

**Lorimer v Board of Mgrs. of One Madison Ave.
Condominium**

2019 NY Slip Op 33096(U)

October 17, 2019

Supreme Court, New York County

Docket Number: Index No. 158870/2015

Judge: Paul A. Goetz

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ PART IAS MOTION 47EFM

Justice

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INDEX NO. 158870/2015

MARY LORIMER,

MOTION DATE 10/10/2019

Plaintiff,

MOTION SEQ. NO. 002

- v -

BOARD OF MANAGERS OF ONE MADISON AVENUE
CONDOMINIUM, SL GREEN REALTY CORP., SL GREEN
MANAGEMENT LLC, MI NY CLOCK TOWER, LLC, CREDIT
SUISSE (USA), INC., CUSHMAN & WAKEFIELD,
INC., CUSHMAN & WAKEFIELD CLEANING SERVICES,
INC., CUSHMAN & WAKEFIELD FACILITIES
MANAGEMENT, INC.

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43,
44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71,
72, 73, 74, 75, 76

were read on this motion to/for JUDGMENT - SUMMARY

Plaintiff Mary Lorimer alleges that she was injured on May 15, 2014, when she slipped
and fell on water in the lobby of 1 Madison Avenue at approximately 12:50 pm. Defendants SL
Green Realty Corp., SL Green Management LLC, the owners of the building, and defendant
Credit Suisse (USA), Inc., the lessee, now move pursuant to CPLR 3212 for summary judgment
seeking dismissal of the complaint based on lack of actual or constructive notice of the alleged
defective condition of the lobby floor. The SL Green defendants also move for dismissal on the
ground that they are an out of possession landlord with no responsibility for maintaining the
premises, which plaintiff does not oppose. Defendants Cushman & Wakefield, Inc., Cushman &
Wakefield Cleaning Services, Inc. and Cushman & Wakefield Facilities Management, Inc., the
management company, cross-moves for dismissal of the complaint and any cross-claims asserted

against them based on lack of actual and constructive notice and rely on the movants' papers to support their motion.

On a motion for summary judgment based on lack of notice, defendant has the initial burden of making a prima facie showing that it neither created the hazardous condition nor had actual or constructive notice of its existence. *Infante v. Jerome Car Wash*, 52 A.D.3d 319, 320 (1st Dep't 2008). To meet its prima facie burden on the issue of constructive notice in a slip-and-fall case, a defendant must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff fell. *Hobbs v. New York City Hous. Auth.*, 168 A.D.3d 634 (1st Dep't 2019) (citing *Gautier v. 941 Intervale Realty LLC*, 108 A.D.3d 481 [1st Dep't 2013]). Reference to general cleaning practices is insufficient to establish a lack of constructive notice. *Gautier*, 108 A.D.3d at 481.

Here, defendants have failed to meet this burden. With respect to actual notice, defendants did not submit any evidence that they lacked actual notice of the condition, by, for example, showing that they did not receive any complaints about the defect prior to the incident and that there were no similar accidents at the subject location. *Clarkin v. In Line Restaurant Corp.*, 148 A.D.3d 559, 560 (1st Dep't 2017). Likewise, defendants failed to meet their burden on the issue of constructive notice as they failed to offer any evidence as to when the subject area was last inspected or cleaned. *Hobbs*, 168 A.D.3d at 635.

Defendants argue that it is unnecessary for them to submit evidence regarding lack of constructive notice since plaintiff does not know how long the water was on the floor prior to her fall and any argument that the water was there for a sufficient time such that defendants should have been aware of it, would be speculative. *See Early v. Hilton Hotels Corp.*, 73 A.D.3d 559, 562 (1st Dep't 2010). However, unlike the cases cited by defendants, here, defendants have

failed to meet their burden with respect to the issue of lack of actual notice of the condition. *Id.* at 561. Moreover, plaintiff has submitted sufficient evidence to create an issue of fact regarding whether there was any precipitation outside prior to her accident such that defendants would have constructive notice of a wet condition on the floor. Affirmation of Edward Cohn dated July 18, 2019, Exhs. E and F (climate reports showing small amounts of precipitation on date of the accident), and Exh. K (video of the lobby on the date of incident showing some people carrying umbrellas and caution signs out on the floor). Accordingly, it is

ORDERED that the motion and the cross-motion for summary judgment are denied except that all claims and cross-claims against defendants SL Green Realty Corp. and SL Green Management LLC are dismissed, and the Clerk shall enter judgment accordingly with costs and disbursements awarded to said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption shall be amended to reflect the dismissal of defendants SL Green Realty Corp. and SL Green Management; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

10/17/19
DATE


PAUL A. GOETZ, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	