Misook Song v Costco Wholesale
2021 NY Slip Op 32981(U)
June 8, 2021
Supreme Court, Nassau County
Docket Number: Index No. 611119/18
Judge: Denise L. Sher
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

TRIAL/IAS PART 30
NASSAU COUNTY

MISOOK SONG,

Plaintiff,

Index No.: 611119/18
Motion Seq. No.: 02
Motion Date: 01/25/2021

- against -

COSTCO WHOLESALE,

Defendant.

The following papers have been read on this motion:

	Papers Numbered
Notice of Motion, Affirmation and Exhibits	**1**
Affirmation in Opposition and Exhibits	**2**
Reply Affirmation and Exhibits and Memorandum of Law	**3**

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Defendant moves, pursuant to CPLR § 3212, for an order granting summary judgment dismissing plaintiff's Verified Complaint. Plaintiff opposes the motion.

In this action, plaintiff seeks to recover for injuries she sustained on June 22, 2018, between 10:00 a.m. and 11:00 a.m., when she was allegedly caused to slip and fall upon a liquid condition on the floor of the Costco store located at 1250 Old Country Road, Westbury, County of Nassau, State of New York. *See* Defendant's Affirmation in Support Exhibit C.

Plaintiff commenced the instant action with the filing of a Summons and Verified Complaint on or about August 17, 2018. *See* Defendant's Affirmation in Support Exhibit A. Issue was joined by defendant on or about August 29, 2018. *See* Defendant's Affirmation in Support Exhibit B.

In support of the motion, counsel for defendant submits, in pertinent part, that, "[t]he within motion respectfully seeks dismissal of the plaintiff's complaint asserted against Costco because the annexed deposition testimony of the plaintiff Misook Song, Costco manager David St. Clair, in addition to the attached affidavit of Costco manager David St. Clair, and evidence in this matter establish that Costco did not cause or create the subject liquid condition, and did not otherwise have either actual or constructive notice of said condition. Plaintiff does not and could not assert in her sworn testimony that Costco caused and created the subject liquid condition. She earnestly admitted that they had no first-hand knowledge of the condition or its cause before Ms. Song slipped and fell and acknowledge that Ms. Song therefore did not/could not have placed Costco on actual notice of the condition. As such, Ms. Song's ability to theoretically raise a triable issue of fact rest (*sic*) solely on whether she can effectively assert a constructive notice claim in this premises liability matter. However, as noted and documented in detail below and in the attached admissible deposition testimony, the exhibits and sworn affidavit of Mr. St. Clair, Costco both as a matter of custom and practice generally, and more importantly, specifically on the actual date of the incident performed consistent, frequent and thorough (*sic*) of the subject location including the area/zone where plaintiff fell on June 22, 2018. The spill further lacked any dirt, debris, or any indicia that it had been present for long prior to the accident. As such, Costco has further affirmatively established as a matter of law that they were not on constructive notice of said spill or that they should have been aware of it with enough time to have addressed

the spill, and as such, for these reasons, consistent with the case law cited below, plaintiff's Complaint and the claims asserted against Costco should respectfully be dismissed."

In support of the motion, defendant submits the transcript from plaintiff's Examination Before Trial ("EBT") testimony. *See* Defendant's Affirmation in Support Exhibit F. Counsel for defendant asserts that plaintiff testified, in pertinent part, that, "the accident occurred on June 22, 2018 inside the Costco in Westbury, New York. The accident occurred in the morning between 10:00 and 11:00 a.m.... On the date of the accident, the weather was clear, and the plaintiff wore 'flip-flops' (footwear).... The accident occurred in the pizza stand area in the front of the warehouse store.... The plaintiff and her friend, Joyce Park, had purchased items at the Costco store and placed an order for food at the pizza stand prior to the accident.... In addition to the food, Ms. Song ordered a drink and was walking to the soda fountain prior to the accident.... Ms. Song described the flooring in the area as gray and appearing to be smooth polished cement.... Ms. Song testified that the area was well lit and she did not have difficulty seeing.... Prior the accident, Ms. Song was in the area where the accident occurred for approximately 10 minutes. While in the pizza stand area, she observed other people in the area eating and drinking.... At no time prior to the accident did Ms. Song observe anything on the ground in the area.... As Ms. Song was walking towards the soda fountain carrying a cup, she slipped and fell forward.... After Ms. Song fell, she saw water on the ground.... Ms. Song testified that she saw water ahead of where she fell that was distinct from the area where she fell.... Later in the deposition, Ms. Song admitted that the water that she saw was ahead of and distinct from the area where she had fallen and that she was not sure whether she ever saw the liquid that she allegedly slipped on.... Ms. Song did not know what color the liquid was.... Additionally, she could not say whether the liquid was clear, nor could she describe the size of the wet spot on the

floor.... Ms. Song did not know how the water came to be on the floor but believed another customer might have spilled it, though admittedly she did not observe any spill occur.... Moreover, Ms. Song did not know how long the liquid was present on the floor prior to the accident.... Prior to the accident, as plaintiff was walking to the soda fountain, there was nothing obstructing plaintiff's view.... Ms. Song did not know if any of her clothing was wet after the accident.... Ms. Song did not see any Costco employees in the area at the time of the accident.... Approximately 3 to 5 minutes after the accident, plaintiff saw a Costco employee.... The Costco employee helped her up from the floor.... The Costco employee asked the plaintiff if she needed him to call an ambulance and plaintiff said that no ambulance was needed because she was going to be okay.... The Costco employee asked her to write out an accident report.... The Costco employee called out the manager of the pizza stand and told the manager of the pizza stand about the accident and that the liquid needed to be cleaned.... Prior to being called over to the plaintiff after her fall, the pizza stand manager was behind the counter which was approximately 10 feet away from where the accident occurred.... Plaintiff did not make any prior complaints and was not aware of any prior complaints made to Costco regarding liquid on the floor." *See* Defendant's Affirmation in Support Exhibits F and G.

Also in support of the motion, defendant submits the transcript from the EBT testimony of David St. Clair ("St. Clair"), who testified on behalf of defendant, along with an affidavit from him. *See* Defendant's Affirmation in Support Exhibits I and J. Counsel for defendant asserts that St. Clair testified, in pertinent part, that he "has worked for Costco since 1995. Currently, and at the time of plaintiff's accident, he was a food service manager for the subject Costco warehouse store located at 1250 Old County Road, Westbury, a position he had held for approximately five years.... Mr. St. Clair was working at the subject Costco at the time of plaintiff's accident, and

he has an independent recollection of meeting with plaintiff following the same.... As food service manager, he makes schedules for food court employees, tracks the attendance of food court employees, makes sure food service areas are clean, trains employees on safety, and upholds cleaning and safety guidelines.... Generally, Mr. St. Clair has been trained to clean up hazards as soon as he sees them.... Further, all Costco employees are trained to be on the lookout for spills and other conditions on the floor, and were required to report any observations of spills, leaks, and/or slip hazards, and any customer complaints of spills, leaks, and/or slip hazards inside the store and immediately correct the condition.... Additionally, Mr. St. Clair affirmed that if there is a spill an employee will either clean it immediately or remain in the area to warn others of the spill until someone can arrive with cleaning supplies.... Each day, food service members performed daily periodic inspections of the food court area every 20 to 30 minutes.... In addition to the routine inspections performed by the food service employees, a member service employee performs floor walk inspections of the entire store including the food court on an hourly basis.... On the date of plaintiff's accident, Mr. St. Clair met plaintiff at the area of the accident shortly after the accident occurred. At that time, Mr. St. Clair observed the plaintiff seated on a bench near the soda machine in the food court and observed small drops of water on the concrete floor.... The water looked like droplets which Mr. St. Clair testified was a small amount of water that was difficult to see.... Additionally, the plaintiff did not appear to be wet.... Mr. St. Clair avers in his affidavit that he was personally present in the area less than 20 minutes prior to plaintiff's accident, personally inspected the floor in the area, and observed no spills, water, wetness, or other condition on the floor but instead observed the floor to be clean and dry.... Based on Mr. St. Clair's personal knowledge and discussions with Costco staff, on June 22, 2018, prior to plaintiff's alleged accident, no customers ever reported or complained of any

leaks, spills, and/or slip hazards on the floor in or around the food court to any Costco employees.... Further, based on Mr. St. Clair's personal knowledge and discussions with Costco staff, on June 22, 2018, prior to plaintiff's alleged accident, no other Costco employees observed any leaks, spills, and/or slip hazards on the floor of the food court area." *See id.*

In opposition to the motion, plaintiff submits the transcripts from her own EBT testimony. *See* Plaintiff's Affirmation in Opposition Exhibits C and D. Counsel for plaintiff asserts that plaintiff testified, in pertinent part, that "[o]n June 22, 2018, Ms. Song and her friend, Ms. Joyce Park, visited Costco in Westbury, New York. Ms. Soong had shopped at (*sic*) Westbury location once a month or once every other month for about two years.... Ms. Song was in Costco for about an hour to an hour and a half when the accident happened between 10:00 a.m. and 11:00 a.m.... She and her fried (*sic*) had finished shopping and went to the food court area to get something to eat. After placing the order and standing in line for about 10 minutes, Ms. Song was walking toward the soda fountain with an empty cup when she slipped and fell on the floor.... Her right foot slid forward that her left knee hit the ground and her right hand and forearm hit the chair on the right side.... After she fell, Ms. Park came right away and said, 'oh goodness, there's water.'... Ms. Song observed water on the floor as her friend was trying to help her get up.... There were two puddles of water, one that she slipped on and the other that was further away, approximately four to five feet, below the area where the soda fountain was, although she does not know how much liquid was there.... At the moment of the accident, Plaintiff did not see any Costco employees in the area.... After 3 to 5 minutes, a male Costco employee came and helped her get up and seated her on the nearby chair, which she had struck her hand and arm with. The male Costco employee told Ms. Song that she has (*sic*) to fill out the incident report and called the manager of the pizza stand.... Plaintiff heard the conversation

between the manager and the male Costco employee speaking about a customer's spilled drink and that should be dried.... After the accident, someone cleaned it up with a mop.... Prior to the date of the accident, Ms. Song has (*sic*) seen once or twice where there was water leakage or drops that a mother complained to Costco employees to wipe the area up." *See id.*; Plaintiff's Affirmation in Opposition Exhibit F.

Also, in opposition to the motion, plaintiff submits the transcripts from St. Clair's EBT testimony. *See* Plaintiff's Affirmation in Opposition Exhibit E. Counsel for plaintiff asserts that St. Clair testified, in pertinent part, that, "[o]n the date of the accident, Mr. St. Clair worked as a food service manager and he currently holds (*sic*) the same position for 5 years.... As a food service manager, Mr. St. Clair's job duties include making a schedule for food court employees, tracking their attendance, making sure the food services areas are clean, training the employees on safety and upholding the guidelines for cleaning and safety standards.... Mr. St. Clair states he does not have a normal work schedule, but works 45 hours a week, typical hours ten to seven. The schedule varies and is set by his manager.... However, Mr. St. Clair does not remember what was (*sic*) his schedule on the date of the accident or the name of the manager who set his schedule.... Mr. St. Clair states the store is regularly inspected for hazards. A floor walk through is done every hour by member service employees. But he does not know who is responsible for such walk through.... The food court area where he supervises is cleaned regularly every 20 to 30 minutes. However, there is no procedure, set schedule or checklist for cleaning the food court other than Mr. St. Clair sending out the food court assistants to clean the food court area at least every half hour. There are times where he is understaffed that all the employees are behind the scene.... Mr. St. Clair does not maintain any checklist for inspecting the spills near the soda machine dispenser or (*sic*) checklist of job duties for the food court assistants that he supervises

although 'he should.'... On the date of the accident, Mr. St. Clair arrived at work at approximately 7:00 a.m. He inspected the floor prior to the store opening and did not see any spills or hazards on the floor at that time.... The store opened at 9:00 a.m. and the Plaintiff's accident occurred before 9:30 a.m.... Mr. St. Clair did not instruct any of his food court assistants to go outside to clean the floor prior to the accident's (*sic*) occurring.... He does not remember seeing any employees conducting a walk through and does not know if they came around the food court area for the walk through on the date of the accident.... When the accident happened, Mr. St. Clair was on the floor shopping. His manager called him up front because Plaintiff had fallen in his department.... While he was shopping, there was no one supervising the food court area.... When he arrived on the scene of the accident, Mr. St. Clair observed the Plaintiff sitting on the bench and Ms. Blanca Lugo, food service assistant, was with her. He noticed some water on the floor, which appeared to be droplets and not in (*sic*) significant amount.... It was his knowledge (*sic*) that Plaintiff had fallen near the soda machine area on water.... He offered Plaintiff an ice pack 33 (*sic*) and filled out the incident report.... Plaintiff's friend helped Plaintiff filling (*sic*) out the incident report due to her (*sic*) language barrier.... After the incident, either Mr. St. Clair or Blanca wiped up the area.... Where the accident occurred, about five feet from the soda machine, Mr. St. Clair testified that 'once every few days, once a day,' there is a spill." *See id.*

Counsel for plaintiff argues, in pertinent part, that, "[d]efendant's summary judgment motion must be denied because Defendant failed to establish its prima facie burden of demonstrating that it did not have constructive notice of the alleged hazardous condition. To meet its burden on the issue of lack of constructive notice, moving defendant must offer some 'evidence as to when the accident site was last cleaned or inspected prior to the plaintiff's fall.'

[citation omitted].... Here, ..., it should be noted that Defendant does not submit any concrete evidence such a (*sic*) maintenance record, cleaning log or surveillance video showing when the last cleaning or inspection occurred before the Plaintiff's fall. To prove its lack of constructive notice, Defendant singlehandedly relies on Mr. St. Clair's affidavit that he was personally present in the area and inspected the floor to be clean and dry 'no more than 20 minutes' prior to the subject accident. However, Defendant cannot meet its initial burden based on the single, self-serving affidavit of Mr. St. Clair because different inferences can be made and there is a serious question of witness credibility."

Counsel for plaintiff further contends, in pertinent part, that, "[l]ooking at his affidavit and his prior sworn testimony, it is not clear as to when the accident site was last inspected by Mr. St. Clair. Mr. St. Clair stated that the accident occurred before 9:30 a.m. and he personally inspected the inspection site less than 20 minutes before the accident. Based on his representations, the inspection occurred sometime around 9:10 a.m. However, Plaintiff testified that the accident happened between 10 and 11 a.m. and that she had stayed inside Costco for about an hour to (*sic*) hour and a half before she fell.... The Member First Report of Incident also has (*sic*) time marked as 11:10 a.m.... Therefore, taking both of (*sic*) Mr. St. Clair's deposition testimony and affidavit, there is a significant gap in time, in fact, more than thirty minutes, between the time Mr. St. Clair inspected the accident location and the time of the accident. Or, in the alternative, Mr. St. Clair conducted another inspection of the accident site which he never testified about during his deposition.... Viewing the evidence in (*sic*) light most favorable to Plaintiff, different inferences as to when the last inspection occurred are raised based on Mr. St. Clair's affidavit and his prior deposition testimony, and Plaintiff's deposition transcript. As such, Defendant's summary judgment motion should be denied."

It is well settled that the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law by providing sufficient evidence to demonstrate the absence of material issues of fact. *See Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980); *Bhatti v. Roche*, 140 A.D.2d 660, 528 N.Y.S.2d 1020 (2d Dept. 1988). To obtain summary judgment, the moving party must establish its claim or defense by tendering sufficient evidentiary proof, in admissible form, sufficient to warrant the court, as a matter of law, to direct judgment in the movant's favor. *See Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065, 416 N.Y.S.2d 790 (1979). Such evidence may include deposition transcripts, as well as other proof annexed to an attorney's affirmation. *See* CPLR § 3212 (b); *Olan v. Farrell Lines Inc.*, 64 N.Y.2d 1092, 489 N.Y.S.2d 884 (1985).

If a sufficient *prima facie* showing is demonstrated, the burden then shifts to the non-moving party to come forward with competent evidence to demonstrate the existence of a material issue of fact, the existence of which necessarily precludes the granting of summary judgment and necessitates a trial. *See Zuckerman v. City of New York, supra*. When considering a motion for summary judgment, the function of the court is not to resolve issues but rather to determine if any such material issues of fact exist. *See Sillman v. Twentieth Century-Fox Film Corp., supra*. Mere conclusions or unsubstantiated allegations are insufficient to raise a triable issue. *See Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988).

Further, to grant summary judgment, it must clearly appear that no material triable issue of fact is presented. The burden on the court in deciding this type of motion is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues

exist. *See Barr v. Albany County*, 50 N.Y.2d 247, 428 N.Y.S.2d 665 (1980); *Daliendo v. Johnson*, 147 A.D.2d 312, 543 N.Y.S.2d 987 (2d Dept. 1989).

Issue finding, rather than issue determination, is the key to summary judgment. *See In re Cuttitto Family Trust*, 10 A.D.3d 656, 781 N.Y.S.2d 696 (2d Dept. 2004); *Greco v. Posillico*, 290 A.D.2d 532, 736 N.Y.S.2d 418 (2d Dept. 2002); *Gniewek v. Consolidated Edison Co.*, 271 A.D.2d 643, 707 N.Y.S.2d 871 (2d Dept. 2000); *Judice v. DeAngelo*, 272 A.D.2d 583, 709 N.Y.S.2d 427 (2d Dept. 2000). The court should refrain from making credibility determinations (*see S.J. Capelin Assoc. v. Globe Mfg. Corp.*, 34 N.Y.2d 338, 357 N.Y.S.2d 478 (1974); *Surdo v. Albany Collision Supply, Inc.*, 8 A.D.3d 655, 779 N.Y.S.2d 544 (2d Dept. 2004); *Greco v. Posillico, supra*; *Petri v. Half Off Cards, Inc.*, 284 A.D.2d 444, 727 N.Y.S.2d 455 (2d Dept. 2001)), and the papers should be scrutinized carefully in the light most favorable to the party opposing the motion. *See Glover v. City of New York*, 298 A.D.2d 428, 748 N.Y.S.2d 393 (2d Dept. 2002); *Perez v. Exel Logistics, Inc.*, 278 A.D.2d 213, 717 N.Y.S.2d 278 (2d Dept. 2000).

Summary judgment is a drastic remedy which should not be granted when there is any doubt about the existence of a triable issue of fact. *See Sillman v. Twentieth Century-Fox Film Corp.*, *supra*. It is nevertheless an appropriate tool to weed out meritless claims. *See Lewis v. Desmond*, 187 A.D.2d 797, 589 N.Y.S.2d 678 (3d Dept. 1992); *Gray v. Bankers Trust Co. of Albany, N.A.*, 82 A.D.2d 168, 442 N.Y.S.2d 610 (3d Dept. 1981).

An owner of property has a duty to maintain the property in a reasonably safe condition. *See Kellman v. 45 Tieman Assoc.*, 87 N.Y.2d 871, 638 N.Y.S.2d 937 (1995); *Basso v. Miller*, 40 N.Y.2d 233, 386 N.Y.S.2d 564 (1976); *Kruger v. Donzelli Realty Corp.*, 111 A.D.3d 897, 975 N.Y.S.2d 689 (2d Dept. 2013).

In order for plaintiff to make a *prima facie* case of negligence, she must establish the existence of a dangerous or defective condition in the first instance. *See Pillato v. Diamond*, 209 A.D.2d 393, 618 N.Y.S.2d 446 (2d Dept. 1994). Plaintiff must also demonstrate that defendant's negligence was a substantial cause of the incident. *See Howard v. Poseidon Pools, Inc.*, 72 N.Y.2d 972, 534 N.Y.S.2d 360 (1988).

"To impose liability upon a defendant in a trip-and-fall action, there must be evidence that a dangerous or defective condition existed, and that the defendant either created the condition or had actual or constructive notice of it." *See Leary v. Leisure Glen Home Owners Ass'n, Inc.*, 82 A.D.3d 1169, 920 N.Y.S.2d 193 (2d Dept. 2011); *Alami v. 215 East 68th Street, L.P.*, 88 A.D.3d 924, 931 N.Y.S.2d 647 (2d Dept. 2011); *Williams v. SNS Realty of Long Island, Inc.*, 70 A.D.3d 1034, 895 N.Y.S.2d 528 (2d Dept. 2010); *Hayden v. Waldbaum, Inc.*, 63 A.D.3d 679, 880 N.Y.S.2d 351 (2d Dept. 2009); *Dennehy-Murphy v. Nor-Topia Serv. Center, Inc.*, 61 A.D.3d 629, 876 N.Y.S.2d 512 (2d Dept. 2009). *See also Denker v. Century 21 Dept. Stores, LLC*, 55 A.D.3d 527, 866 N.Y.S.2d 681 (2d Dept. 2008); *Rubin v. Cryder House*, 39 A.D.3d 840, 834 N.Y.S.2d 316 (2d Dept. 2007). "A defendant has constructive notice of a defect when the defect is visible and apparent, and has existed for a sufficient length of time before the accident that it could have been discovered and corrected." *Dennehy-Murphy v. Nor-Topia Serv. Center, Inc., supra*; *Gordon v. American Museum of Natural History*, 67 N.Y.2d 836, 501 N.Y.S.2d 646 (1986); *Nelson v. Cunningham Associates, L.P.*, 77 A.D.3d 638, 908 N.Y.S.2d 713 (2d Dept. 2010); *Cusack v. Peter Luger, Inc.*, 77 A.D.3d 785, 909 N.Y.S.2d 532 (2d Dept. 2010); *Rabadi v. Atlantic & Pacific Tea Company Inc.*, 268 A.D.2d 418, 702 N.Y.S.2d 316 (2d Dept. 2000); *Gauzza v. GBR Two Crossfield Ave. LLC*, 133 A.D.3d 710, 20 N.Y.S.3d 147 (2d Dept. 2015); *Gebert v. Catalano*, 110 A.D.3d 951, 973 N.Y.S.2d 332 (2d Dept. 2013). *See also Minor*

v. 1265 Morrison, LLC, 96 A.D.3d 1024, 947 N.Y.S.2d 167 (2d Dept. 2012); *Sloane v. Costco Wholesale Corp.*, 49 A.D.3d 522, 855 N.Y.S.2d 155 (2d Dept. 2008).

To demonstrate entitlement to summary judgment in a slip and fall case, a defendant must establish, *prima facie*, that it maintained the premises in a reasonably safe manner and that it neither created the alleged dangerous condition, nor had either actual or constructive notice of that condition for a sufficient length of time prior to the incident to discover and remedy it. *See Gomez v. David Milkin Residence Hous. Dev. Fund Co., Inc.*, 85 A.D.3d 1112, 927 N.Y.S.2d (2d Dept. 2011).

Once the defendant has met this burden, the burden shifts to plaintiff to raise a factual issue as to the creation of the defect or notice thereof sufficient to require a trial of her claims. *See Smith v. Costco Wholesale Corp.*, 50 A.D.3d 499, 856 N.Y.S.2d 573 (1st Dept. 2008); *Zuckerman v. City of New York, supra.*

Based upon the evidence and legal arguments presented in the papers before it, the Court finds that defendant has failed to establish, *prima facie,* that it did not have actual or constructive notice of the condition alleged to have caused plaintiff's fall. The Court finds that there is an issue of fact as to when the last inspection of the subject Costco store took place prior to plaintiff's accident. Defendant failed to submit any maintenance records to substantiate the testimony of its witness, St. Clair, as to the inspection of the subject Costco on the date of incident. *See Sohi v. Costco Wholesale Corp.*, 144 A.D. 1130, 41 N.Y.S.3d 757 (2d Dept. 2016); *Morahan-Glick v. Costco Wholesale Corp.*, 116 A.D.3d 747, 982 N.Y.S.2d 897 (2d Dept. 2014).

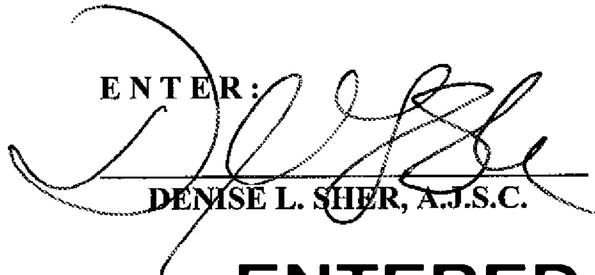
Furthermore, the credibility of witnesses, the reconciliation of conflicting statements, a determination of which should be accepted and which rejected, the truthfulness and accuracy of the testimony, whether contradictory or not, are issues for the trier of the facts. *See Lelekakis v.*

Kamamis, 41 A.D.3d 662, 839 N.Y.S.2d 773 (2d Dept. 2007); *Pedone v. B&B Equipment Co., Inc.*, 239 A.D.2d 397, 662 N.Y.S.2d 766 (2d Dept.1997).

Therefore, based upon the above, defendant's motion, pursuant to CPLR § 3212, for an order granting summary judgment dismissing plaintiff's Verified Complaint, is hereby **DENIED**.

All parties shall appear for Trial, in Nassau County Supreme Court, Differentiated Case Management Part (DCM), at 100 Supreme Court Drive, Mineola, New York, on June 14, 2021, at 9:30 a.m.

This constitutes the Decision and Order of this Court.



ENTER:

DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York
June 8, 2021

ENTERED
Jun 14 2021
NASSAU COUNTY
COUNTY CLERK'S OFFICE