At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 15th day of December, 2025.

P R E S E N T: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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CRYSTAL JONES,

Plaintiff,

-against-

BOWL 360, INC. and AMERICANA PROPERTIES, INC.,

Defendants.

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Index No.: 523308/2021
**DECISION AND ORDER**
(Mot. Seq. No. 2)

| The following e-filed papers read herein: | NYSCEF Doc Nos. |
|---|---|
| **Motion Seq No. 6** | |
| Notice of Motion/Affirmation in Support/Statement of Material Facts/Exhibits | 37 – 51 |
| Affirmation in Opposition/Statement of Material Facts/Exhibits | 55 – 64 |
| Reply Affirmation | 66 |

Plaintiff Crystal Jones ("Plaintiff") commenced this action seeking damages for personal injuries allegedly sustained on April 18, 2021, when she slipped and fell on an alleged wet substance at a bowling alley located at 98-18 Rockaway Boulevard in Ozone Park, New York (the "Premises"). Specifically, Plaintiff asserts that she had taken four turns bowling in one lane before she slipped on the approach during her first game in a second lane. The bowling alley was operated by Defendant Bowl 360 Inc. ("Bowl 360"), which, as a tenant, leased the Premises from Defendant Americana Properties, Inc. ("Americana") (collectively, "Defendants").

Defendants now move for an order, pursuant to CPLR 3212, granting them summary judgment on the issue of liability and dismissing this action with prejudice (Mot. Seq. No. 2). Plaintiff opposes the motion.

In their motion, Defendant asserts that there are no triable issues of fact as to whether they created, or had notice of, the alleged dangerous condition. In support, Defendants assert that neither

Plaintiff nor her husband Samyr Cajoux ("Cajoux") ever saw a Bowl 360 (a) server walk over the approach[1] with any food or drink or (b) employee walk over the specific area where Plaintiff allegedly slipped. Defendants argue that they had no actual notice of the alleged liquid substance since there is no testimony that Plaintiff or Cajoux informed a Bowl 360 employee of a liquid substance before she fell. Defendants further assert that they did not have constructive notice. Plaintiff testified that she had taken four turns before her fall and Cajoux testified that the accident occurred an hour after they arrived. During this time, neither of them noticed anything on the ground. Defendants also note that Plaintiff was unable to state what the substance on the floor was. Therefore, Defendants argue that Plaintiff's failure to identify the specific substance or where it came from is fatal to her claims.

In opposition, Plaintiff argues that Defendants' motion should be denied because (1) they did not meet their prima facie burden and (2) there are multiple issues of fact. First, Plaintiffs contend that Defendants failed to establish that they did not have constructive notice. According to Plaintiff, Mr. Mohabir only testified to generalities regarding cleaning and inspecting the subject area. Plaintiff avers that Defendants do not have records documenting the last time when the area was cleaned prior to Plaintiff's fall. Second, Plaintiff asserts that there are issues of fact, such as whether the lighting was too dark,[2] who created the condition, and how long the condition went undetected.

In their reply, Defendant argues that even if the bowling alley was darker than the photos shown at Plaintiff and her husband's deposition, Plaintiff inherently assumed the risk of a recreational activity. Moreover, Defendants assert that the lighting in the Premises was sufficient to notice any type of water on the ground. Defendants further note that neither Plaintiff nor anyone in her group complained about the lighting conditions. Defendants also asserts that the condition was mere feet from where Plaintiff had been bowling for at least an hour. In addition, Defendants maintain that they did not have constructive notice because the condition could not have existed

[1] Per the deposition testimony of 360 Bowl's owner, Dhandeo Mohabir, the approach is the area before the lane starts and consists of wood flooring (Mohabir tr at 24, lines 7-12).
[2] Plaintiff states that her accident occurred during "glow bowling" with LED strips on the lanes and moving strobe lights to give a lighting effect. At the time, there were also black curtain barriers on either side of the lanes because of COVID. Accordingly, Plaintiff asserts that the intentionally dim and shifting lighting conditions, together with the COVID barriers, resulted in her not being able to see hazards on the approach (NSYCEF Doc No. 55, ¶¶ 23-26).

for a sufficient length of time to notice any type of water. In support, Defendants state that Plaintiff's entire group failed to perceive the alleged condition for one whole game of bowling.

"Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues of material fact'" (*Kolivas v Kirchoff*, 14 AD3d 493, 493 [2d Dept 2005], citing *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]; *see Sucre v Consolidated Edison Co. of N.Y., Inc.*, 184 AD3d 712, 714 [2d Dept 2020]). "The proponent for the summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact" (*Sanchez v Ageless Chimney Inc.*, 219 AD3d 767, 768 [2d Dept 2023], citing *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

When a defendant is moving for summary judgment, it must establish that it "maintained the subject property in a reasonably safe condition and that it neither created the alleged dangerous condition nor had actual or constructive notice thereof" (*McGee v New York City Hous. Auth.*, 122 AD3d 695, 696 [2d Dept 2014] [internal citation omitted]). Constructive notice is established if the defect (1) is visible and apparent and (2) existed for a sufficient length of time before the accident to allow the defendant to discover and remedy it (*Gordon v Am. Museum of Nat. Hist.*, 67 NY2d 836, 837 [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 NY Racing Assn., Inc.*, 57 AD3d 598, 598-599 [2d Dept 2008]). Mere testimony of general practices is insufficient to establish lack of constructive notice (*see Buffalino v XSport Fitness*, 202 AD3d 902, 903 [2d Dept 2022]; *Goodyear v Putnam/N. Westchester Bd. of Co-op. Educ. Servs.*, 86 AD3d 551, 552 [2d Dept 2011]).

Here, Defendants essentially assert that they did not need to present evidence of their specific cleaning practices because the condition did not exist for a sufficient length of time for them to notice and remedy it. Defendants insist that Plaintiff and her party had been bowling for at least an hour and did not notice anything. It is undisputed that Plaintiff and her party had rented two lanes. Defendants ignore Plaintiff's affidavit and Cajoux's testimony where they aver that the incident occurred in the second lane, after Plaintiff and her party had bowled the first game in the first lane for about an hour (NYSCEF Doc No. 64; Cajoux tr at 19, lines 10-24; at 21, lines 11-16). Thus, Defendants' argument is unavailing. Since Defendants failed to meet their initial burden, it

is not necessary to consider the sufficiency of Plaintiff's opposition (*see Winegrad*, 64 NY2d at 853).

Accordingly, it is hereby

ORDERED, that Defendants' motion (Mot. Seq. No. 2) for summary judgment is denied.

All other issues not addressed herein are without merit or moot.

This constitutes the decision and order of the Court.

HON. INGRID JOSEPH, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice