

Mastrangelo v R. & M. & Sons Realty Inc.
2024 NY Slip Op 35274(U)
March 6, 2024
Supreme Court, Nassau County
Docket Number: Index No. 606478/19
Judge: Erica L. Prager
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT: ERICA L. PRAGER, J.S.C.

-----X
MADDALENA MASTRANGELO,

Plaintiff,

-against-

**R. & M. & SONS REALTY INC. THE LAUNDRY
STADIUM II CORP., THE LAUNDRY STADIUM II
CORP. d/b/a LAUNDRY STADIUM II and THE
LAUNDRY STADIUM II CORP. f/k/a SUPER
WASH LAUNDRY,**

Defendants.
-----X

IAS/TRIAL PART 17

Motion Seq.: 003

Submission Date: 12/19/23

Index No.: 606478/19

DECISION AND ORDER

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Upon the foregoing papers, the defendants move for an Order: (a) pursuant to CPLR § 3212 granting the defendants' motion to dismiss; (b) dismissing plaintiff's Summons and Verified Complaint in its entirety; (c) directing the clerk of the court to enter judgment in favor of the defendants; (d) together with such other and further relief as the Court may deem just and proper.

BACKGROUND

This is an action to recover damages for personal injuries allegedly sustained by plaintiff in a slip and fall accident that occurred on March 22, 2019 at approximately 9:25 AM, at the premises known as the Laundry Stadium, located at 751 Old Country Road, Westbury, New York (the "Laundromat"). The underlying facts are taken from the parties' submissions, and are undisputed, except where otherwise noted.

On the date of the accident, plaintiff and her daughter, non-party Josephine Ruggerio ("Ms. Ruggerio"), arrived at the rear entrance of the Laundromat at approximately 9:20 AM. Plaintiff and Ms. Ruggerio had been going to this Laundromat once a week for over three years prior to the accident. It had been raining steadily the entire morning, and the parking lot and sidewalk were wet. It was still raining when Ms. Ruggerio exited the car, took a bundle of laundry, and entered the

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Laundromat about five feet ahead of plaintiff. Neither plaintiff nor Ms. Ruggerio used an umbrella. There was a mat directly inside the entrance of the Laundromat running the width of the doorway. Ms. Ruggerio entered the doorway and crossed over the mat. She did not slip. Plaintiff entered a few seconds later and crossed the mat. When plaintiff stepped off of the mat onto the first tile, she immediately slipped and fell to the ground.

Plaintiff commenced the instant action on May 13, 2019 with the filing of the Summons and Complaint. Issue was joined by the filing of defendant R&M & SONS REALTY, INC.'s Answer on June 24, 2019 and the remaining defendants' Answer on August 15, 2019.

As set forth in the Bill of Particulars, plaintiff alleges that defendants were negligent in the ownership, operation and/or maintenance of the Laundromat, in that they caused or permitted the floor by the rear entrance of the Laundromat to become or remain in an unsafe (wet and slippery) condition.

ARGUMENTS

Defendants now seek summary judgment dismissing the Complaint in its entirety on the grounds that: (1) plaintiff cannot identify the cause of her fall, and thus any allegation of negligence is speculative; and (2) plaintiff cannot establish that anyone affiliated with defendants had actual or constructive knowledge of the alleged slippery condition.

In support of their motion, defendants submit (among other things) transcripts of the depositions of: (i) plaintiff, conducted on February 25, 2020; (ii) Ms. Ruggerio, conducted on January 18, 2023; and (iii) Vincent Vescova, on behalf of the defendant Laundromat, conducted on April 27, 2021. Defendants also submit copies of surveillance videos depicting the plaintiff's fall and its aftermath.

Defendants highlight plaintiff's testimony wherein she states that she was looking straight ahead of her from the time she entered the Laundromat to the time she fell. She did not look down, either at the mat or at the tile on which she slipped. Plaintiff admits that even after the accident, she did not look down at the mat or at the tile to see what caused her fall. She assumed that she slipped on water based upon the wetness she felt at the back of her jacket. Defendants further cite Ms. Ruggerio's testimony that she (Ms. Ruggerio) was looking straight ahead of her as she entered the Laundromat, that she did not see the tiles prior to the accident, and that she did not witness her mother's accident. According to defendants, plaintiff arrived at her conclusion as to the cause of her

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fall only after the accident, and not from any personal knowledge or eyewitness account. Based upon the foregoing, defendants argue that plaintiff cannot identify the cause of the fall without speculation.

In addition, defendants argue that, even if it is assumed that plaintiff slipped on water, there is no evidence as to where the water came from or for how long it was present. According to defendants, there is no evidence that anyone affiliated with the defendants caused or created the alleged slippery condition, or had notice of the condition in time to remedy it. In defendant's view, it is just as likely that plaintiff's daughter tracked water onto the floor when she entered the Laundomat moments before plaintiff, or that plaintiff brought the water in on her own shoes.

As noted by defendants, plaintiff's testimony that she wiped her feet back and forth twice before stepping onto the tile is belied by the video recording. Moreover, plaintiff's stated assumption that the wetness she felt on the back of her jacket came from the mat is, according to defendants, inconsistent with her testimony that the mat was not "squishy" when she stepped on it. In defendants' view, these inconsistencies further demonstrate plaintiff's inability to prove her case.

Plaintiff opposes the motion on the basis that defendants have not met their *prima facie* burden to eliminate all issues of fact, and thus summary judgment should be denied without regard to the sufficiency of plaintiff's proof. According to plaintiff, the evidence establishes that plaintiff knows the cause of her fall, and that, at minimum, there are issues of material fact with respect to defendants' negligence or their actual or constructive knowledge of the dangerous condition.

To demonstrate that plaintiff can identify the cause of her fall, plaintiff submits (among other things) a photograph of plaintiff lying on the floor after the accident, which shows water on the floor near plaintiff's leg. Plaintiff also cites portions of her own deposition testimony,¹ wherein she states:

"Q. Do you know why you fell, what caused you to fall?

A. I slipped on the water.

Q. Did you see any water before you slipped on it?

A. No.

Q. Did you see any water after you were on the ground?

A. No, but I felt it." (P.92)

"A. Actually it was the first tile. That's where I slipped. That's where the water was," (P.99).

¹ All page numbers cited in this section refer to the transcript of plaintiff's deposition (NYSCEF Doc. 71).

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“Q. And as were you lying there on the ground before the ambulance came did you feel any type of wetness on your pants?

A. Not on my pants, on the back.

Q. On your back?

A. The coat. My coat was wet.

Q. As you were lying there on the ground before the ambulance came did you observe any liquid on the floor or water?

A. Not – not that I – no, I couldn’t. I didn’t notice anything, I was in such pain, I mean I –

Q. But you felt – did you feel your coat wet at that time or later on?

A. That time when I fell.

Q. Were you able to feel the wetness?

A. Yes.” (P.42)

In addition, plaintiff cites portions of her daughter’s testimony:²

“Q. People fall. So at the time that you took photographs, did you have any notion of what caused your mother to fall?

A. Did I have any notion of what caused her to fall.

Q. Correct?

A. The tile was slippery.” (P. 73)

Q. What is the reason you think your mother fell?

A. What’s the reason.

Q. Yes?

A. From the rain and the mat and the water an those slippery tiles. (P.81)

“Q. When you entered – sorry, after your mother’s fall did you check to see if the mat had water on it?

A. Did I check.

Q. Did you feel it at all?

A. Did I feel it with my hands.

Q. Or with anything, did do you anything?

A. I didn’t check but visually you could see there’s water on there. You could just watch the tape.

Plaintiff also submits the transcript of the deposition of non-party Roxana Rubio, conducted on September 29, 2022. Ms. Rubio, who manages the Laundromat, testified that she was not present

² All page numbers cited in this section refer to the transcript of Ms. Ruggerio’s deposition (NYSCEF Doc. 74).

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at the Laundromat on the morning of plaintiff's accident, but that she was notified of the accident by a worker who was on the premises. Neither Ms. Rubio nor the worker witnessed the accident. Ms. Rubio viewed the video recordings of the accident remotely through an application on her phone, and came to the premises about an hour later, after plaintiff had been taken by ambulance to the hospital. According to plaintiff, Ms. Rubio's testimony was inconsistent as to whether or not she saw, in the video, water on the tiles prior to plaintiff's fall. Moreover, according to plaintiff, Ms. Rubio testified that rain causes "water accumulation" at the subject premises, a recurring condition which, in plaintiff's view, supports an inference of actual or constructive notice on the part of defendants.

Finally, plaintiff refers to the deposition testimony of Vincent Vescova, the sole shareholder of defendant THE LAUNDRYSTADIUM II CORP., the corporation that owns and operates the Laundromat. Plaintiff highlights the portions of the testimony wherein Mr. Vescova states that (i) he does not inspect the premises on a regular basis; (ii) he does not have any records that would reflect any inspection of the subject premises by any person or entity; (iii) although he goes to the premises on a daily basis to collect money from the machines, he does not have a set schedule, and he keeps no records of when he goes; (iv) Ms. Rubio, who is not his employee, is responsible for the upkeep of the store, including cleaning, sweeping and mopping the floor, and he does not supervise her or her employees in that regard.

In plaintiff's view, this testimony undermines defendants' ability to establish, *prima facie*, the absence of actual or constructive notice of the alleged slippery condition of the floor. Further, according to plaintiff, Mr. Vescova's testimony that there is never any pooling of water at the subject premises is directly contradicted by that of Ms. Rubio, which identified what plaintiff characterizes as a "recurring water condition."³ In plaintiff's view, this discrepancy, along with the lack of proof of when the Laundromat was last inspected, precludes the Court from granting defendants' motion.

Moreover, as plaintiff notes, defendant's suggestion that Ms. Ruggiero tracked in the water upon which plaintiff fell is belied by the video, which clearly shows that Ms. Ruggiero walked in a different direction than the plaintiff. That is, Ms. Ruggiero never stepped on the tile upon which plaintiff slipped, and thus could not have been the source of any water on that tile.

³ Plaintiff's reliance upon Ms. Rubio's testimony to demonstrate the existence of a recurring condition of water accumulation on the premises is misplaced, at best. It is clear from the context that Ms. Rubio was not talking about water accumulation on the floor near the rear entranceway of the Laundromat, where plaintiff slipped. Ms. Rubio was being asked about whether puddles commonly form in the parking lot when it rains, and she answered: "Yes. If it is raining, there is a water accumulation." See Transcript of Rubio EBT, pp. 33-34 (NYSCEF Doc. 73).

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DISCUSSION

Identification of the Cause.

In a trip/slip and fall action, a defendant may establish *prima facie* entitlement to judgment as a matter of law by showing that the plaintiff cannot identify the cause of his or her fall without engaging in speculation. *Baterna v Maimonides Medical Center*, 139 AD3d 653 (2d Dept. 2016); *Ash v City of New York*, 109 AD3d 854 (2d Dept. 2013); *Peluso v Red Rose Rest., Inc.*, 106 AD3d 972 (2d Dept. 2013). The plaintiff's inability to identify the cause of the fall is fatal to the negligence claim, because any finding that the defendant's negligence proximately caused plaintiff's injuries would be based solely on speculation. *Blocker v Filene's Basement #51-00540*, 126 AD3d 744 (2d Dept. 2015); *Rivera v J. Nazzaro Partnership, LP*, 122 AD3d 826 (2d Dept. 2014); *Patrick v Costco Wholesale Corp.*, 77 AD3d 810 (2d Dept. 2010). That is not to say that plaintiff must have personal knowledge of the cause of the fall. Causation may be established by eyewitness testimony, circumstantial evidence or other admissible proof. *McRae v Venuto*, 136 AD3d 765 (2d Dept. 2016); *Vazquez v Flesor*, 128 AD3d 808 (2d Dept. 2015); *Brown v Outback Steakhouse*, 39 AD3d 450 (2d Dept. 2007). That is only to say that where there are many possible causes which are equally likely, causation cannot be proved. *Ash*, 109 AD3d at 855.

In this case, viewing the evidence in the light most favorable to plaintiff, and affording plaintiff the benefit of every possible inference (*Derise v Jaak*, 127 AD3d 1011 [2d Dept. 2015]), the Court finds that plaintiff has offered sufficient circumstantial evidence to render her identification of the cause of her fall more than speculative. The video recording of the accident shows that something caused plaintiff to slip when she stepped on the tile. Plaintiff's testimony that after the fall, she felt water on the back of her jacket supports plaintiff's conclusion that she slipped on water. The post-accident photographs show plaintiff lying on the ground with her back on the mat and her buttocks on the first tile – i.e., the tile on which she had initially stepped and slipped. Thus, plaintiff's testimony that she felt wetness in the area of her buttocks is consistent with her conclusion that she slipped on water on the first tile.

This is not a situation in which there are many possible causes of plaintiff's fall which are equally likely. There is no evidence of any possible cause other than water on the ceramic tile. In the view of this Court, the real question is the source of the water, and the length of time, if any, that it was present on the ceramic tile prior to the plaintiff's fall. That is, the dispositive issue in this case is whether or not there was a defective condition on the premises (i.e., a wet and slippery floor) prior to the plaintiff's accident, that existed for a sufficient period of time such that it could or should have been remedied by the defendants.

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Existence of a Defect.

The evidence supports two possible inferences: that plaintiff brought in the water on her own shoes or clothing, or that the water was already present on the tile prior to her entry.⁴ Only in the latter scenario could there be a potential basis for premises liability.

The Court's own examination of the video recording was inconclusive. The video showed clearly that something caused plaintiff to slip when she stepped on the tile. Without the ability to enlarge the video or to obtain a closer view, however, the Court could not discern what, if anything, was on the tile prior to plaintiff's fall. Moreover, the absence of earlier video footage hinders the investigation. The Court thus finds that the issue cannot be decided as a matter of law on the record presented, and reserves for the trier of fact the question of whether or not there was a wet and slippery condition on the floor prior to plaintiff's accident. See *Trincere v County of Suffolk*, 90 N.Y.2d 976, 977 (1997) ("whether a dangerous or defective condition exists on the property of another so as to create liability depends on the peculiar facts and circumstances of each case and is generally a question of fact for the jury")

Actual or Constructive Notice.

"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. ... A defendant has constructive notice of a dangerous condition when the dangerous condition is visible and apparent, and 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, 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." *Merchant v New York City Tr. Auth.*, 183 A.D.3d 647 (2d Dept. 2020) (internal citations and quotation marks omitted).

At bar, defendants have not met this initial burden. While the defendants "[were] not obligated to provide a constant remedy to the problem of water being tracked into a building in rainy weather" (*Murphy v Lawrence Towers Apts., LLC*, 15 A.D.3d 371 [2d Dept. 2005]), here defendants

⁴ As plaintiff notes, the suggestion that the water was tracked in by Ms. Ruggiero is belied by the video showing that Ms. Ruggiero did not step on the same tile as the plaintiff.

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have offered no evidence whatsoever as to when the floor was last cleaned or inspected, if at all. Instead, they have merely pointed out anticipated gaps in the plaintiff's proof, which is insufficient to meet their *prima facie* burden on the issue of constructive notice. See *Williams v JP Morgan Chase & Co.*, 39 A.D.3d 852, 853 (2d Dept. 2007).

CONCLUSION

The Court has considered the remaining contentions of the parties and finds that they do not require discussion or alter the determination herein.

Based upon the foregoing, it is

ORDERED, that defendants motion for summary judgment dismissing the Complaint in its entirety is *denied*.

Any requests for relief not specifically addressed herein are *denied*.

This constitutes the Decision and Order of this Court.

Dated: March 6, 2024
Mineola, NY, 11501

ENTER:



HON. ERICA L. PRAGER, J.S.C.

ENTERED

Mar 11 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE

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