At an I.A.S. Part 95 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 6th day of November 2020.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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MIKHAIL SEREBRENIK,

Plaintiff,

-against-

CHELSEA APARTMENTS LLC, CHELSEA APARTMENTS DEL LLC and APARTMENT MANAGEMENT ASSOCIATES, LLC.,

Defendants.

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Index No. 521131/2016
Cal. No. 31 MS 2

DECISION AND ORDER

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this motion:

Papers	Numbered
MS 2	Docs. # 30-54

Upon the foregoing cited papers, defendants' motion for summary judgment, pursuant to CPLR 3212, is decided as follows:

In this personal injury slip and fall case, plaintiff alleged on December 14, 2014, at approximately 1:30 pm, he fell and was injured in the hallway of the premises located at 8700 25th Avenue in Brooklyn, NY, where he resided. He alleged he was injured as the result of a "dangerous condition of the aforesaid premises and floor, which was highly slippery and covered with a foreign substance." Specifically, plaintiff claims he slipped and fell on the wet floor near the side entrance of the building after entering same and suffered a serious injury.

Defendants alleged that Chelsea Apartment LLC neither owned the building at the time of the accident nor exercised any control over the premises and should be dismissed as a named party. Defendants also averred that a wet floor sign had been placed at the location prior to the accident, the premises were inspected every thirty to forty minutes, it did not receive any complaints about the floor being wet prior to the incident and notice of the incident was only received when the porter, Wesley Dalusma, heard plaintiff scream after the fall.

Defendants acknowledged shoveling the outside premises had taken place that day by its employees, including in and around the ramp, leading to the side entrance where plaintiff fell and Wesley Dalusma was in the office taking a break from the shoveling when the incident occurred. However, Wesley Delusma, contrary to defendant's contention, averred that he could not remember how long he had been in the office prior to the accident. Further, no evidence was offered as to when the subject location of the accident was last inspected, although defendants' averred it was their policy to inspect the premises areas to insure dry floors every thirty to forty minutes the days of and after a snow fall, as here, and to leave a wet floor sign in place.

Defendants moved for summary judgment, pursuant to CPLR 3212, on the issue of liability. Plaintiff opposed.

Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). A party moving for summary judgment must make a prima facie showing of entitlement as a matter of law sufficient to demonstrate the absence of any material issues of fact, but once a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish material issues of

fact which require trial of the action (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman*, 49 NY2d at 562).

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 hazardous condition which allegedly caused the fall, and did not have actual or constructive notice of that condition for a sufficient length of time to discover and remedy it (*Campbell v New York City Tr. Auth.*, 109 AD3d 455, 456 [2d Dept 2013]).

To constitute a lack of actual notice, defendants must proffer evidence sufficient to demonstrate that they lacked awareness of the hazardous condition prior to the accident (*see LoSquadro v R.C. Archdiocese of Brooklyn*, 253 AD2d 856, 857 [2d Dept 1998]). Testimony defendant did not receive prior complaints serves as evidence defendant was not aware of the condition (*see Rosa v Food Dynasty*, 307 AD2d 1031, 1031-1032 [2d Dept 2003]).

Here, although defendants established they did not have actual notice, they cannot establish they did not have constructive notice. A defendant has constructive notice of a hazardous condition on property when the condition is visible and apparent, and has existed for a length of time sufficient to afford the defendant a reasonable opportunity to discover and remedy it (*Goodyear v Putnam/Northern Westchester Bd. of Coop. Educ. Servs.*, 86 AD3d 551, 552 [2d Dept 2011], citing *see Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]). "To meet its initial burden on the issue of lack 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" (*Goodyear*, 86 AD3d at 552; quoting *Birnbaum v New York Racing Assn., Inc.*, 57 AD3d 598, 598-599 [2008]; *see Schiano v Mijul, Inc.*, 79 AD3d 726, 726-

727 [2010]; *Farrell v Waldbaum's, Inc.*, 73 AD3d 846, 847 [2010]; *Ames v Waldbaum, Inc.*, 34 AD3d 607 [2006]).

Although defendants established they have a policy that during and after snowfalls the floor areas are required to be inspected every thirty to forty minutes for dryness, it did not establish with admissible evidence when the subject floor area of the accident here was last inspected. Contrary to defendants' contentions, Mr. Delusma averred he could not remember how long he was in the office for his break or whether he was the only employee present when the accident occurred.

To the extent Chelsea Apartment LLC did not own or control the building on the date of the accident, the motion is granted and the complaint against it dismissed. The remainder of the motion for summary judgment is denied.

ENTER:

Hon. Reginald A. Boddie
Justice, Supreme Court