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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

JUDGE GEOFFREY D. WRIGHT

PRESENT: _____ **PART** 47

Justice

Index Number : 101323/2012
ZHAO, SHULAN
vs.
BROOKFIELD OFFICE PROPERTIES
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 002

The following papers, numbered 1 to 2 **, were read on this motion to/for** _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **No(s).** 1

Answering Affidavits — Exhibits _____ **No(s).** 1

Replying Affidavits _____ **No(s).** _____

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the attached hereto decision.

FILED

JUN 17 2014

NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 6/13/14

GEOFFREY D. WRIGHT
AJSC , J.S.C.

1. CHECK ONE: ..... ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

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

----------x

SHULAN ZHAO,

Plaintiff,

Index # 101323/12

-against-

DECISION

BROOKFIELD OFFICE PROPERTIES, INC.,
And THE ASPECT PARTNERSHIP, LLC.,

Defendants.

Present:
Hon. Geoffrey D. Wright

----------x Acting Justice Supreme Court

RECITATION , AS REQUIRED BY CPLR 2219(A), of the papers considered in the review of this Motion/Order for summary judgment.

PAPERS	NUMBERED
Notice of Motion and Affidavits Annexed	1
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	2
Replying Affidavits	
Exhibits	
Other.....cross-motion	

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Defendants Brookfield Financial Properties, L.P. and The Aspect Partnership, LLC ("Brookfield") move for an Order pursuant to CPLR 3212 granting summary judgment dismissing Plaintiff, Shulan Zhao's ("Defendant") complaint on the ground that there are no issues of fact against them. Specifically, Defendant argues that it did not have actual or constructive notice of the alleged condition and they did not create the condition. Defendant argues that the "uneven cobblestones" that caused the accident were not defective or dangerous; that the condition was open and obvious; and Plaintiff was the sole proximate cause of her accident. For the reasons discussed, Defendant's motion for summary judgment is granted.

Plaintiff was injured on September 18, 2011 at 2:00 p.m. while attending a free auto trade show at the World Financial Center. There were displays both inside and outside of the buildings. Outside of the building, one of the cars, a Mini Cooper was

positioned on a elevated oval platform. Plaintiff claims she was told by a security guard that if she wanted to see the car she could step up to the raised platform. Plaintiff stepped from the cobblestone area to the smaller raised oval to look at the rear hatch of the car. As she stepped down from the raised oval her left foot stepped into the spaces left by uneven cobblestone blocks causing her ankle to roll.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law demonstrating the absence of material issues of fact. (Alverez v. Prospect Hospital , 68 N.Y.2d 320, 501 N.E.2d 572(1986). Once the movant has made such a showing, the burden then shifts to the opposing party to produce evidence in admissible form sufficient to establish the existence of any material issues of fact requiring a trial of the action. (Zuckerman v City of New York, 49 NY2d 557 (1980). However, where the moving party fails to make a *prima facie* showing, the motion must be denied regardless of the sufficiency of the opposing party's papers. (Winegrad v. City of New York Univ. Med. Ctr., 64 NY2d 851, 476 N.E.2d 642, 487 N.Y.S.2d 316 (1985).

Bare allegations are insufficient to create a genuine issue of fact, and thus, defeat summary judgment (S.J. Capelin Assoc., Inc. v Globe Mfg Corp., 34 N.Y.2d 338, 342, 313 N.E.2d 776, 357 N.Y.S.2d 478 [1974]). A party will not succeed in defeating summary judgment where it offers only surmises, suspicions or conjectures that are unsupported by evidence (Izzo v Lynn, 271 AD2d 801, 802, 706 N.Y.S.2d 918 [3rd Dept. 2000]; Zuckerman 49 NY2d at 562).

In her opposition, Plaintiff offers nothing more than assertions and speculations. There is no evidence to support the claims she alleges. Indeed the record consists of the attorney affirmation and a few pictures, two which show the Plaintiff on the ground supposedly in the location but, which taken 30 minutes after the fall by her husband.

To impose liability upon a defendant in a trip-and-fall action, there must be evidence that a dangerous or defective condition existed, and that the defendant either created the condition or had actual or constructive notice of it. (Dennehy-Murphy v. Nor-Topia Serv. Ctr., Inc., 61 AD3d 629, 876 N.Y.S2d 512 (2009).

Further, the existence of an alleged dangerous condition, in and of itself, does not give rise to a cause of action in negligence, rather Plaintiff must establish that the condition was present under circumstances sufficient to charge a defendant with responsibility for it. Liability under a theory of common law negligence does not attach when the condition is open and obvious and there is not duty to warn or protect against an open and obvious condition which is not inherently dangerous. (Fernandez v. Edlund, 31 A.D.3d 601, 602 (2nd Dept. 2006). By contrast, a latent hazard may give rise to a duty to

protect entrants from that danger. While the issue of whether a hazard is latent or open and obvious is generally fact-specific and thus usually a jury question, (Tagle v. Jakob, 97 N.Y.2d 165, 169 (N.Y. 2001) (*citing*) (Liriano v Hobart Corp., 92 NY2d 232, 242 [1998]; Bolm v Triumph Corp., 33 NY2d 151, 159-160 [1973]), a court may determine that a risk was open and obvious as a matter of law when the established facts compel that conclusion (Liriano, supra, at 242), and may do so on the basis of clear and undisputed evidence (Tushaj v City of New York, 258 AD2d 283, lv denied 93 NY2d 818 [1999]; Paone v County of Suffolk, 251 AD2d 563, 564; Russell v Archer Bldg. Ctrs., 219 AD2d 772).

In this case Plaintiff walked over to look at the car. She stepped up to further view the Mini Cooper and was injured while stepping down. That Plaintiff was injured stepping down does not prove a dangerous or defective condition and mere assertions do not make it so.

Plaintiff has failed to raise a triable issue of fact. Accordingly, for the reasons discussed, Defendant's motion for summary judgment is granted.

This constitutes the Decision and Order of the Court.

GEOFFREY D. WRIGHT
AJSC

Dated: June 13, 2014

JUDGE GEOFFREY D. WRIGHT
Acting Justice of the Supreme Court