

**Petrosini v GGP Staten Is. Mall, LLC**

2020 NY Slip Op 30127(U)

January 8, 2020

Supreme Court, Kings County

Docket Number: 522591/2016

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

Index No.:522591/2016  
Motion Date:10-7-19  
Mot. Cal. Nos.:42-44

-----x  
MARTHA PETROSINI,

Plaintiff,

-against-

**DECISION/ORDER**

GGP STATEN ISLAND MALL, LLC,  
ABM JANITORIAL SERVICES - NORTHEAST, INC.,  
ABM JANITORIAL SERVICES - SOUTHEAST, INC.,  
ABM JANITORIAL SERVICES and  
UNIVERSAL PROTECTION SERVICE, LLC,

Defendants.  
-----x

The following papers numbered 1 to 8 were read on these motions:

Papers:	Numbered:
Notice of Motions	
Affidavits/Affirmations/Exhibits/Memos of Law.....	1-3
Answering Affirmations/Affidavits/Exhibits/Memos of Law.....	4-6
Reply Affirmations/Affidavits/Exhibits/Memos of Law.....	7-8
Other.....	

Upon the foregoing papers, the motion is decided as follows:

In this action to recover damages for personal injuries sustained as a result of a slip and fall accident, separate notices of motion, defendants, GGP STATEN ISLAND MALL, LLC ("GGP"), UNIVERSAL PROTECTION SERVICE, LLC ("UPS"), ABM JANITORIAL SERVICES - NORTHEAST, INC. and ABM INDUSTRY GROUPS, LLC ("ABM") move for an order pursuant to CPLR 3212 granting them summary judgment dismissing all claims and cross-claims asserted against them. The three motions are

MS#03  
MS#04  
MS#05  
UPS  
ABM

consolidated for disposition.

Plaintiff, MARTHA PETROSINI, commenced this action claiming that she suffered personal injury on December 28, 2013, when she slipped and fell on a wet floor while walking in one of the common areas of the Staten Island Mall located at 2655 Richmond Avenue, Staten Island, New York. Defendant GGP is the owner of the commons areas of the Mall. GGP retained ABM to provide janitorial services and UPS to provide security services.

In support of their respective motions, the moving defendants annexed, among other things, the deposition transcripts of the plaintiff, Sefer Papraniku, ABM's project manager and Christine Fabisenski, a UPS security officer. Plaintiff testified that her accident occurred on December 28, 2013, at around 7:00 p.m., near the indoor entrance to Claire's, a retail establishment located on the second floor of the Staten Island Mall on J.C. Penny Wing. She maintained that while walking with her grand daughter, she walked into and skidded in a wet puddle and fell to the ground. She estimated the puddle to be around one foot in circumference and the liquid in the puddle as being odorless and colorless. Neither she nor her grand daughter saw the puddle prior to the accident. She did not know what caused the puddle or how long it was in existence prior to her fall and had not walked past the area of the accident that day prior to her fall.

Sefer Papraniku, the ABM project manager at the Staten Island Mall, testified that there were three to four ABM employees patrolling the second floor of the Mall on the day of the accident and that each of them was required to be on the constant lookout for spills.

Each ABM employee was equipped with a janitorial cart and radio and if one discovered a spill or was advised of a spill over the radio, he or she would clean the spill immediately.

He testified that Edward Lodge, the ABM employee was assigned to the J.C . Penney Wing that day, cleaned the spill in question but that he did not see the accident. Accordingly to Papraniku, Lodge would have inspected the area of the accident about 15 minutes prior thereto.

Christine Fabisenski testified that she was worked at the Staten Island Mall on the day of the accident as a security officer for USP and that her shift was from 3:00 p.m. to 11:00 p.m. The area she was assigned to that day included J.C. Penny Wing. She too was supposed to be on the constant look out for spills. She learned of the accident when her supervisor called her over the radio. She went over to the area of the accident and observed the spill. The spill was reported to ABM by radio and she guarded the area or the spill until it was cleaned by Lodge. She testified that she walked by the Clair's store approximately twenty minutes before accident and did not see the spill at that time.

None of these witnesses testified that they knew of the spill or that someone had complained about the spill prior to the accident.

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 neither created the alleged dangerous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it (*see Milorava v. Lord & Taylor Holdings, LLC*, 133 A.D.3d 724, 725, 20 N.Y.S.3d 398; *Jordan v. Juncalito Abajo Meat Corp.*, 131 A.D.3d 1012, 16

N.Y.S.3d 278; *Beceren v. Joan Realty, LLC*, 124 A.D.3d 572, 2 N.Y.S.3d 155; *Payen v. Western Beef Supermarket*, 106 A.D.3d 710, 964 N.Y.S.2d 583). A defendant has constructive notice of a dangerous condition when the condition is visible and apparent, and has existed for a sufficient length of time to afford the defendant a reasonable opportunity to discover and remedy it (*see Gordon v. American Museum of Natural History*, 67 N.Y.2d 836, 837–838, 501 N.Y.S.2d 646, 492 N.E.2d 774; *Butts v. SJF, LLC*, 171 A.D.3d 688, 689, 97 N.Y.S.3d 219; *Cho Lun Yeung v. Selfhelp [KIV] Assoc., L.P.*, 170 A.D.3d 653, 653, 95 N.Y.S.3d 312). “ ‘To meet its initial burden on the issue of constructive notice, the 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’ ” (*Radosta v. Schechter*, 171 A.D.3d 1112, 1113, 97 N.Y.S.3d 664, quoting *Birnbaum v. New York Racing Assn., Inc.*, 57 A.D.3d 598, 598–599, 869 N.Y.S.2d 222; *see Lombardo v. Kimco Cent. Islip Venture, LLC*, 153 A.D.3d 1340, 60 N.Y.S.3d 497).

Here, the moving defendants established their prima facie entitlement to judgment dismissing plaintiff’s complaint insofar as asserted against them by demonstrating as a matter of law through admissible proof that they neither created nor had actual or constructive notice of the condition alleged by the injured plaintiff to have caused the accident (*see Freiser v. Stop & Shop Supermarket Co., Inc.*, 84 A.D.3d 1307, 1308, 923 N.Y.S.2d 732; *Sloane v. Costco Wholesale Corp.*, 49 A.D.3d 522, 523, 855 N.Y.S.2d 155; *Popovec v. Great Atl. & Pac. Tea Co., Inc.*, 26 A.D.3d 321, 808 N.Y.S.2d 779). Significantly, Fabisenski, the a UPS security officer, who was in the area of the accident approximately 20 minutes before it occurred who did not see the spill. Such testimony is

sufficient to demonstrate lack of constructive notice (*see Payen v. W. Beef Supermarket*, 106 A.D.3d 710, 710–11, 964 N.Y.S.2d 583, 584, *Mehta v. Stop & Shop Supermarket Co., LLC*, 129 A.D.3d 1037, 1038–39, 12 N.Y.S.3d 269).

In opposition to the motions, the plaintiff failed to raise a triable issue of fact. Accordingly, the moving defendants’ motions for summary judgment dismissing plaintiff’s complaint and all cross-claims sounding in common law contribution are **GRANTED**.

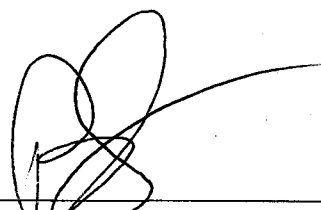
To the extent that ABM and UPS seek summary judgment dismissing GGP’s cross claims for contractual indemnity, their motions are also **GRANTED**. The contract between GGP and ABM, only required ABM to indemnify and hold harmless GGP for its own negligence (¶ 9). Likewise, the purported contract between GGP and UPS<sup>1</sup> only required UPS to indemnify and hold harmless GGP for its own negligence (p. 19). Since both ABM and UPS are being awarded summary judgement, the indemnification provisions in the two contracts do not afford GGP the right to contractual indemnify.

Accordingly, it is hereby

**ORDERED** that defendants’ motions are in all respects **GRANTED**.

This constitutes the decision and order of the Court.

Dated: January 8, 2020



PETER P. SWEENEY, J.S.C.  
**HON. PETER P. SWEENEY, J.S.C.**

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KINGS COUNTY CLERK  
FILED  
MMW

<sup>1</sup>The contract GGP annexed to its moving papers is actually with IPC International Corp.