SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

----------X

HIGINIO HAGO,

Plaintiff,

-against-

82 ASSOCIATES LLC, JONES LANG LASALLE OF NEW YORK, LLC, JONES LANG LASALLE-NORTHEAST, INC and JONES LANG LASALLE AMERICAS, INC.,

Defendants.

----------X

82 ASSOCIATES LLC,

Third-Party Plaintiff,

-against-

CAPITAL ONE, N.A., Successor to NORTH FORK BANK,

Third-Party Defendant.

----------X

JONES LANG LASALLE AMERICAS, INC.,

Second Third-Party Plaintiff,

-against-

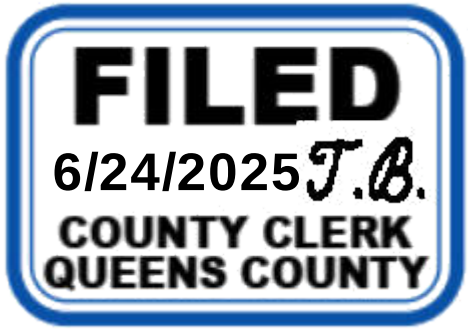
CAPITAL ONE, NATIONAL ASSOCIATION,

Second Third-Party Defendant.

----------X

Index No.: 701065/2020
Motion Seq. No.: 2, 3 and 4

AMENDED DECISION and ORDER



Present: **HONORABLE ULYSSES B. LEVERETT**

	Papers Numbered
Third-Party Defendant's Notice of Motion (Seq. 2)-Affirmation-Statement of Material Facts-Exhibits	EF 103-117
Defendant 82 Associates LLC Affirmation in Opposition-Statement of Material Facts-Exhibits	EF 119-130
Defendant Jones Lang Lasalle Americas, Inc.'s Affirmation in Opposition-Exhibits	EF 191-210
Third-Party Defendant's Affirmation in Reply	EF 259
Third-Party Defendant's Affirmation in Reply	EF 260-261
Defendant Jones Lang Lasalle Americas, Inc.'s Notice of Motion (Seq. 3)-	

Statement of Material Facts-Affirmation-Exhibits	EF 132-177
Plaintiff's Affirmation in Opposition-Statement of Material Facts-Exhibits	EF 213-229
Defendant 82 Associates LLC's Affirmation in Opposition	EF 248
Third-Party Defendant's Affirmation in Opposition-Exhibit-Response Statement of Material Facts	EF 249-251
Jones Lang Laselle Americas Inc.'s Affirmation in Reply	EF 258
Defendant 82 Associates LLC's Notice of Motion (Seq. 4)-Affirmation-Statement of Material-Exhibits	EF 230-246
Jones Lang Lasalle Americas, Inc.'s Affirmation in Opposition-Exhibits	EF 247
Third-Party Defendant's Affirmation in Opposition-Exhibit-Response Statement of Material Facts	EF 252-254
82 Associates Affirmation in Reply-Exhibit	EF 255-256
82 Associates Affirmation in Reply	EF 257

Upon the foregoing papers and after oral argument, the decision on Third-Party Defendant Capital One, N.A. Successor to North Fork Bank (Capital One) motion (Seq. 2) for summary judgment dismissing plaintiff's complaint and all cross claims pursuant to CPLR 3212, Defendant Jones Lang Lasalle Americas, Inc.'s (JLL) motion (Seq. 3) granting Jones Lang Lasalle Americas, Inc. summary judgment and dismissal of all claims, cross-claims, and counterclaims asserted against Jones Lang Lasalle Americas, Inc. and conditional summary judgment in its favor on its' third-party claims against Capital One for contractual indemnification, and Defendant 82 Associates LLC's (82 Associates) (Seq. 4) for an Order pursuant to CPLR §3212 granting Defendant 82 Associates LLC summary judgment against the plaintiff and dismissal of all claims, cross-claims, and counterclaims asserted against Defendant 82 Associates LLC and summary judgment in its favor on its' third-party claims against Capital One for contractual indemnification is decided as follows:

The action before the Court is one to recover for personal injuries that Plaintiff allegedly sustained on September 23, 2019, while as an employee of Third-Party Defendant Capital One he slipped and fell due water droplets in basement floor of the Capital One branch where he worked, located at 37-02 82nd Street, Jackson Heights, New York (hereinafter "subject premises" and/or "subject location") sustaining personal injuries.

Defendant/Third-Party Plaintiff, 82 Associates was and is the owner of the subject premises. Capital One is a tenant at 37-02 82nd Street, Jackson Heights, New York, pursuant to a Lease Agreement. Defendant/second Third-Party Plaintiff, JLL, was and is the facilities management company retained by Capital One pursuant to a Master Services Agreement.

Plaintiff as per their Bill of Particulars alleges that he slipped and fell in the basement of the premises 37-02 82nd Street, Jackson Heights, New York, due to water or other wet substance that was caused, permitted and allowed to become and remained at the aforesaid location. It is claimed that Defendant 82 Associates was negligent in permitting and/or allowing the water or other wet substance to become and remain at the aforesaid location and that they had actual and constructive notice. It is claimed that JLL was negligent in permitting and/or allowing the water or other wet substance to become and remain at the aforesaid location; in causing permitting and/or allowing leaks and/or other plumbing problems to be, become and remain; in causing, creating and/or permitting a trip and/or slipping hazard at said location.

82 Associates and JLL commenced third-party actions against Capital One for contribution, contractual indemnity/contribution and breach of contract to procure liability insurance alleging that Capital One is responsible to maintain its space in a clean and safe manner to avoid any dangers.

Plaintiff's deposition testimony was that as part of his morning sweep, he went down the stairs to the lower level/basement of the bank and walked toward the lunchroom. He did not observe water on the floor and/or have difficulty walking in the subject area. After the plaintiff completed his morning sweep of the basement and as he was returning to the main level, his left foot slipped on droplets of water on the floor and he fell. Plaintiff testified that he believed that the water had come from the drain in the basement. Plaintiff admitted that he did not see water coming from the drain and did not know where the water came from or when the water spilled to the ground. The plaintiff referred to a past flood in a different location resulting from the roof and another incident which involved water backup subsequent to his accident resulting from heavy rain.

"Owners and lessees are under a duty to maintain their property 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." *Matter of New York City Asbestos Litig.*, 27 N.Y.3d 765 (2016). For a defendant charged with maintaining a property "to be liable in tort to a plaintiff who is injured as a result of an allegedly defective condition upon the property, it must be established that the defendant created the condition or had actual or constructive notice of its existence." *Marazita v. City of New York*, 202 A.D.3d 951 (2d Dep't 2022). "A defendant has constructive notice of a defect when the defect is visible and apparent, and existed for a sufficient length of time before the accident that it could have been discovered and corrected. In addition, a defendant who has actual knowledge of a particular ongoing and recurring hazardous condition may be charged with constructive notice of each specific reoccurrence of that condition." *Toussaint v. Ocean Ave. Apt. Assoc., LLC*, 144 A.D.3d 664 (2d Dep't 2016). A defendant will be deemed to have constructive notice where there is evidence of an ongoing and recurring dangerous condition that existed in the area of the accident which was routinely left unaddressed." *Mauge v. Barrow St. Ale House*, 70 A.D.3d 1016, (2d Dep't 2010). However, a general awareness that a dangerous condition may be present is legally insufficient to constitute notice of the specific condition that caused the plaintiff's fall. *Piacquadio v. Recine Realty Copr.*, 84 N.Y.2d 967 (1994). Mere notice of a general or unrelated problem is not enough; the particular defect that caused the damage must have been apparent. *Id.*

Defendant 82 Associates argues that the tenant, Capital One was responsible for maintenance within its premises. They argue that it is Capital One's obligation to report any issues with the drain to JLL. If JLL as management determines that it is an issue related to a drain back up or a broken pipe, the landlord is to be notified. They did not receive a report through the Corrigo system used by JLL, the day of the accident nor the day before the accident.

82 Associates further argues that there is no evidence that the water on the floor where plaintiff slipped on the date of the accident was caused by a recurring condition, being a back-up from the floor drain. Defendant refers to pages 97 and 98 of the Plaintiff's deposition testimony where the Plaintiff admitted that there was no water coming up from the drain and did not see any water coming up from the drain either before his accident or after he fell. *See* NYSCEF Doc. 184, p. 97-98.

Defendant JLL cites Catlyn v. Hotel & 33 Company, 230 A.D.2d 655 (1st Dep't 1996) and argues that Plaintiff must show that the Defendant created the dangerous condition or had either

actual or constructive notice of the dangerous condition and where a Plaintiff cannot establish that the Defendant created a dangerous condition it is improper for a jury to speculate alleged negligence. Defendant argues that there was no submitted evidence that reveals that the plaintiff or any other individual complained to JLL about water on the basement floor before the alleged accident.

They further argue that Plaintiff's opposition is based upon the "assumed" fact that the water came from the floor drain in the basement and that there is no evidence that's where the water came from on the day of the accident, which they argue is further proven by plaintiff's testimony. *See* NYSCEF Doc. 145 p. 33-34, 97-98. JLL argues that Plaintiff has to show that his fall was caused by the specific recurrence of a recurring dangerous condition, about which Defendants had actual notice. *See Fay v. Bass Hotels & Resorts, Inc.*, No. 00 CIV. 9107 (MBM), 2003 WL 21738967, (S.D.N.Y. July 28, 2003).

Plaintiff at Exhibit M attached copies of the Service and repair records, in support of their opposition that Defendants/Third-Party Plaintiffs failed to provide evidence of when they last inspected or cleaned or whether they lacked notice of a dangerous recurring condition.

Plaintiff in opposition argues that a possessor or owner of land has a continuing duty to exercise reasonable care to maintain its property under the circumstances. Plaintiff cites to *Basso v. Miller*, 40 N.Y.2d 233 (1976) and *Birnbaum v. N.Y. Racing Assn. Inc.*, 57 A.D.3d 598 (2d Dep't 2008) to support the allegations that Defendants have the initial burden of proving that they didn't create the hazardous condition or notice of its existence for a length of time and that they need to prove when they last inspected or cleaned the area.

Plaintiff argues that the cause of the water on the floor is of no importance in establishing that Defendants had notice of a recurring condition. The testimony provided by Cathy Ardolina on behalf of JLL was that when there was water coming out of the floor drain, Capital One was to put in a work order with JLL for 82 Associates to repair. The Court of Appeals and Second Department cases that the Plaintiff cites are distinguishable from the subject incident as they refer to a defendant in possession of the premises failing to show when they last inspected or cleaned the area. Defendants 82 Associates and JLL assert that they did not have possession or unrestricted access of the premises that would allow them to inspect or repair the drain and that Plaintiff has failed to prove what definitively caused his accident.

This Court also takes note of the testimony by Thomas Krahn of Vision Enterprises who testified on behalf of 82 Associates. Mr. Krahn testified that physically speaking, the City of New York was responsible for the flooding conditions as it usually occurred due to a back up from the City storm sewers.

Here, as the plaintiff noted in opposition to the motions for summary judgment, the defendants submitted deposition testimony establishing that they were aware that water would flow from the drain. However, 82 Associates and JLL's general awareness of this recurring condition is insufficient to establish their constructive notice of the alleged water on the basement floor that allegedly caused the Plaintiff to fall. *Solazzo v. New York City Tr. Auth.*, 6 N.Y.3d 734 (2005). Plaintiff's assertion that he fell on droplets of water, but inability to attribute those droplets to the condition of the drain does not equate the immediate constructive notice necessary to maintain a cause of action. It has not been disputed that the Defendants were aware of the flooding condition from the drain pipe, however even with the Court viewing the evidence in the light most favorable to

the Plaintiff there is no proof they were aware of the alleged condition on September 23, 2019 much less that the droplets Plaintiff testified to came from the drain pipe.

In the instant case, plaintiff was unable to testify that he observed any water in the area he was walking in, before he fell. Further, there was no evidence that the condition existed for a sufficient length of time prior to the accident. The inability to make the required showing "creates the possibility that the condition may have emanated only moments before the accident, through no fault or with no knowledge of the defendant, any other conclusion being pure speculation." *Grier v. Macy & Co.*, 173 A.D.2d 238 (1st Dep't 1991).

Accordingly, the Plaintiff failed to raise any issue of fact as to whether Defendants/Third-Party Plaintiffs had notice of the condition which allegedly caused plaintiff's fall and Plaintiff failed to establish, in opposition that the source of the water at issue was the drain system and that the Defendants had immediate notice of it. The motions for summary judgement to dismiss the Complaint filed by 82 Associates LLC (Seq. 4) and Jones Lang Lasalle Americas, Inc. (Seq. 3) are granted. The arguments as to contribution, contractual indemnity/contribution and breach of contract are not addressed. Additionally, the motion by Capital One, N.A. for summary judgement dismissing the Third-Party Complaint (Seq. 2) is denied as moot as there is no proof of where the alleged dangerous condition came from nor who was responsible for it.

Defendant/Third-Party Plaintiff 82 Associates is to serve a copy of this decision and order on all parties within 15 days of entry.

This is the decision and order of this Court.

Dated: June 11, 2025

Hon. Ulysses B. Leverett, J.S.C.

HON. ULYSSES B. LEVERETT

FILED
6/24/2025 T.B.
COUNTY CLERK
QUEENS COUNTY