

|                                                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Lane v GBR One Crosfield LLC</b>                                                                                                                                                                                            |
| 2020 NY Slip Op 34846(U)                                                                                                                                                                                                       |
| April 16, 2020                                                                                                                                                                                                                 |
| Supreme Court, Rockland County                                                                                                                                                                                                 |
| Docket Number: Index No. 032052/2017                                                                                                                                                                                           |
| Judge: Robert M. Berliner                                                                                                                                                                                                      |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. |
| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

SUPREME COURT: STATE OF NEW YORK  
COUNTY OF ROCKLAND  
HON. ROBERT M. BERLINER, J.S.C.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

-----X  
PATRICIA LANE,  
  
Plaintiff,  
  
-against-

DECISION AND ORDER

GBR ONE CROSFIELD LIMITED LIABILITY  
COMPANY and GIBRALTAR MANAGEMENT  
CO., INC.,  
  
Defendants.

Index No.: 032052/2017  
  
Motion Sequence #001

-----X  
The following papers, number 1 to 4, were read in connection with Defendants' motion seeking summary judgment as to liability pursuant to CPLR §3212:

Notice of Motion/Affirmation in Support/Exhibits(A-F).....1-2  
Affirmation in Opposition/Exhibits(A-F).....3  
Reply Affirmation.....4

Upon the foregoing papers, it is ORDERED that this motion is disposed of as follows:

Plaintiff commenced this action to recover for personal injuries she sustained when she allegedly slipped and fell on pooled rainwater in the entryway of 1 Crossfield Avenue in West Nyack, New York (hereinafter "the building") at approximately 8:50 a.m. on September 10, 2015. On this day, Plaintiff had a scheduled appointment at her doctor's office at the building. Plaintiff was entering the premises from the parking lot when she claims that her left foot slipped on pooled rainwater in the vestibule/foyer of the building, causing her to fall forward into another set of glass entry doors. Plaintiff sustained injuries to the left side of her body, including her face, neck, back and shoulder.

Defendants now move for summary judgment on the issue of liability based upon their assertion that they neither created the alleged dangerous condition nor had actual or constructive notice of such condition. In sum, Defendants contend that there was no pooled water in the vestibule of the building and therefore no dangerous condition that they created or could have had notice of. In support thereof, Defendants direct the Court's attention to Plaintiff's May 31, 2018 Examination Before Trial transcript in which she testified that it was raining moderately on the

September 10, 2015 incident date, she used an umbrella to keep herself dry on her way into the building and was wearing backless slip-on sandals with approximately two-inch high heels that she had worn on only one or two prior occasions that season. Plaintiff stated that neither the inside of her shoes nor her feet were wet after she fell.

Defendants also reference pertinent portions of the deposition of Joseph Dell'Armo, Gibraltar Management's facility manager for the building. Joseph Dell'Armo testified at his August 20, 2018 examination before trial that he has worked at the building for 18 years and Plaintiff's incident was the first he has known about during this time period. Mr. Dell'Armo outlined his daily responsibilities and routine, which include, as pertinent herein, placing caution signs and additional rugs in the foyer in the event of rain or snow. He testified that he placed four by ten rugs with rubber backing between the two sets of double doors at the building on the date of Plaintiff's incident, as was his practice during wet weather. He acknowledged that the foyer floor is granite and gets slippery when wet, necessitating the placement of the rugs approximately three inches from the inside edge of the saddle of the exterior doors. Mr. Dell'Armo also stated that Plaintiff told him and that she tripped over the saddle/threshold underneath the left exterior doors and pointed to same when questioned by him after her fall. When asked if he needed to mop the area of the foyer where Plaintiff fell, Mr. Dell'Armo stated that he did not have to because that area was not wet. Defendants also offered the surveillance video depicting Plaintiff's fall on September 10, 2015 in connection with the instant application. In sum, Defendant's argue that Plaintiff's fall was attributable to her inattention and poor choice of footwear under the circumstances rather than a dangerous condition for which they can be held legally liable.

In opposition, Plaintiff offers the affirmation of her counsel, who argues that Mr. Dell'Armo's EBT testimony establishes that Defendants were aware that the granite tiles become slippery when wet, thereby putting them on notice of a dangerous recurring condition that they failed to sufficiently address on the date of Plaintiff's fall. Plaintiff also questions the unavailability of video surveillance footage from 7:00-8:45 a.m. on September 10, 2015, which Mr. Dell'Armo testified depicted approximately 20 individuals entering the building through the same doors without incident. In addition, Plaintiff's counsel points out his client that believed there was an approximate 12 inch gap between the saddle/threshold of the exterior door and the rug in the vestibule/foyer and that is where her left foot slipped.

In reply, Defendants maintain that Mr. Dell'Armo's testimony does not establish a dangerous-reoccurring condition occasioned by wet granite tiles, but rather additional precautions taken to safeguard individuals and keep the building safe for patrons and tenants.

"As we have stated frequently, the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986][internal citations omitted]. "Thus, 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 hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it. A defendant has constructive notice of a defect when it is visible and apparent, and has existed for a sufficient length of time before the accident that it could have been discovered and corrected. To meet its initial burden on the issue of lack of constructive notice, 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." *Feola v City of New York*, 102 AD3d 827, 827-28 [2d Dept 2013].

"Where the moving party has established prima facie that it is entitled to summary judgment, the party opposing the motion must demonstrate the existence of a factual issue requiring a trial of the action by admissible evidence, not mere conjecture, suspicion, or speculation" *Fotiatis v Cambridge Hall Tenants Corp.*, 70 AD3d 631, 632 [2d Dept 2010]; see *Zuckerman v. City of New York* 49 NY2d 557 [1980].

Here, the Court finds that Defendants have tendered sufficient evidence demonstrating that they neither created the dangerous condition of pooled water inside the exterior doors of the building nor had actual or constructive notice of such pooled water. The Court further finds that Plaintiff's opposition papers, consisting solely of an affirmation from her counsel and references to deposition transcripts, fails to raise a triable issue of material fact requiring a trial. Plaintiff's theory of pooled water is belied by her account to Mr. Dell'Armo shortly after her alleged fall, the

video footage and the circumstances surrounding her fall gleaned from her deposition and that of Mr. Dell'Armo.


Based upon the foregoing, it is

ORDERED that Defendants' motion for summary judgment on the issue of liability is hereby granted and Plaintiff's complaint is dismissed.

The foregoing constitutes the Decision and Order of the Court.

Dated: New City, New York  
April 16, 2020

ENTER



HON. ROBERT M. BERLINER, J.S.C.

To:

Counsel of Record via NYSCEF