

Meyer v New York Lessee LLC

2025 NY Slip Op 30278(U)

January 24, 2025

Supreme Court, New York County

Docket Number: Index No. 160358/2020

Judge: Shlomo S. Hagler

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This opinion is uncorrected and not selected for official publication.

Plaintiff testified that it had been raining continuously from the time he left his apartment on East 90th Street until the time he arrived at the Hotel's entrance on Sixth Avenue (NYSCEF Doc No. 27, Cherkis affirmation, exhibit L, plaintiff tr at 23, 30 and 36). The entrance area was busy, with many people carrying umbrellas (*id.* at 220 and 224). Plaintiff proceeded to walk 20 to 25 feet from the sidewalk to the automatic or mechanized revolving door that led into the Hotel's lobby (*id.* at 39, 50-51 and 57-58). Although "[t]here was some protection [overhead] for a few feet before the revolving door" (*id.* at 40), the area between the sidewalk and the entrance was wet (*id.* at 222). Plaintiff testified that he did not see any caution signs warning of a wet floor nor did he see anyone directing him away from the revolving door (*id.* at 228).

Each compartment of the revolving door was large enough to accommodate several people and their luggage (*id.* at 57). The floor in the compartment "looked like highly polished, slick marble probably" (*id.* at 75). A gray mat had been placed on the ground directly in front of the door (*id.* at 66). Plaintiff stated that the mat looked "somewhat saturated" (*id.*) and that "I didn't use the mat as a device to wipe off my shoes because it was wet" (*id.* at 67). He added, "I saw, when I tried to wipe my foot, some moisture coming up from the mat" (*id.* at 69). Plaintiff testified that when he stepped into the compartment, he felt his legs "going out" from under him (*id.* at 80). Plaintiff recalled seeing "maybe a slight film" of moisture covering two to three square feet of the compartment floor before he fell (*id.* at 76-77).

Geovanny Polanco (Polanco), then a security guard, testified that he had been posted at the front of the Hotel near the revolving door beginning at 7:30 a.m. on the day of the accident (NYSCEF Doc No. 31, Cherkis affirmation, exhibit P, Polanco tr at 47, 49 and 87). The revolving door's four compartments each measured four to five feet, and a rubber "squeegee" at the bottom of each panel separated the compartments (*id.* at 20 and 22). Mats had been placed on the ground

directly in front of the door outside of the Hotel and inside the lobby (*id.* at 55). It had been raining heavily that morning (*id.* at 36), and Polanco stated that the floor within the revolving door becomes wet “[e]very time it rains” (*id.* at 67) from “people ... walking with wet feet or wet sneakers, shoes, sandals” and their umbrellas, including on the day of the accident (*id.* at 70 and 73). Polanco estimated that over one thousand Hotel guests or convention attendees had entered the Premises before the accident, though he was “not good in counting” (*id.* at 77), and given the number of visitors, the revolving door could not be closed (*id.* at 42). Polanco explained that it was the Hotel’s regular procedure for housekeeping staff to dry-mop wet floors during rainy weather, including the floor beneath the revolving door (*id.* at 25, 29 and 62), and that staff would “stay there until the whole area is cleaned” (*id.* at 68). Polanco testified that the same housekeeper had dry-mopped the floor under the revolving door twice that morning, taken 10 to 15 minutes each time, and had last dry-mopped that area in the half hour immediately preceding the accident (*id.* at 49-53). The housekeeper dried the floor “until it was completely dry” (*id.* at 52). Polanco also testified that when the revolving door floor became wet during prior rainstorms, “[housekeeping] stay there until the whole area is cleaned,” and, “[i]f they have to,” housekeeping would remain there until it stopped raining (*id.* at 68).

Polanco recounted that he had been walking his post 30 to 40 feet away when he saw plaintiff fall inside one of the revolving door’s compartments (*id.* at 22 and 48). Just prior to the accident, a woman had walked past plaintiff, stepped into a compartment and “heavily” shook her umbrella for a few seconds (*id.* at 14-15 and 17-19). Plaintiff followed the woman into the compartment, stepped over “the same location” (*id.* at 131) and immediately slipped where the floor was wet “because of the previous lady” (*id.* at 9-11). Polanco testified that he assisted plaintiff off the ground, took him to the Hotel’s fire command and notified a dispatcher about the

accident and the wet floor, who sent housekeeping to clean (*id.* at 24 and 72). Polanco recalled that no one else had slipped before the accident (*id.* at 39 and 80). Regarding the mat in front of the revolving door, Polanco testified that he did not look at or inspect the mat, was not aware of its condition, including whether it was wet, and was under no duty to check it (*id.* at 66-67).

James White (White), then a security officer, testified there was a 100-foot covered walkway between the sidewalk on Sixth Avenue to the revolving door that led into the lobby (NYSCEF Doc No. 29, Cherkis affirmation, exhibit N, White tr at 9, 13, 17-18 and 22). The floor beneath the revolving door was made of tile or marble (*id.* at 12). A rubber-backed mat was placed outside the revolving door (*id.* at 18-20). White testified that he had never seen anyone move the mat, and he did not know if the mat was ever inspected to determine if it was wet from rain (*id.* at 31).

White recalled that he was first alerted to the accident when Polanco reported over the radio that a guest had slipped in the revolving door on Sixth Avenue (*id.* at 69 and 74). White testified that he brought plaintiff to the Hotel's fire command station and asked plaintiff to complete a guest incident report (*id.* at 33 and 47). White completed a separate incident report on which he noted that a guest had slipped inside the revolving door (*id.* at 54 and 58). White could not recall if plaintiff told him that he had slipped (*id.* at 50) and did not know if plaintiff's clothes were wet (*id.* at 70). White could not recall if he checked the condition of the floor or if he checked the mat to determine if it was wet (*id.* at 64). White testified that he did not know how long the floor within the revolving door was wet before the accident (*id.* at 92). White, who had worked at the Hotel for 29 years (*id.* at 9), also testified that he did not know if the mat becomes saturated with water when it rained and that he had never seen the mat saturated with water (*id.* at 20).

Anthony Spagnuolo (Spagnuolo), the area director of safety and security for managed Hiltons in New York, New Jersey, Connecticut and Pennsylvania and the Hotel's director of

security, testified that a 100-foot covered walkway led from the sidewalk to the revolving door (NYSCEF Doc No. 33, Cherkis affirmation, Spagnuolo tr at 8, 20-22, 26, 68 and 72). There were three compartments to the revolving door (*id.* at 26), and a rubber “sweeper” at the bottom of each panel separating the compartments kept out drafts (*id.* at 35-36). A rain mat was placed down in front of the door (*id.* at 23). Between 5 a.m. and 10 p.m., visitors could also use two fixed-hinge doors on either side of the revolving door to enter the lobby (*id.* at 32). Spagnuolo testified that housekeeping was responsible for cleaning the Hotel (*id.* at 92), including the floor under the revolving door, and that security was responsible for reporting safety issues, like slippery conditions, as they occurred or are observed (*id.* at 34).

Spagnuolo testified that surveillance video showed that it was raining heavily at the time of the accident (*id.* at 68-69). He testified that the area leading up to the revolving door “did not appear to be overly wet, and no one slipped, and there was no issue before the matted area” (*id.* at 71). Spagnuolo stated the video depicted a woman carrying an umbrella cutting in front of plaintiff on the walkway in front of the revolving door (*id.* at 72-73). Spagnuolo concluded that the woman’s umbrella must have been dripping because she had been “carrying it in what appeared to be the upright position until she turned it down as she was walking into the revolving door” (*id.* at 77) and that it appeared “she was shaking it out” (*id.* at 73). Spagnuolo testified that he did not determine how much water dripped off the woman’s umbrella but “it seems that [plaintiff] stepped right in the area that she walked in when she pointed her umbrella down” (*id.* at 81). Spagnuolo denied that the mat becomes saturated with water in rainy weather and he has never seen tracked-in water on the floor from persons entering the revolving door (*id.* at 24). He also had never seen warning signs or cones placed at the revolving door outside of the lobby (*id.* at 52).

Plaintiff and his wife, suing derivatively, commenced this action claiming that defendants were negligent in their ownership, operation and maintenance of the Premises. Defendants now move for summary judgment dismissing the complaint.

Discussion

A party moving for summary judgment bears the burden of “mak[ing] 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” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the moving party meets its prima facie burden, “the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for [its] failure so to do” (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

Defendants predicate their motion on the grounds that they did not create or have actual or constructive notice of the allegedly dangerous condition that caused plaintiff to slip. Defendants rely, in part, on affidavits from Spagnuolo; Daniel Mensah (Mensah), a Permanent House Person in the Housekeeping Department; Barry Dickey (Dickey), a forensic expert specializing in audio and video analysis; and Jeffrey J. Schwalje, P.E. (Schwalje), a professional engineer.

Mensah avers that he was assigned to work in “Lobby 1,” an area which encompassed the revolving door, between 8:40 a.m. and 4 p.m. on December 9, 2019 (NYSCEF Doc No. 19, Mensah aff, ¶¶ 1-2 and 7). This assignment involved sweeping outside and in front of the Sixth Avenue entrance and inspecting the entrance, including the revolving door, which entailed “regularly entering and standing in the revolving door area, wiping the glass doors therein as well as checking for any dirt condition on the floor there during my shift” and mopping the floor of the revolving door as necessary (*id.*, ¶ 3). Mensah explains that he rotated throughout Lobby 1 every

15 to 20 minutes (*id.*, ¶¶ 4-5). He avers that “Hilton’s custom and practice is that there is particular attention focused on the entrance area such that I will remain in the entrance area for a longer period whenever possible to make sure conditions are safe” (*id.*, ¶ 5). The concierge and bellmen, who are stationed just inside the entrance, may also send a dispatch to housekeeping to address any conditions they observed (*id.*, ¶ 4). Mensah attests that he did not witness or recall the accident, but in the ordinary course of his duties, he would have likely inspected the revolving door area at least three separate times before the accident occurred (*id.*, ¶¶ 6-7).

Spagnuolo avers that a search of Hilton’s records yielded no prior reported incidents or prior complaints of persons having slipped and fallen within the revolving door (NYSCEF Doc No. 17, Spagnuolo aff, ¶ 12).

Schwalje avers to have personally inspected the revolving door entrance and conducted slip resistance testing on January 7, 2021 (NYSCEF Doc No. 16, Schwalje aff, ¶¶ 1 and 9). Schwalje stated that a 50-foot by 40-foot covered atrium walkway prevented precipitation from entering directly into the revolving door area (*id.*, ¶ 24). The floor under the revolving door was composed of coarse-textured Jerusalem marble with “small indentations and an unfinished/unpolished surface which increase[s] slip resistance” (*id.*, ¶ 10). He opined the floor was “slip resistant in wet surface conditions pursuant to American National Standards (ANSI) standards” (*id.*, ¶ 10). Schwalje also inspected the entry mat, which was a custom rubber-backed Berber indoor/outdoor mat with “heavy duty raised face ..., multi-directional, non-crushing, high traffic face ..., color-fast and stain resistant [yarn, and] ... 100% polypropylene, tightly double needled matting, and a raised hob-nail surface” (*id.*, ¶ 14). Schwalje opined the mat was appropriate for high volume use and would not have become saturated with moisture from foot

traffic (*id.*, ¶ 20). Schwalje further opined that adding extra mats was not necessary or required and would not have any impact on the amount of tracked-in water (*id.*, ¶ 23).

Plaintiffs counter that defendants created and had actual and constructive notice of the wet condition. Plaintiffs' expert, professional engineer Stanley H. Fein (Fein), opined within a reasonable degree of engineering certainty that: the floor beneath the revolving door has a low coefficient of friction when wet; the floor became wet from constant use; the rubber-backed entry mat could not absorb the water tracked into the Premises from visitors' wet clothes, shoes and umbrellas; defendants should have closed the revolving door entrance because they could not keep the floor dry; and warning signs should have been placed in the revolving door area to redirect traffic or warn that the floor was wet and slippery (NYSCEF Doc No. 61, Cannavo affirmation, exhibit O, Fein aff, ¶¶ 1, 13-14, 16-17 and 24). Fein further opined that, because the volume of foot traffic "overwhelmed" the mat's ability to absorb rainwater and "prevent water from being tracked into the revolving door" (*id.*, ¶ 6), defendants should have stationed "personnel at the door to monitor the situation and to be ready to close the door at any time" and "should have had a wet vacuum in use to remove excess water from the mat" (*id.*, ¶¶ 35-36).

A property owner has a duty to maintain its premises "in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of avoiding the risk" (*Basso v Miller*, 40 NY2d 233, 241 [1976] [citation omitted]). An owner may be held liable for a dangerous condition on its premises if it is shown that the owner "created or had actual or constructive notice of the hazardous condition which precipitated the [plaintiff's] injury" (*Boderick v R.Y Mgt. Co., Inc.*, 71 AD3d 144, 147 [1st Dept 2009]). Thus, an owner in a slip-and-fall action establishes its entitlement to summary judgment by showing that it did not create or have actual or constructive notice of that condition (*Ross v*

Betty G. Reader Revocable Trust, 86 AD3d 419, 421 [1st Dept 2011]). Because “[a]ctual notice may be found where a defendant either created the condition, or was aware of its existence prior to the accident” (*Atashi v Fred-Doug 117 LLC*, 87 AD3d 455, 456 [1st Dept 2011]), an owner demonstrates its lack of actual notice by showing that there were no prior repairs, complaints or accidents involving the same condition that allegedly caused the accident (*see Dan v City of New York*, 227 AD3d 495, 496 [1st Dept 2024]). As to constructive notice, the “defect or condition must be ‘visible and apparent and ... must exist for a sufficient length of time prior to the accident to permit defendant’s employees to discover and remedy it’” (*Gibbs v Port Auth. of N.Y.*, 17 AD3d 252, 255 [1st Dept 2005] [citation omitted]). An owner demonstrates its lack of constructive notice by showing when the accident location was last cleaned and inspected prior to the accident (*see Qeliqi v Gladden Props. LLC*, 226 AD3d 543, 545 [1st Dept 2024]).

As is relevant here, an owner is “not required to provide a constant ongoing remedy for an alleged slippery condition caused by moisture tracked indoors during ... [an ongoing] storm” (*Polanco v Newmark & Co. Real Estate, Inc.*, 172 AD3d 602, 602 [1st Dept 2019]; *Thomas v Boston Props.*, 76 AD3d 460, 461 [1st Dept 2010] [“[t]he law imposes no obligation to take continuous remedial action to remove moisture accumulating as a result of pedestrian traffic”]). A property owner need only take “reasonable maintenance measures to address the wet conditions” (*Polanco*, 172 AD3d at 602), such as laying down mats, placing caution signs on the floor or mopping (*see Betancourt v ARC NYC123 William, LLC*, 232 AD3d 459, 459 [1st Dept 2024]; *Polanco*, 172 AD3d at 602; *Pomahac v TrizecHahn 1065 Ave. of Ams., LLC*, 65 AD3d 462, 464 [1st Dept 2009]).

Under these principles, defendants have met their prima facie burden (*see Betancourt*, 232 AD3d at 459; *Price v BFP Tower C Co., LLC*, 216 AD3d 681, 682-683 [2d Dept 2023]).

Defendants have demonstrated that they did not affirmatively create the condition that led to plaintiff's accident (*compare DiVetri v ABM Janitorial Serv., Inc.*, 119 AD3d 486, 487 [1st Dept 2014] [defendant failed to take any action to prevent water used to hose down the sidewalk from being tracked into the lobby]; *Munoz v Uptown Paradise T.P. LLC*, 69 AD3d 401, 402 [1st Dept 2010] [testimony showed the defendants may have created the wet condition on the floor by shaking flowers to remove excess water]). Similarly, defendants have demonstrated that they lacked actual or constructive notice of the condition (*see Dan*, 227 AD3d at 496). There were no prior incidents of persons slipping on the revolving door floor on the day of the accident (NYSCEF Doc No. 31 at 39 and 80), and a search of Hilton's records yielded no prior reported incidents or complaints of persons having slipped within the revolving door (NYSCEF Doc No. 17, ¶ 12).

Defendants also took reasonable measures to address rainwater tracked into the Premises by laying down mats and assigning staff to periodically inspect and mop the floor beneath the revolving door (*see Betancourt*, 232 AD3d at 459; *Price*, 216 AD3d at 682-683 [defendants "'took reasonable precautions to remedy the wet condition on [the] premises caused by the rain"' by periodically mopping of the floor under the revolving door where the plaintiff slipped] [citation omitted]; *Lee v Alma Realty Corp.*, 146 AD3d 471, 472 [1st Dept 2017] [doormat in vestibule for visitors to wipe their feet a reasonable measure]; *Sook Ja Lee v Yi Mei Bakery Corp.*, 305 AD2d 579, 579 [2d Dept 2003] [rubberized mats on the street- and lobby-sides of the door and mopping as necessary were reasonable precautions]). Defendants have produced evidence of a "reasonable cleaning routine" employed during periods of inclement weather (*Kelly v Roza 14W LLC*, 153 AD3d 1187, 1188 [1st Dept 2017]), which, Mensah attested, included inspecting the revolving door area every 15 to 20 minutes and mopping wet areas (NYSCEF Doc No. 19, ¶ 3). Although Mensah could not specifically recall working on the date of the accident, Polanco testified that he

observed a housekeeper dry-mop the revolving door floor twice that morning and that the same housekeeper dry-mopped the floor half an hour before the accident (NYSCEF Doc No. 31 at 50). Polanco also testified that mats had been placed directly in front of either side of the revolving door (*id.* at 55).

Plaintiffs, in opposition, argue that defendants had actual and constructive notice of a recurring wet condition based on Polanco's testimony that the floor beneath the revolving door always becomes wet in rainy weather (NYSCEF Doc No. 63, plaintiffs mem of law at 6 and 9). Specifically, when asked to describe the condition of the revolving door floor when housekeeping was last present, Polanco responded, "[t]he same way it was, wet" (NYSCEF Doc No. 31 at 69; NYSCEF Doc No. 84, defendants 1/16/2024 letter, exhibit 1, oral argument 11/28/2023 tr at 33-34). Such testimony, however, is insufficient to raise an issue of material fact on whether defendants had actual notice of the specific condition that caused plaintiff to slip, as Polanco did not state that the floor remained wet after housekeeping mopped the area (NYSCEF Doc No. 84 at 41). On constructive notice, the testimony establishes only a general awareness on defendants' part that the revolving door floor can become wet in rainy weather, and "a 'general awareness' that a dangerous condition may be present is legally insufficient to constitute notice of the particular condition that caused plaintiff's fall" (*Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969 [1994]; *Barreto v 750 Third Owner, LLC*, 194 AD3d 441, 442 [1st Dept 2021] [general awareness the floor could become wet in inclement weather insufficient to raise an issue on notice]). Indeed, "the fact that it had been raining for several hours before the accident does not, alone, establish an issue of fact as to whether defendants had constructive notice" (*Manderson v Phipps Houses Servs., Inc.*, 173 AD3d 459, 460 [1st Dept 2019]; *Garcia v Delgado Travel Agency*, 4 AD3d 204, 204 [1st Dept 2004] ["[t]he fact that it was raining and water was being tracked in

does not constitute notice of a dangerous situation”]), since it is “quite possible that any water on the floor had been tracked into the building by individuals immediately preceding plaintiff” (*Keum Choi v Olympia & York Water St. Co.*, 278 AD2d 106, 107 [1st Dept 2000]).

Moreover, whether defendants had notice of an allegedly wet condition caused by tracked-in rainwater, “[t]he issue is ... whether they took reasonable precautions to remedy that condition” (*Toner v National R.R. Passenger Corp.*, 71 AD3d 454, 455-456 [1st Dept 2010] [McGuire, J., concurring]). As explained above, defendants took reasonable protective measures to address the tracked-in rainwater, including dry-mopping 30 minutes before the accident (*see Radosta v Schechter*, 171 AD3d 1112, 1114 [2d Dept 2019] [granting summary judgment where an employee had dry-mopped the floor 15 to 25 minutes before the plaintiff slipped on rainwater that had accumulated near the store’s front entrance]). Contrary to plaintiffs’ contention, defendants were not required to produce written logs of its cleaning activities (*see Hartley v Burnside Hous. Dev. Fund Corp.*, 209 AD3d 608, 609 [1st Dept 2022]), and plaintiffs have offered no evidence to rebut Polanco’s testimony that staff had last dry mopped the floor 30 minutes before the accident. And while Polanco testified that when it rained on prior occasions, housekeeping may remain stationed at the revolving door until it ceased raining, “where the internal guideline or policy requires a standard that transcends the standard required by the duty of reasonable care, a defendant’s breach of the guideline or policy cannot be considered evidence of negligence” (*Pomahac*, 65 AD3d at 465). In this case, defendants were not “required to patrol [the revolving door area] 24 hours a day” (*Love v New York City Hous. Auth.*, 82 AD3d 588, 588 [1st Dept 2011], citing *Berger v ISK Manhattan, Inc.*, 10 AD3d 510, 512-513 [1st Dept 2004]). Nor were defendants obligated to cover the entire floor with mats (*see Mareneck v Bohemian Brethern Presbyt. Church*, 201 AD3d 471, 472 [1st Dept 2022]) or “continuously mop up all tracked in water” (*Gonzalez-Jarrin v New York*

City Dept. of Educ., 50 AD3d 334, 335 [1st Dept 2008]). Thus, plaintiffs have failed to raise a triable issue of fact by showing that defendants routinely failed to address a recurring wet condition at the Premises (*compare Nieves v BHV IV, LLC*, 191 AD3d 608, 608 [1st Dept 2021] [conflicting testimony whether at stairwell landing always became wet when it rained and whether prior complaints had been made about it sufficient to raise a triable issue of fact]).

Plaintiffs also argue that defendants created a recurring wet condition by allowing the stationary, rubber-backed mat in front of the revolving door to become saturated with rainwater, thereby causing visitors traversing over the mat to track the rainwater that had accumulated on the mat onto the revolving door floor (NYSCEF Doc No. 84 at 48; NYSCEF Doc No. 77, plaintiffs 1/12/2024 letter at 1-2). This argument is unpersuasive (*see Kokin v Key Food Supermarket, Inc.*, 90 AD3d 850, 851 [2d Dept 2011] [rejecting the contention that routine watering of vegetables, which resulted in a wet condition in the produce aisle of a store, raised a triable issue on notice]). Plaintiffs have failed to point to specific evidence in the record to show that defendants were aware that the mat always became saturated with tracked-in rainwater so as to reasonably infer that they created the specific recurring wet condition on the floor beneath the revolving door which caused plaintiff to slip (*see Arrufat v City of New York*, 45 AD3d 710, 710 [2d Dept 2007] [“the plaintiff failed to show by specific factual references that the defendants had knowledge of a specific recurring condition”]). Furthermore, Fein’s opinion on the mat’s alleged inadequacy to absorb tracked-in rainwater, discussed *infra*, is conclusory. The proof adduced thus far establishes only defendants’ general awareness that the revolving door floor may become wet in rainy weather, not that the mat always became over-saturated with moisture in inclement weather. Additionally, in light of defendants’ proof of a regular inspection and cleaning schedule and testimony that a housekeeper had twice mopped the floor before the accident, plaintiffs have failed to present any

evidence demonstrating that defendants routinely failed to address or remedy a specific recurring condition (*see Manderson*, 173 AD3d at 460)).

Fein's expert affidavit is insufficient to raise a triable issue of fact. First, Fein opined that the mat "was of a type normally used for commercial premises" and that "[u]nder normal usage, this mat should be adequate to absorb water from persons entering the premises and to allow them to dry their feet to some degree so that water would not be tracking continuously into the revolving door" (NYSCEF Doc No. 61, ¶ 5). Fein then expressed:

"[t]he sheer number of patrons crossing that area [on the date of the accident] would have overwhelmed the ability of the mat with its rubber undersurface to absorb the water and prevent water from being tracked into the revolving door. The mat is not designed or manufactured to handle that volume of pedestrian traffic. Under those conditions, it could not function adequately. Water would be tracked with certainty into the revolving door area and onto the floor surface of the lobby"

(*id.*, ¶ 6). Fein's opinion on the adequacy of the mat's ability to absorb tracked-in rainwater during periods of heavy foot traffic is entirely speculative and conclusory and is not supported by any specific scientific evidence (*see Camacho v City of New York*, 135 AD3d 482, 483 [1st Dept 2016] [expert's speculative and conclusory affidavit insufficient to raise a triable issue]). Notably, it also was not raining when Fein conducted his inspection (NYSCEF Doc No. 61, ¶ 3; oral argument 2/14/2024 tr at 6).

Second, Fein opined that the floor beneath the revolving door is a "consistent smooth surface" that "is slippery and dangerous when it becomes wet" based on an "extremely low coefficient of friction" (NYSCEF Doc No. 61, ¶¶ 9 and 13). Fein's conclusion that the floor is slippery when wet, however, "is not supported by any empirical data obtained by scientific analysis" (*Friberg v City of New York*, 193 AD3d 451, 452 [1st Dept 2021]; *Silber v Sullivan Props., L.P.*, 182 AD3d 512, 513 [1st Dept 2020] [expert failed to furnish measurements of the

coefficient of friction “to show that the combination of the rainwater and marble surface was a hazardous condition”]; *Clarke v Verizon N.Y., Inc.*, 138 AD3d 505, 506 [1st Dept 2016], *lv denied* 28 NY3d 906 [2016] [no scientific data to support conclusion that the ramp was slippery]; *Pomahac*, 65 AD3d at 466 [expert failed to show that, when measuring the coefficient of friction, the lobby floor was in the same condition as on the day of the accident]). Moreover, “the mere fact that a floor or walkway becomes slippery when wet does not establish a dangerous condition” (*Van Duser v Mount St. Mary Coll.*, 176 AD3d 1532, 1533 [3d Dept 2019] [citation omitted]).

Fein also concluded that defendants should have cordoned off and closed the revolving door, used a wet vacuum on the mat, or placed warning signs at the door. Fein, though, failed to cite any relevant engineering principles or generally accepted industry-wide safety standards in support of this opinion (*see Velocci v Stop & Shop*, 188 AD3d 436, 439 [1st Dept 2020]; *Warshak v City of New York*, 200 AD3d 548, 549 [1st Dept 2021]; *Jones v City of New York*, 32 AD3d 706, 707 [1st Dept 2006] [reasoning that plaintiff’s expert failed to cite any support of his opinion “either in the form of a published industry or professional standard or in the form of evidence that such a practice had been generally accepted in the relevant industry”]). Last, Fein opined that defendants should have stationed staff at the revolving door “to monitor the situation and to be ready to close the door at any time” (NYSCEF Doc No. 61, ¶ 35), but, as stated earlier, defendants were not required to continuously patrol or monitor the revolving door (*see Love*, 82 AD3d at 588).

The cases cited by plaintiffs are distinguishable. For instance, in *Braendgaard v KSSNY Inc.* (198 AD3d 508, 508 [1st Dept 2021], *affg* 2020 NY Slip Op 32815[U] [Sup Ct, NY County 2020]), summary judgment was properly denied where the defendants failed to establish their lack of constructive notice of a wet floor caused by tracked-in precipitation and failed to take any precautions to remedy the recurring dangerous condition. The plaintiff in *Geranimo v Hanoz*

Realty, Ltd. (221 AD3d 564, 565 [1st Dept 2023]) slipped on melting snow tracked into the premises from snow the defendant's superintendent had piled outside the premises, which another tenant had indicated was an ongoing problem; the Court concluded that the defendant had failed to offer any evidence of its cleaning routine on the date of the accident. And in *Rodriguez v Kwik Realty, LLC* (216 AD3d 477, 478 [1st Dept 2023]), the plaintiff slipped in a building vestibule on water which presumably originated from tracked-in precipitation from a snowstorm that took place one day earlier. The plaintiff claimed that the accident was caused by the "placement of an unreasonably short anti-slip floor mat on known, wet glossy tiles on a newly laid floor" (*id.* at 479). The Court concluded that the defendants failed to meet their prima facie burden by failing to tender evidence of when the vestibule was last inspected before the accident (*id.* at 478). The evidence showed that plaintiff's superintendent was aware of the hazardous condition given that the superintendent had attempted to address the condition "with a mat and caution sign" (*id.*). The Court reasoned that there were issues of fact as to whether these precautions "were reasonable under the circumstances" (*id.*). Here, by contrast, defendants have offered specific evidence of its cleaning routine on the day the accident, and plaintiff has not demonstrated that they were aware of the specific hazardous condition on the revolving door floor prior to plaintiff's accident.

Accordingly, it is

ORDERED that the motion of defendants New York Lessee LLC and Hilton Management LLC for summary judgment dismissing the complaint is granted, and the complaint is dismissed with costs and disbursements as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

1/24/2025

DATE

SHLOMO S. HAGLER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE