

<b>Petty v All Saints Church</b>
2014 NY Slip Op 31647(U)
May 21, 2014
Supreme Court, Bronx County
Docket Number: 301493/12
Judge: Mark Friedlander
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

NEW YORK SUPREME COURT-COUNTY OF BRONX  
PART IA-25

---

ROCHELLE PETTY,

Plaintiff,

-against-

**MEMORANDUM  
DECISION/ORDER**  
Index No.: 301493/12

ALL SAINTS CHURCH a/k/a CHURCH OF ALL  
SAINTS a/k/a THE ROMAN CATHOLIC CHURCH OF  
ALL SAINTS, THE CATHOLIC MUTUAL RELIEF  
SOCIETY OF AMERICA and THE ARCHDIOCESE OF  
NEW YORK,

Defendants.

---

HON. MARK FRIEDLANDER

Defendants move for an order, pursuant to CPLR§3212, granting summary judgment to all of them. Plaintiff cross-moves for an order, pursuant to CPLR§3212(f), staying determination of defendants' summary judgment motion pending completion of outstanding discovery, including the deposition of the defendants' affiant and employee, James Mulligan ("Mulligan"), a notice witness. The motion and cross-motion are decided as hereinafter indicated.

This is an action by plaintiff to recover monetary damages for personal injuries allegedly sustained on April 26, 2009, as a result of her slipping and falling in a bathroom, located in the basement of defendants' Church.

In support of the motion, defendants submit, *inter alia*, a copy of the pleadings, a transcript of plaintiff's deposition testimony, and the affidavit of James Mulligan. In support of the cross-motion, plaintiff submits, *inter alia*, a transcript of the deposition testimony of Jude

Nwachukwu, a pastor at All Saints Roman Catholic Church, plaintiff's Demand for Discovery and Inspection, and defendants' response to plaintiff's Notice for Discovery and Inspection.

The facts, as culled from the pleadings and exhibits, are as follows: Defendants are the owners of All Saints Church ("Church"), located at 47 East 129<sup>th</sup> Street, New York, New York. On April 25, 2009, a dinner/dance was held at Spann Hall, located in the basement of the Church. This dinner/dance commenced on Saturday evening at 10:00 P.M. and ended at approximately 3:00 A.M. on Sunday morning. Plaintiff testified that she attended the dinner/dance, arriving at approximately 10:20 P.M. She used the bathroom in the basement one time prior to her accident. On her first visit to the bathroom, at approximately 12:00 A.M. (midnight), the floor was not slippery, she did not observe any wet areas anywhere on the floor, and she did not slip or fall.

At approximately 2:30 A.M., plaintiff returned to the bathroom, and went inside a stall. When plaintiff walked into the stall, she did not see or feel anything wet or slippery on the floor. After flushing the toilet, and fell as she pushed open the bathroom door. Prior to her fall, she did not see a wet spot in the area where she fell. After she fell, her backside and the back part of her jacket (a short blazer) were wet. Plaintiff then saw what she believed was more than one wet spot. Plaintiff believes she slipped on water because the substance was clear, did not have any color to it, and had no thickness. She described the wet spot (s) where she fell as measuring about two feet by two feet. Prior or subsequent to her accident, plaintiff did not see water leaking from anywhere in the bathroom. Plaintiff did not know how long the alleged slippery

condition was present on the bathroom floor prior to her accident and was not aware of any prior similar accidents in the women's restroom at Spann Hall that evening/morning.

Mulligan states in his affidavit as follows: He and Derone Newell ("Newell") and Jean George ("George"), were hired by the Church to work the dinner/dance. Their duties included setting up tables and chairs, general maintenance and cleaning during the course of the dinner/dance, and cleaning up thereafter, which included disposing of garbage , breaking down the tables and chairs and locking up Spann Hall. In the early morning hours of April 26, 2009, Mulligan was advised by plaintiff that she had fallen while exiting a bathroom stall in the women's restroom. Mulligan proceeded to the women's restroom and found the area in front of the three bathrooms stalls to be dry.

During the course of the dinner/dance, and prior to learning of plaintiff's accident, Mulligan inspected the men's and women's restrooms at Spann Hall at least once per hour. These inspections were performed to ensure that the restrooms were kept clean, that the stalls were stocked with toilet paper and that the floors were dry. Mulligan did not observe any water on the floor in front of the bathrooms stalls during his inspections of the women's restroom that evening. He did not cause or create the puddle of water upon which plaintiff claims she slipped and fell.

Prior to plaintiff's fall, Mulligan did not receive any complaints concerning water or another liquid pooling on the floor in front of the bathroom stalls in the women's restroom. During his inspections of the women's restroom that evening, he did not observe anything which

could have been the source of the water upon which plaintiff claims she slipped and fell.

Mulligan had worked numerous events at Span Hall, both prior and subsequent to plaintiff's accident, and he was not aware of any ongoing or recurring condition at the women's restroom at Spann Hall that could have caused the condition upon which plaintiff claims she slipped and fell.

Paragraph "6" of Defendants' Response to plaintiff's Notice for Discovery and Inspection, dated March 18, 2013, some nine months prior to plaintiff's filing of a note of issue, contains the name and addresses of Mulligan and Newell and clearly identifies them as potential witnesses. The names and addresses of Mulligan, Newell and George were also supplied as volunteers to the dinner/dance in paragraph "12" of defendants' response. The fact that Mulligan, Newell and George were identified as volunteers rather than employees is immaterial. Plaintiff was at liberty, prior to the filing of the note of issue, to depose Mulligan, Newell and/or George, as non-party witnesses. If the witness originally produced by defendants lacked knowledge or information material to the plaintiff's accident, plaintiff could have moved for production of an appropriate witness. Accordingly, plaintiff's cross-motion for an order staying defendants' summary judgment motion is denied.

Defendants have demonstrated that they did not cause or create the condition complained of, or have actual constructive notice thereof. The motion papers establish that defendants did not receive any complaints about the alleged defective condition prior to the accident. Plaintiff testified that she did not see water on the floor prior to her fall and did not know how long it was there. Mulligan also testified that he inspected the women's restroom at least one every hour and

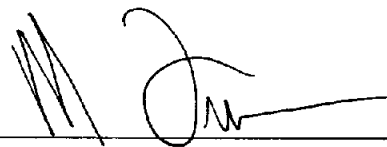
saw no water on the bathroom floor. *Phillip v. Young Men's Christian Ass'n. Of Greater New York*, — A.D.3d — (1<sup>st</sup> Dept. 2014), 2014 WL 169839, 2014 N.Y. Slip Op 03013; *Briggs v. Pick Quick Foods, Inc.*, 103 A.D.3d 526 (1<sup>st</sup> Dept. 2013); *Rodriguez v. New York City Housing Authority*, 102 A.D.3d 407 (1<sup>st</sup> Dept. 2013); *Smith v. Costco Wholesale Corp.*, 50 A.D.3d 499 (1<sup>st</sup> Dept. 2008). Contrary to the contention of plaintiff's counsel, Mulligan's affidavit, viewed as a whole, sufficiently establishes his inspection of the area where plaintiff allegedly fell.

Defendants' motion for summary judgment is granted and plaintiff's complaint is dismissed.

The foregoing constitutes the Decision and Order of the Court.

Dated: \_\_\_\_\_

5/21/14



MARK FRIEDLANDER, J.S.C.