SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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LENORA SARA COLBERT,

Plaintiff,

Index No. 158514/2013

-against-

DECISION/ORDER

ST. LUKE A.M.E. CHURCH,

Defendant.

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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.....	1
Answering Affidavits.....	2
Replying Affidavits.....	3
Exhibits.....	4

Plaintiff commenced the instant action to recover damages for personal injuries she allegedly sustained when she slipped and fell on grease on the floor of the fellowship hall at defendant St. Luke A.M.E. Church. Defendant now moves for an Order pursuant to CPLR § 3212 granting it summary judgment on the ground that defendant neither created the condition nor had actual or constructive notice of the condition. For the reasons set forth below, defendant's motion for summary judgment is granted.

The relevant facts are as follows. On Sunday, July 17, 2011, plaintiff attended a worship service at St. Luke A.M.E. Church, located at 1872 Amsterdam Avenue, New York, New York, and was then responsible, as a member of the church's Finance Committee, for bringing the money collected in the church's offering to the finance room, which was located off the

fellowship hall. Plaintiff was accompanied by Lamonte Worley, who volunteered to provide "security" for the church. Plaintiff entered the fellowship hall between noon and 12:30 p.m. According to plaintiff, there were many people in the fellowship hall, some of whom were drinking and eating while socializing or waiting for a ride. After taking about six to eight steps within the fellowship hall toward the locked door of the finance room, plaintiff fell. She felt herself skid and slide as if "on grease," and her left leg slipped in front of her. She landed on the right side of her back. People in the fellowship hall tried to assist plaintiff and an ambulance was called. When plaintiff was being carried out on a gurney, she noticed that there was grease on the floor where she slipped and fell. According to the affidavit testimony of Lamonte Worley, he looked to see whether there was anything on the floor where plaintiff slipped and fell, and did not see grease or anything similar.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim." *Id.*

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 create 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 (1st Dept 2006). "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." *Gordon v American Museum of Natural History*, 67 N.Y.2d 836, 837-838 (1986). To make a *prima facie* showing that it had no constructive notice in a slip and fall case, a defendant may provide evidence regarding "when the area in question was last cleaned or inspected relative to the time when the plaintiff fell." *Arcabascio v. We're Assoc., Inc.*, 125 A.D.3d 904 (2nd Dept 2015). Mere evidence of general cleaning practices, without specific reference to "the area in question," is not sufficient to establish a lack of constructive notice. *Id.* at 905.

In the present case, defendant has established its *prima facie* right to summary judgment on the grounds that it did not create the condition on which plaintiff slipped and fell and that it did not have actual or constructive notice of the condition on which plaintiff slipped and fell. Defendant has made a *prima facie* showing that it did not cause the grease spill based on the deposition testimony of Raleigh Ray Barrett ("Barrett"), the maintenance supervisor for defendant at the time of plaintiff's accident, that there had been no events in the fellowship hall in the month prior to the accident, and it is undisputed that the kitchen was not being used by defendant or its employees to prepare food at or around the time of the accident. In addition, defendant has made a *prima facie* showing that it did not have actual or constructive notice of the grease spill based on the deposition testimony of Barrett that, on the date of the accident at approximately 11:30 a.m., he visited the fellowship hall to make sure that no one was there and that the doors were locked. He turned on the lights and walked around the entire room for about five minutes. Barrett testified as follows:

Q. While you were walking there, did you notice anything on the floor?
A. No.
Q. Were you looking for anything on the floor at that time?
A. I checked everything.

This testimony shows that Barrett had inspected the floor but did not see a grease spill, or anything similar, merely a half-hour to an hour before the time of the accident. *See Strowman v. Great Atlantic and Pacific Tea Co., Inc.*, 252 A.D.2d 384 (1st Dept 1998) (holding that the defendant established that it did not have constructive notice of a banana peel on the floor where the floor was swept hourly, as the peel could have been deposited minutes or hours before the accident).

In response, plaintiff has failed to raise an issue of fact as to whether defendant created the condition. Plaintiff has offered no evidence establishing that defendant created the condition as she has not alleged or shown that defendant deposited grease on the floor. It is undisputed that, although there was a kitchen in the fellowship hall, it was not being used by defendant or defendant's employees on the date of the accident.

Additionally, plaintiff has failed to raise an issue of fact as to whether defendant had actual notice of the condition. Plaintiff claims that she had entered the fellowship hall on the Wednesday or Thursday before the date of the accident. According to plaintiff, she noticed that the fellowship hall's entire floor was "dirty," and had mentioned the dirty condition of the floor to the trustees and other church members who were with her that day. However, she has not presented any evidence that defendant was aware of the specific condition of grease on the floor which allegedly caused her to fall. If plaintiff had seen grease on the floor on the Wednesday or Thursday when she noticed that the floor was "dirty," and had complained of the condition, she could have submitted an affidavit in opposition to defendant's motion for summary judgment

stating that she had seen and complained about grease on the floor.

Plaintiff has also failed to raise an issue of fact as to whether defendant had constructive notice of the condition. As an initial matter, plaintiff has failed to raise an issue of fact as to whether the condition was visible and apparent. Plaintiff's own testimony demonstrates that she did not see the grease on the floor prior to her fall. Further, plaintiff has failed to raise an issue of fact as to whether the condition existed for a sufficient length of time prior to her accident to allow defendant to discover the condition and allow for time to remedy the condition. There was only a half-hour to an hour between the time Barrett inspected the fellowship hall to when plaintiff claims she slipped and fell on the condition. Plaintiff has not put forth any evidence disputing the fact that the fellowship hall was inspected at approximately 11:30 a.m. on the date of the accident. Thus, the grease on which plaintiff allegedly slipped and fell could have been deposited there only minutes before plaintiff's accident. Any finding as to when the grease came to be located on the floor would be based solely on speculation, which is not enough to support an allegation of constructive notice. *See Penny v. Pembrook Mgmt.*, 280 A.D.2d 590 (2nd Dept 2001) (holding that because injured plaintiff testified that she did not see patch of ice in parking lot at any time before her accident, any finding as to when the ice patch developed is pure speculation, and thus insufficient to support allegation of constructive notice of the ice patch); *see also Gordon*, 67 N.Y.2d at 838. Moreover, plaintiff's submission of the affidavit of Vannisha Taylor ("Taylor"), a church member, who testified that she saw the grease on the floor where plaintiff fell and that she believed "the grease was there from an event earlier in the week," is unavailing. Taylor's testimony that she saw the grease on the date of plaintiff's accident does not raise an issue of fact as she does not state that she saw the grease before Barrett

inspected the fellowship hall. Further, Taylor's testimony that she believed the grease had been on the floor since an event earlier in the week does not raise an issue of fact as she does not state any basis for this belief and her testimony is therefore conclusory.

Accordingly, defendant's motion for summary judgment dismissing plaintiff's complaint is granted. This constitutes the decision and order of the court.

Dated: 4/4/16

Enter: _____
J.S.C.

CYNTHIA S. KERN
J.S.C