Gashi-Baraliu v City of New York
2025 NY Slip Op 34295(U)
November 13, 2025
Supreme Court, New York County
Docket Number: Index No. 157772/2015
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** — ***Justice*** **PART** **11M**

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ELEONORA GASHI-BARALIU, BLERON BARALIU,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, TEMCO SERVICE INDUSTRIES, INC.

Defendant.

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INDEX NO. 157772/2015

MOTION DATE 08/01/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, following oral argument and for the reasons set forth below the City's motion for summary judgment is granted.

The instant action arises out of personal injuries allegedly sustained by plaintiff, when she slipped and fell on water while descending stairs inside P.S. 290 Manhattan New School on April 30, 2014. Plaintiff entered the school building after accompanying her daughter on a school trip.

Defendants, the City of New York and the New York City Department of Education, The Board of Education of the City of New York and Temco Service Industries Inc. (collectively "defendants") seek summary judgment arguing that there was a storm in progress, it did not have actual or constructive notice of the alleged condition and there is no proof that it caused or created the condition. Plaintiff opposes the motion alleging that there is a question of fact as to whether defendants caused and created the condition, had actual notice of the same and that the stairway violated building codes.

Standard of Review

It is a well-established principle that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]. As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320, 501 [1986]; *Winegrad v New York University Medical Center*, 64 NY 2d 851 [1985]. Courts have also recognized that summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted.

Absent proof that a defendant actually created the dangerous condition or, had actual or constructive notice of the same, there can be no liability on a claim for premises liability (*Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969 [1994]; *Bogart v F.W. Woolworth Company*, 24 NY2d 936, 937, [1969]; *Armstrong v Ogden Allied Facility Management Corporation*, 281 AD2d 317 [1st Dept 2001]; *Wasserstrom v New York City Transit Authority*, 267 AD2d 36, 37 [1st Dept 1999]; *Allen v Pearson Publishing*, 256 AD2d 528, 529 [2d Dept 1998]; *Kraemer v K-Mart Corporation*, 226 AD2d 590 [2d Dept 1996]).

A defendant is charged with having constructive notice of a defective condition when the condition is visible, apparent, and exists for a sufficient length of time prior to the happening of an accident to permit the defendant to discover and remedy the same (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]). The notice required must be more than general notice of any defective condition (*id.* at 838; *Piacquadio* at 969). Instead, notice of the specific condition alleged at the specific location alleged is required and, thus, a general awareness

that a dangerous condition may have existed, is insufficient to constitute notice of the particular condition alleged to have caused an accident (*Piacquadio* at 969). The absence of evidence demonstrating how long a condition existed prior to a plaintiff's accident constitutes a failure to establish the existence of constructive notice as a matter of law (*Anderson v Central Valley Realty Co.*, 300 AD2d 422, 423 [2d Dept. 2002]. *lv denied* 99 NY2d 509 [2008]; *McDuffie v Fleet Fin. Group*, 269 AD2d 575 [2000]). Alternatively, a defendant may be charged with constructive notice of a hazardous condition if it is proven that the condition is one that recurs and about which the defendant has actual notice (*Chianese v Meier*, 98 NY2d 270, 278 [2002]; *Uhlich v Canada Dry Bottling Co. Of NY*, 305 AD2d 107 [2003]). If such facts are proven, the defendant can then be charged with constructive notice of the condition's recurrence (*id.; Anderson* at 422).

Generally, on a motion for summary judgment a defendant establishes prima facie entitlement to summary judgment when the evidence establishes the absence of actual or constructive notice (*Hughes v Carrols Corporation*, 248 AD2d 923, 924 [3d Dept 1998]; *Edwards v Wal-Mart Stores, Inc.*, 243 AD2d 803 [3d Dept 1997]; *Richardson-Dorn v. Golub Corporation*, 252 AD2d 790 [3d Dept 1998]). If defendant meets its burden it is then incumbent on plaintiff to tender evidence indicating that defendant had actual or constructive notice (*Strowman v Great Atlantic and Pacific Tea Company, Inc.*, 252 AD2d 384, 385 [1st Dept 1998]).

Discussion

In support of its motion, defendants cite to plaintiff's testimony to establish that the wet condition that caused her to slip was tracked in water from the rain as the students entered the building from their field trip.

Plaintiff opposes the motion alleging that a material issue of fact exists because defendants should have known of the condition and prevented the condition because the children were on a

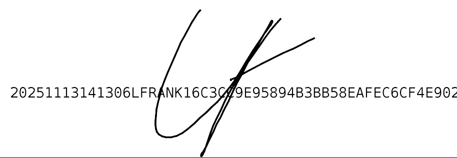
field trip on a rainy day. Further, plaintiff argues that an issue exists regarding the alleged spoliation of a video of plaintiff's fall as well as whether the stairs were in violation of applicable building codes.

The Court finds plaintiff's arguments unavailing. First, the law is well established that defendants do not have an "obligation to provide a constant remedy to the problem of water being tracked into a building in rainy weather" (*Gibbs v Port Auth. of NY*, 17 AD3d 252, 255 [1st Dept 2005]). The testimony is undisputed that while plaintiff noticed water dripping off umbrellas and jackets. Plaintiff then returned to the stairs minutes later and noticed the wet condition and testified that other than the stairs being slippery there were no other defects on the stairs or handrails.

The Court does not reach the expert affidavits or the purported issued of building code violations as the testimony of the plaintiff establishes the cause of the accident, a slip and fall on rainwater tracked into the building on a rainy day, immediately preceding plaintiff's fall. Accordingly, the Court finds that defendants have established its *prima facie* entitlement to judgment as a matter of law and plaintiff has failed to raise a triable issue of fact. Accordingly, it is hereby

ORDERED that defendants' motion for summary judgment is granted and the complaint is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.



11/13/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:	[X] **CASE DISPOSED**		[ ] **NON-FINAL DISPOSITION**	
	[X] **GRANTED**	[ ] **DENIED**	[ ] **GRANTED IN PART**	[ ] **OTHER**
APPLICATION:	[ ] **SETTLE ORDER**		[ ] **SUBMIT ORDER**	
CHECK IF APPROPRIATE:	[ ] **INCLUDES TRANSFER/REASSIGN**		[ ] **FIDUCIARY APPOINTMENT**	[ ] **REFERENCE**