

**Smith v Dubai Furniture III Corp.**

2022 NY Slip Op 32463(U)

January 4, 2022

Supreme Court, Queens County

Docket Number: Index No. 714837/2019

Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK  
CIVIL TERM - IAS PART 34 - QUEENS COUNTY  
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD  
**Justice**

- - - - - x

CARMETA SMITH,

Index No.: 714837/2019

Plaintiff,

Motion Date: 12/23/21

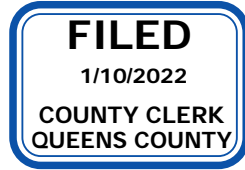
- against -

Motion No.: 20

DUBAI FURNITURE III CORP., DUBAI  
FURNITURE CORP. and IG SECOND  
GENERATION PARTNERS LP,

Motion Seq.: 2

Defendants.



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The following electronically filed documents read on this motion by defendants DUBAI FURNITURE III CORP. and DUBAI FURNITURE CORP. (collectively hereinafter Dubai) for an Order granting summary judgment to Dubai and dismissing the complaint and any and all cross-claims:

	Papers Numbered
Notice of Motion-Affirmation-Exhibits.....	EF 35 - 44
Plaintiff's Affirmation in Opposition-Exhibits.....	EF 50 - 56
Reply Affirmation.....	EF 63 - 66

This is an action to recover damages for personal injuries sustained by plaintiff on November 28, 2018 when she was struck by a board as she walked on the sidewalk in front of the Dubai Furniture store located at 89-31 164<sup>th</sup> Street, Jamaica, New York.

Plaintiff commenced this action on August 28, 2019 by filing a summons and verified complaint. IG Second Generation Partners LP (IG) joined issue by service of an answer with cross-claims on November 1, 2019. Dubai Furniture III Corp. and Dubai Furniture Corp. (collectively hereinafter Dubai) joined issue by service of an answer with cross-claims on November 19, 2019. Dubai now moves for summary judgment.

Plaintiff appeared for an examination before trial on September 2, 2020 and testified that on the date of the accident, the weather was nice with no precipitation. The accident occurred just passed the door leading into the Dubai furniture store. She was looking straight ahead when a piece of plywood struck her on her left side and pushed her onto a hand truck on the sidewalk. She did not see the board until it came in contact with her side. A woman who was walking behind her told her that the board came from a stack of such boards on the sidewalk. A gust of wind blew the plywood from the curb where it was stacked. After the accident, she saw a stack of about six plywood pieces in the street, by the curb. She believes the plywood is from the church. There were two construction projects going on; one to the church and one to Dubai. There was scaffolding in front of the church. After the accident, two men approached her, removed the plywood off her, and took the plywood into the Dubai furniture store. The men also picked up other plywood off the sidewalk.

Majbi Nofal appeared for an examination before trial on behalf of Dubai on March 2, 2021 and testified that at the time of the accident, he was the owner and president of Dubai. The premises were leased pursuant to a written lease. The store was open 7 days a week. The store had two entrances. The front entrance is located on 165<sup>th</sup> Street. The back entrance is located on 164<sup>th</sup> Street. In November 2018, Dubai had two employees. Ayman Khalil was the store manager. Tommy Kaher was the salesman. The store manager was responsible for receiving merchandise, assembling the furniture for store displays, and handling customer service. Part of customer service involves assisting customers load their purchases into their vehicles. This is done from the back entrance.

Non-party Ayman Khalil appeared for an examination before trial on April 30, 2021 and testified that he was the store manager at Dubai in November 2018. Deliveries, both in and out of the store, are performed on 164<sup>th</sup> Street as there is an entrance on that side of the building that leads to the elevator that takes you into the storage area in the basement. Dubai had both a hand truck and dolly to assist with moving the furniture.

Sara Fontanet appeared for an examination before trial on behalf of IG on March 22, 2021 and testified that she is employed by BLDG Management (BLDG), the real estate management company for the subject premises. She is a property manager. Her responsibilities include collecting rents, handing tenant complaints, and visiting the sites. The subject building is owned by IG. The building has ten retail store spaces. Dubai is a tenant pursuant to a written lease. She visits the building

approximately once a month. She does not go on any regular basis. Neither IG nor BLDG performed any construction or renovation to or at the premises in November 2018. Pursuant to the Lease, the tenant had the responsibility to keep the sidewalks clean and clear of debris. There were no sidewalk repairs being performed at the time of the accident.

Based upon the submitted evidence, Dubai contends that plaintiff cannot establish where the plywood came from, who it belonged to, how long it had been in the position it was in before being carried through the air by the wind, or who placed the plywood in such position. Moreover, Dubai did not have actual or constructive notice of the alleged dangerous condition.

In opposition, plaintiff argues that Dubai failed to establish that it lacked constructive notice as there is no evidence as to the last time Dubai cleaned or inspected the subject sidewalk prior to the accident.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of his position (see Zuckerman v. City of New York, 49 NY2d 557[1980]).

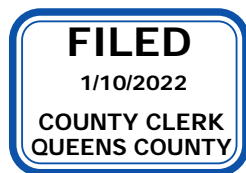
A defendant who is responsible for maintaining a premises who moves for summary judgment in a premises liability case involving the property has the initial burden of making a prima facie showing that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it (see Arzola v Boston Props. Ltd. Partnership, 63 AD3d 655 [2d Dept. 2009]; Brak v Razaq, Inc., 60 AD3d 715 [2d Dept. 2009]). 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 NY2d 836 [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" (Birnbaum v New York Racing Association, Inc., 57 AD3d 598 [1986]; see Przybywalny v New York City Tr. Auth., 69 AD3d 598 [2d Dept. 2010]; Arzola v Boston Props. Ltd. Partnership, 63 AD3d 655 [2d Dept. 2009]; Braudy v Best Buy Co., Inc., 63 AD3d 1092 [2d Dept. 2008]).

Here, viewing the evidence in the light most favorable to the nonmoving party, Dubai failed to establish that it lacked constructive notice of the alleged dangerous condition. There is no testimony in the record and no evidence elicited as to what Dubai's employees responsible for cleaning did in particular on the day of plaintiff's accident, and no testimony with regard to when the area where plaintiff's accident occurred had last been inspected.

Accordingly, and based upon the above reasons, it is hereby

ORDERED, that the summary judgment motion by defendants DUBAI FURNITURE III CORP. and DUBAI FURNITURE CORP. is denied.

Dated: January 4, 2022  
Long Island City, N.Y.



*Robert J. McDonald*

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**ROBERT J. MCDONALD**  
**J.S.C.**