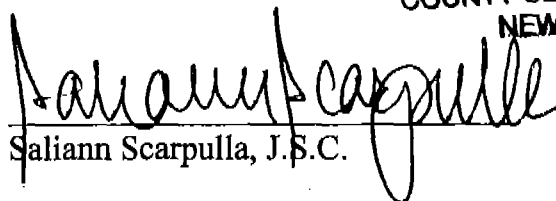
Dated: New York, New York
March 15, 2012

ENTER:

FILED

MAR 20 2012

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NEW YORK


Saliann Scarpulla, J.S.C.

with the standard of ordinary reasonable care, and does not transcend that standard.