

**Costello v Medical Arts Sanitarium, Inc.**

2020 NY Slip Op 35405(U)

December 3, 2020

Supreme Court, Kings County

Docket Number: Index No. 508945/2018

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 73

Index No.: 508945/18  
Motion Date: 10/19/20  
Mot. Seq. No.: 2

-----X  
CHERISSE COSTELLO,  
  
Plaintiff,  
  
-against-

**DECISION/ORDER**

MEDICAL ARTS SANITARIUM, INC.,  
GALWAY PROPERTIES, LLC,  
TOWNHOUSE PROPERTY GROUP LLC and  
CORNERSTONE OF MEDICAL ARTS CENTER,

Defendants.

-----X

The following papers numbered 1 to 3 were read on this motion:

<b>Papers:</b>	<b>Numbered:</b>
Notice of Motion/Order to Show Cause	
Affirmations/Affidavits/Exhibits/Memo of Law.....	1
Answering Affirmations/Affidavits/Exhibits/Memo of Law.....	2
Reply Affirmations/Affidavits/Exhibits/Memo of Law.....	3

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

In this personal injury action involving a slip and fall incident on the defendants' property, defendants MEDICAL ARTS SANITARIUM, INC., d/b/a CORNERSTONE TREATMENT FACILITIES NETWORK, GALWAY PROPERTIES, LLC, and TOWNHOUSE PROPERTY GROUP LLC, move pursuant to CPLR 3212 for an order granting summary judgment dismissing the complaint.

Plaintiff CHERISSE COSTELLO commenced this action alleging that on May 4, 2017, while walking in the cafeteria near the entranceway at Cornerstone of Medical Arts Center located at 159-05 Union Turnpike, Queens, NY, she was caused to slip and fall due to a wet/slippery substance on the floor. In support of the motion, she submitted her deposition testimony as well as the deposition testimony of the witness produced to testify on behalf of the defendants.

At plaintiff's March 17, 2019 deposition, Ms. Costello testified that on the date of the accident, she went with her group to the cafeteria to get breakfast at 8:00 a.m. She was seated for approximately three to ten minutes inside the lunchroom/cafeteria at a table approximately ten feet from the doorway waiting to be called to get her food tray. The "food tray lady", the person responsible for handing out the food trays, was standing just outside the door with the food trays. When her name was called, she slipped and fell as she approached the food tray lady. After falling, she observed what appeared to be coffee or tea on her clothing, knee and elbow. Ms. Costello testified she had not observed anything on the floor prior to her fall. Some of the other persons in the cafeteria had already gotten their trays prior to the accident.

On September 19, 2019, Debbie Bello, the Vice President of Support Services for Cornerstone Medical Arts, testified that there is a beverage area in the lunchroom that must be available to the patients 24 hours a day except when the lunchroom is being cleaned. She testified that the lunchroom is cleaned after every meal. The last meal that was served in the cafeteria before breakfast on the day of the accident was the evening before. Someone from a third-party management company would inspect to make sure the cleaning was done. There were daily rounds that the housekeeping supervisor or housekeeping manager would do. Ms. Bello could not say if an inspection was done on any particular day relative to the accident.

In a premises liability case, in order to succeed on a motion for summary judgment dismissing the complaint, a defendant generally must establish, prima facie, that it neither created the allegedly dangerous or defective condition nor had actual or constructive notice of its existence (*see Williams v. Island Trees Union Free Sch. Dist.*, 177 A.D.3d 936, 937, 114 N.Y.S.3d 118; *Kerzhner v. New York City Tr. Auth.*, 170 A.D.3d 982, 982–983, 96 N.Y.S.3d 298). Here, the defendant failed to satisfy its burden that its employees did not create and were

unaware of the alleged hazardous condition prior to the accident. Moreover, the defendant failed to eliminate all triable issues of fact as to whether it had constructive notice of the alleged hazardous condition. 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, 501 N.Y.S.2d 646, 492 N.E.2d 774). To meet its burden on the issue of lack of constructive notice, a defendant must offer some evidence as to when the accident site was last cleaned or inspected prior to the accident (*see Butts v. SJF, LLC*, 171 A.D.3d at 689, 97 N.Y.S.3d 219; *Birnbaum v. New York Racing Assn., Inc.*, 57 A.D.3d 598, 598–599, 869 N.Y.S.2d 222). “Mere reference to general cleaning practices, with no evidence regarding any specific cleaning or inspection of the area in question, is insufficient to establish a lack of constructive notice” (*Herman v. Lifeplex, LLC*, 106 A.D.3d 1050, 1051, 966 N.Y.S.2d 473; *see Griffin v. PMV Realty, LLC*, 181 A.D.3d at 913, 119 N.Y.S.3d 876).

Here, in support of the motion, the defendant submitted, inter alia, the deposition testimony of Debbie Bello who testified that the floor in the area of the accident is cleaned after every meal. The last meal served in the cafeteria where the accident was the evening before. While she also provided evidence as to the defendant's general cleaning practices, she gave no further testimony as to when the area at issue was last inspected or cleaned prior to the accident. Ms. Bello’s testimony therefore did not establish as a matter of law that the condition that caused the accident was not in existence for an unreasonable amount of time.

Since the defendant failed to establish its prima facie entitlement to judgment as a matter of law, it is unnecessary to consider the sufficiency of the plaintiff's opposition papers

(see *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642; *Hanney v. White Plains Galleria, LP*, 157 A.D.3d at 662, 68 N.Y.S.3d 522).

Accordingly, it is hereby

**ORDERED** that defendant's motion to dismiss is **DENIED**.

This constitutes the decision and order of the Court.

Dated: December 3, 2020



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

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020