

**Palmer v Little**

2026 NY Slip Op 31923(U)

May 11, 2026

Supreme Court, Broome County

Docket Number: Index No. EFCA2024001843

Judge: Eugene D. Faughnan

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At a Motion Term of the Supreme Court of  
the State of New York held in and for the  
Sixth Judicial District at the Broome County  
Courthouse, Binghamton, New York on  
January 23, 2026.

PRESENT: HON. EUGENE D. FAUGHNAN  
Justice Presiding

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF BROOME

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TAMARA PALMER,  
Plaintiff,

vs.

ROBERT W. LITTLE, JR. and,  
DIANE LITTLE  
Defendants.

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DECISION AND ORDER

Index No. EFCA2024001843

APPEARANCES:

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**EUGENE D. FAUGHNAN, J.S.C.**

This case involves a slip and fall injury suffered by Plaintiff Tamara Palmer (“Palmer”). It is before the Court at this time to consider the motion of Defendants Robert Little Jr. and Diane Little for summary judgment and dismissal of the Complaint. The motion has been opposed by Plaintiff. Oral argument was held and counsel for both parties were present.<sup>1</sup> After due deliberation, this Decision and Order constitutes the determination of this Court.

**BACKGROUND FACTS**

Plaintiff was working as an in-house home health aide for both Defendants, who suffer from dementia, at Defendants’ residence located at 229 Oscar Terrace, Endicott, NY. Plaintiff did light house cleaning, made sure Defendants took their medicine and did Defendants’ laundry. The laundry facilities were located in the basement of the home. On or about May 15, 2024, as Plaintiff was descending the basement stairs, she slipped and fell sustaining physical injuries, particularly to her left leg and left foot.

A Summons and Verified Complaint was filed on July 9, 2024, setting forth a cause of action against Robert W. Little, Jr. for negligence, a cause of action against Diane Little for negligence, and a cause of action against both Defendants for nuisance (NYSCEF Doc. No. 1). Defendants filed a Verified Answer with Affirmative Defenses on July 26, 2024 (NYSCEF Doc. No. 4). Plaintiff served a Verified Bill of Particulars on December 17, 2024.

The parties engaged in discovery, including Plaintiff’s deposition and the deposition of Robin Lavo, Defendants’ daughter, with both depositions taking place on June 13, 2025. After completion of discovery, Defendants filed the instant motion for summary judgment. In support of the motion, Defendants submitted an affirmation of Justin P. Harmon, dated November 10, 2025, with Exhibits, an expert affirmation from John Steele, a professional engineer, dated November 5, 2025, and a Memorandum of Law. Plaintiff filed an affirmation in opposition to the motion, and Defendants submitted a reply affirmation.

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<sup>1</sup> The Court has considered all the papers filed in support and opposition to the motion, as well as all the other documents contained in the electronic case file.

Defendants argue that they have no liability because Plaintiff has not identified anything that caused her to fall, other than the steps were “slippery”, and that Defendants had no actual or constructive notice of any alleged defect. Defendants also contend that, contrary to Plaintiff’s argument, the provisions of Multiple Dwelling Law are inapplicable. Plaintiff argues that there are triable issues of fact precluding summary judgment.

## **LEGAL DISCUSSION AND ANALYSIS**

In a slip/trip and fall case, a defendant “who moves for summary judgment has the initial burden of making a prima facie showing that it neither created the allegedly dangerous or defective condition nor had actual or constructive notice of its existence.” *Deutsch v. Green Hills (USA), LLC*, 202 AD3d 909, 910 (2<sup>nd</sup> Dept. 2022) (citations omitted); *Bovee v. Posniewski Enters., Inc.*, 206 AD3d 1112 (3<sup>rd</sup> Dept. 2022); *Godfrey v. Town of Hurley*, 68 AD3d 1527 (3<sup>rd</sup> Dept. 2009); *Mokszki v. Pratt*, 13 AD3d 709 (3<sup>rd</sup> Dept. 2004); *Clapper v. Schultz Vestal Serv. Ctr., Inc.*, 2024 NY Misc LEXIS 2942 (Sup. Ct., Broome County 2024). Additionally, a Defendant can “also demonstrate ‘entitlement to judgment as a matter of law by establishing that the plaintiff cannot identify the cause of his or her fall without engaging in speculation.’” *Farrell v. Ted’s Fish Fry, Inc.*, 196 AD3d 893, 894 (3<sup>rd</sup> Dept. 2021), quoting *Mulligan v. R&D Props. of N.Y. Inc.*, 162 AD3d 1301, 1301 (3<sup>rd</sup> Dept. 2018); *Deutsch v. Green Hills (USA), LLC*, 202 AD3d 909; *Pascucci v. MPM Real Estate, LLC*, 128 AD3d 1206 (3<sup>rd</sup> Dept. 2015); *Penovich v. Schoeck*, 252 AD2d 799 (3<sup>rd</sup> Dept. 1998). The “‘failure to prove what actually caused a plaintiff to fall in a situation where there could be other causes is fatal to a plaintiff’s cause of action.’” *Martin v. Wilson Mem’l Hosp., Inc.*, 2 AD3d 938, 939 (3<sup>rd</sup> Dept. 2003), quoting *Dapp v. Larson*, 240 AD2d 918, 919 (3<sup>rd</sup> Dept. 1997); *Henry v. Cobleskill-Richmondville Cent. Sch. Dist.*, 13 AD3d 968 (3<sup>rd</sup> Dept. 2004); see, *Chang v. Marmon Enters., Inc.*, 172 AD3d 678, 679 (2<sup>nd</sup> Dept. 2019). A “‘defendant can make its prima facie showing of entitlement to judgment as a matter of law by establishing that the plaintiff cannot identify the cause of his or her fall without engaging in speculation’” *Adzei v. Edward Bldrs., Inc.*, 221 AD3d 639, 640 (2<sup>nd</sup> Dept. 2023), quoting *Grande v. Won Hee Lee*, 171 AD3d 877, 878 (2<sup>nd</sup> Dept. 2019).

The Court concludes that Defendants have met their prima facie burden on this motion. They have submitted evidence that: 1) they did not create the hazardous condition and did not

have actual or constructive notice of the alleged defect for a sufficient length of time to discover and remedy it; 2) Mr. Steele opined that the stairs were free of defect that could have caused or contributed to Plaintiff's fall; 3) Mr. Steele also provided evidence that Defendants did not violate Sections 78, 80 or 35 of the Multiple Dwellings Law; and 4) if the fall was caused simply by "slippery stairs" that is not a defect giving rise to liability.

Where there are no serious allegations that the Defendant created the condition, the Court's consideration is centered on actual or constructive notice of the alleged dangerous condition. *See, e.g., Telesco v. Smith*, 200 AD3d 1140 (3<sup>rd</sup> Dept. 2021). "A defendant establishes that it lacked actual notice when it produces a witness who can testify that no complaints about the location were received before the accident, and there were no prior incidents in that area before the plaintiff fell" *Velocci v. Stop & Shop*, 188 AD3d 436, 439 (1<sup>st</sup> Dept. 2020) (citations omitted); *see, Cosgrove v. River Oaks Rests., LLC*, 161 AD3d 1575 (4<sup>th</sup> Dept. 2018) (Defendant did not receive any complaints and was not aware of any ice in that location); *Decker v. Schildt*, 100 AD3d 1339 (3<sup>rd</sup> Dept. 2012) (Defendant testified that he was not aware of any prior falls and he had not received any complaints about a slippery surface).

There is nothing in the record to suggest that Defendants created a dangerous condition, or did any work on the stairs, other than re-painting them about 15 years ago (Deposition of Lavo, NYSCEF Doc. No. 39 at pp. 11-12). Plaintiff had worked at the residence for about a year and had used the stairs to get the laundry on numerous occasions. (Plaintiff's Deposition, NYSCEF Doc. No. 38 at pp. 25, 28-30, 35). She had never fallen on the stairs and was not aware of anyone else falling prior to her accident. She had traversed the stairs earlier on the date of accident without incident, but she said she had "to be very cautious because I know it's slippery" (*Id.* at pp. 37, 51). She did not tell anyone that the stairs were slippery (*Id.* at p.52). There is no evidence to show that Defendants had actual notice of any defect. Further, if the alleged defect is not visible or apparent, it cannot support constructive notice. *Vasquez v. Nealco Towers, LLC*, 160 AD3d 496 (1<sup>st</sup> Dept. 2018). These facts are sufficient to show that Defendants did not create the condition, nor have actual or constructive notice.

Defendants have also provided evidence to show that the stairs were not dangerous or defective. Mr. Steele inspected the stairs on September 24, 2025, and found them to be "well-maintained, properly illuminated and free of any dangerous condition. (NYSCEF Doc. No. 41 at p.5). He also observed that "[t]he basement stairs were structurally sound, properly anchored,

and capable of supporting all nominal loads and resisting all load effects; and [t]he basement stairs exterior surfaces were maintained in good condition, protected from the elements and decay” (NYSCEF Doc. No. 41 at p.4). That report satisfied Defendants’ burden to show the stairs were not defective.

Plaintiff also alleges that Defendants violated various sections of the Multiple Dwellings Law (§35- Entrance Doors and Lights; §78- Repairs; §80- Cleanliness). However, that statute only applies to “cities with a population of three hundred twenty-five thousand or more” Multiple Dwelling Law §3(1). It is undisputed that the Village of Endicott (or the Town of Union) where this property is located, has a population far less than 325,000. There is also no evidence that either the Village or the Town has adopted the Multiple Dwelling Law. Plaintiff has not offered anything in opposition to the Defendants’ argument that the Multiple Dwelling Law is inapplicable.

Lastly, Defendants assert that there is no cause of action for falls that result from the floor (or stairs) being too slippery due to smoothness. Rather, there must be some evidence of a substance on the floor, or a recent application of wax or polish. Defendants claim that Plaintiff’s allegations are insufficient as a matter of law.

“Absent competent evidence of a defect in the surface or some deviation from an applicable industry standard, liability is not imposed for a slippery floor” *Arias v. Stonhard, Inc.*, 188 AD3d 590 (1st Dept. 2020); *see, Murphy v. Conner*, 84 NY2d 969 (1994); *Kapoor v. Randlett*, 144 AD3d 984 (2<sup>nd</sup> Dept. 2016) (testimony from plaintiff was that he did not see any foreign substance, liquids or other slippery substance on the floor before or after he fell); *Beceren v. Joan Realty, LLC*, 124 AD3d 572, 573 (2<sup>nd</sup> Dept. 2015) (“To the extent that the expert opined that the vestibule floor was inherently slippery due to its smoothness, that is not an actionable defect”); *Kalish v. HEI Hospitality, LLC*, 114 AD3d 444, 445 (1<sup>st</sup> Dept. 2014) (“In cases involving inherently smooth, and thus potentially slippery tiled or stone floors, absent competent evidence of a defect in the surface or some deviation from an applicable industry standard, no liability is imposed”); *Pechtel v. Gould*, 9 AD3d 653 (3<sup>rd</sup> Dept. 2004) (no cause of action for slipping on a stairwell without proof of a foreign substance on the floor or wax was negligently applied). In the present case, Plaintiff has not identified any dangerous condition and nothing on the stairs which caused her to fall, but only refers to the stairs being slippery. Those facts would be insufficient for a claim of negligence.

Defendants have made a prima facie case for summary judgment, so the burden is shifted to the Plaintiff to raise a triable issue of fact. Plaintiff's opposition consists only of an attorney affirmation making legal arguments, which would be more appropriate in a Memorandum of Law. In any event, Plaintiff argues that "15 years of everyday use without any maintenance *can* wear out highly trafficked stairs that do not have any sort of friction strips/grips" (NYSCEF Doc. No. 47 at p.5) (emphasis added). That is a conclusory statement, without any foundation. In fact, the testimony showed that the Defendants were not able to navigate the stairs very well and did not go into the basement often. There is no indication that the stairs were "highly trafficked". There is also no evidence, such as an expert affidavit, that the stairs had become worn. Plaintiff argues that Defendants' expert did not use a tribometer to evaluate the slipperiness of the floor, and provide a coefficient of friction. Plaintiff contends that the failure to take such measurements creates a question of fact as to whether the slippery stairs caused the fall. However, the Defendants did not need to produce evidence concerning whether the stairs were slippery because that would not be sufficient to establish liability. Plaintiff has not provided any evidence concerning whether Defendants created a hazardous condition, or had actual or constructive knowledge of such a condition. Nor has Plaintiff produced any evidence to contradict Defendants' expert that the stairs were in good structural condition, or that Multiple Dwellings Law is inapplicable in this instance. The Court concludes that Plaintiff has not raised any triable issue of fact.


## CONCLUSION

Based on the foregoing discussion, it is hereby

ORDERED, that Defendant's motion for summary judgment is GRANTED and Plaintiff's Complaint is dismissed.

THIS CONSTITUTES THE DECISION AND ORDER OF THIS COURT.

Dated: May 11, 2026  
Binghamton, New York

  
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HON. EUGENE D. FAUGHNAN  
Supreme Court Justice